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FEATURES AND DIRECTIONS OF IMPROVING THE ADMINISTRATIVE AND LEGAL REGULATION OF THE ACTIVITIES OF THE NATIONAL POLICE REGARDING FAMILY VIOLENCE COMBAT

The purpose of the study is the peculiarities and directions of improvement of the administrative and legal regulation of the activities of the National Police of Ukraine in the fight against domestic violence in the existing conditions. The article analyzes the main normative legal acts of Ukraine, which regulate the adoption of urgent measures to prevent and counter violence in the family, gender-based violence and the protection of the rights of persons who have experienced such violence. The main tasks and methods of work of the preventive work unit of the National Police of Ukraine are: detection of facts of domestic violence and timely response to them, reception and consideration of applications and reports regarding domestic violence, including issues of family violence, gender issues, as well as violence received by the call center, etc. The methodological basis of the research is comparative-legal and systemic analysis, formal-legal methods, interpretive methods, hermeneutic methods, analytical-synthetic methods.

The definition of the legislation of Ukraine in the field of combating and preventing domestic violence in the family includes legislative and by-laws, departmental and normative legal acts. It is worth noting that the National Police of Ukraine exercises its powers in the field of prevention and countermeasures against domestic violence taking into account international standards of response of law enforcement agencies to cases of domestic violence and risk assessment. The general and special measures applied to offenders, as well as the specifics of the application of these measures by preventive units of the National Police of Ukraine in the field of prevention and countermeasures against domestic violence, are clarified.

Attention was drawn to the fact that bringing the standards of professional training and official activities for the prevention of domestic violence to the generally recognized norms and standards in international relations, as well as the corresponding standards of European and other countries, by the police units that carry out the activities of the National Police of Ukraine, is one of the main directions of reforming the law enforcement system of Ukraine.

Key words: domestic violence, tasks, powers, National Police of Ukraine, police.

Тильчик В'ячеслав, Легеца Євген. Особливості та напрями вдосконалення адміністративно-правового регулювання діяльності Національної поліції щодо протидії насильству в сім'ї

Метою дослідження є особливості та напрями удосконалення адміністративно-правового регулювання діяльності Національної поліції України щодо протидії домашньому насильству в умовах, що склалися. У статті проаналізовано основні нормативно-правові акти України, які регулюють вжиття невідкладних заходів щодо запобігання та протидії насильству в сім'ї, гендерно зумовленому насильству та захисту прав осіб, які зазнали такого насильства. Основними завданнями та методами роботи підрозділу превентивної роботи Національної поліції України є: виявлення фактів насильства в сім'ї та своєчасне реагування на них, прийом та розгляд заяв і повідомлень щодо насильства в сім'ї, у тому числі з питань насильства в сім'ї, гендерних питань, а також насильство, отримане кол-центром тощо. Методологічною основою дослідження є порівняльно-правовий та системний аналіз, формально-юридичні методи, інтерпретаційні методи, герменевтичні методи, аналітико-синтетичні методи.

До визначення законодавства України у сфері протидії та запобігання домашньому насильству в сім'ї належать законодавчі та підзаконні акти, відомчі та нормативно-правові акти. Варто зазначити, що Національна поліція України здійснює свої повноваження у сфері запобігання та протидії домашньому насильству з урахуванням міжнародних стандартів реагування правоохоронних органів на випадки домашнього насильства та оцінки ризиків. З'ясовуються загальні та спеціальні заходи, що застосовуються до правопорушників, а також особливості застосування цих заходів превентивними підрозділами Національної поліції України у сфері запобігання та протидії домашньому насильству.

Акцентовано увагу, що приведення підрозділами поліції, що здійснюють діяльність Національної поліції України, стандартів професійної підготовки та службової діяльності щодо запобігання домашньому насильству до загальновизнаних норм і стандартів у міжнародних відносинах, а також відповідних стандартів європейських та інших країн є одним із основних напрямків реформування правоохоронної системи України.

Ключові слова: домашнє насильство, завдання, повноваження, Національна поліція України, поліція.

Introduction. Bringing the standards of professional training and official activities for the prevention of domestic violence by the police units carrying out preventive activities of the National Police of Ukraine in line with the generally recognized norms and standards in international relations, as well as the relevant standards of European and other countries is one of the main directions of reforming the law enforcement system of Ukraine. According to the new administrative and territorial structure, the Resolution of the Verkhovna Rada of Ukraine dated July 17, 2020. No. 807-IX “On the Formation and Liquidation of Districts” [6] has introduced new organizational and staff changes in the structure of territorial bodies, police units that determines the development and definition of the following categories: goals, objectives of activities, structural and organizational, and competence elements aimed at ensuring human rights and freedoms, the interests of society and the state, and domestic violence prevention.

Literature review. The works of administrative scientists are devoted to the general theoretical aspects of the organizational and legal basis of the police of Ukraine: Volokitenko I. O., Halaburda Nadiia, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna [2] and others. As for the study of the goals, objectives, forms and methods of activity of the units of the preventive service of the National Police of Ukraine for the prevention of domestic violence in the modern Ukrainian administrative legislation and in the context of reforming the system of the Ministry of Internal Affairs (hereinafter referred to as the Ministry of Internal Affairs) of Ukraine, there are only isolated scientific developments.

The goal of the article is to define the powers of preventive police units to prevent domestic violence, as well as to disclose the main organizational and legal forms, methods and measures in the field of preventing domestic violence.

Thus, as indicated by Kobrusieva Ye. a characteristic feature of the common space of justice, freedom and security is presented as the need to ensure a harmonious combination of its two aspects: external and internal. It is clear that the internal aspect of this space presupposes consolidation of efforts of law enforcement bodies of the European Union member states aimed at insurance of internal security and maintenance of law order throughout the Community, crea-

tion of a number of specialized bodies (institutions) whose activity should be directed at the promotion of the work of national law enforcement bodies [3].

Thus, taking into account that at present the Institute of International Cooperation of bodies and subdivisions of the National Police of Ukraine is at the stage of its formation, the urgent need is to study successful foreign experience of legal regulation of international cooperation in police activity in order to determine the possibility to use this experience in Ukraine and to develop ways of qualitative improvement of administrative and legal regulation of international cooperation of the police in Ukraine.

Results and discussion. In accordance with paragraph 5 of Article 1 of the Law of Ukraine “On Prevention and Counteraction to Domestic Violence”, prevention of domestic violence means the system of measures implemented by executive authorities, local self-government bodies, enterprises, institutions and organizations, as well as citizens of Ukraine, foreigners and stateless persons who are in Ukraine legally, and aimed at raising public awareness of the forms, causes and consequences of domestic violence, forming an intolerant attitude to violent behavior in private relations, caring attitude to affected persons, primarily to affected children, eliminate discriminatory attitudes about the social roles and responsibilities of women and men, as well as any customs and traditions based on them.

The powers of the preventive units of the National Police of Ukraine in the field of preventing and countering domestic violence include:

- 1) identification of facts of domestic violence and timely response to them;
- 2) receiving and reviewing applications and reports of domestic violence, including consideration of reports received by the call center for preventing and countering domestic violence, gender-based violence and violence against children, taking measures to stop it and provide assistance to affected persons, taking into account the results of risk assessment in accordance with the procedure determined by the Central Executive Authority that ensures the formation of state policy in the field of preventing and countering domestic violence, together with the National Police of Ukraine;
- 3) informing affected persons about their rights, measures and social services that they may use;

4) issuing urgent restraining orders against abusers;
5) taking abusers for preventive registration and conducting preventive work with them in accordance with the procedure established by law;

6) monitoring the implementation of special measures to counteract domestic violence by abusers during their validity period;

7) cancellation of permits for the right to purchase, store, carry weapons and ammunition to their owners in the event of domestic violence, as well as the seizure of weapons and ammunition in accordance with the procedure established by law;

8) interaction with other bodies that carry out measures in the field of preventing and countering domestic violence, in accordance with Article 15 of this Law;

9) reporting to the Central Executive Authority, implementing the state policy in the field of preventing and countering domestic violence, on the results of the exercise of powers in this area in accordance with the procedure determined by the Central Executive Authority that ensures the formation of state policy in the field of preventing and countering domestic violence [15].

Authorized units of the National Police of Ukraine exercise their powers in the field of preventing and countering domestic violence, taking into account international standards for the response of law enforcement agencies to cases of domestic violence and risk assessment. Police officers may enter a person's home without a reasoned court decision in urgent cases related to the cessation of an act of domestic violence committed, in case of an immediate danger to the life or health of the injured person.

Of particular note is that in accordance with the Order of the Ministry of Internal Affairs dated December 19, 2017 No. 1044 "On Approval of Instructions for Organizing the Work of Juvenile Prevention Units of the National Police of Ukraine" [4], the main tasks are as follows:

– preventive activities aimed at preventing children from committing criminal and administrative offenses, identifying the causes and conditions that contribute to this, and taking measures within their competence to eliminate them;

– keeping preventive records of children who are prone to committing offenses, and conducting individual prevention measures with them;

– participation in establishing the location of the child in the event of his/her unknown disappearance or obtaining data for this purpose in the criminal proceedings opened on the fact of the child's unknown disappearance;

– taking measures to prevent and counteract domestic violence committed by and against children, as well as child abuse;

– taking measures to prevent child neglect, including the implementation of police custody of minors;

– carrying out activities related to the protection of the child's right to general secondary education [5].

Special measures to combat domestic violence include:

1) an emergency prohibition order against the abuser;

2) a prohibitory injunction order against the abuser;

3) taking the abuser on preventive registration, conducting preventive work with the abuser;

4) referral of the abuser to the abuser program [11].

In accordance with paragraph 16 of Article 1 of the Law of Ukraine "On Preventing and Countering Domestic Violence", an emergency prohibition order is a special measure to counteract domestic violence, which is used by authorized units of the National Police of Ukraine as a response to the fact of domestic violence and is aimed at immediately stopping domestic violence, eliminating the danger to the life and health of victims and preventing the continuation or repetition of such violence [5].

This emergency prohibition order is issued if there is an immediate threat to the life or health of the injured person in order to immediately stop domestic violence, prevent its continuation or recommission. This legal instrument is regulated in more detail in Article 25 of this Law.

Measures that may be applied on the basis of an emergency prohibition order include: an obligation for the abuser (the person who has committed domestic violence) to leave the place of residence (stay) of the injured person; a ban on the abuser to enter and stay in the place of residence (stay) of the injured person; a ban on the abuser in any way to contact the injured person. In relation to minor abusers who have a common place of residence (stay) with the injured person, these first two measures are not subject to application.

It should be noted that the Law of Ukraine "On Preventing and Countering Domestic Violence" gives the safety of the affected person priority even over the property rights of persons to housing [5]. Therefore, part 3 of Article 25 of this Law provides for the possibility of issuing an emergency prohibition order in relation to residential premises that belong exclusively to the offender, provided that such housing is the place of joint residence (stay) of the injured person and the offender. At the same time, the police are empowered to evict the offender from such residential premises, if the emergency prohibition order provides for an obligation to leave the place of residence (stay) of the injured person, and the offender refuses to voluntarily leave it. The urgency

and out-of-court nature of the adoption determine the validity period of an emergency prohibition order, which is not more than ten days [8].

Consequently, an emergency prohibition order is applied by the police if there is a threat to the injured person and for the purpose of immediately countering an act of domestic violence. That is, at the time of issuing this order, the person in respect of whom it is issued has not been found guilty of committing domestic violence in criminal proceedings or an administrative offense. In general, this approach is somewhat similar to the detention of a suspected person during the commission of a crime or after its commission, if the set of signs indicates that this particular person has committed a crime (Article 208 of the Criminal Procedure Code), which takes place before the commencement of a pre-trial investigation (in other words, before the opening of criminal proceedings). By this analogy, in our opinion, the issuance of an emergency prohibition order should be accompanied by other procedural actions of the police, namely, drawing up a protocol on an administrative offense (Article 173-2 of the Code of Ukraine on Administrative Offenses) or entering information on the relevant criminal offense in the Unified Register of Pre-Trial Investigations.

Unlike an emergency prohibition order, a prohibitory injunction order is issued by the court on the basis of an appeal from interested parties, and therefore allows for a much wider range of possible restrictions on the rights of the offender, longer periods. In particular, the measures that may be applied to the abuser on the basis of a prohibitory injunction order are: 1) prohibition to stay in a place of cohabitation (stay) with the injured person; 2) removal of obstacles in the use of property that is the object of the right of common joint ownership or personal private property of the injured person; 3) restriction of communication with the injured child; 4) prohibition to approach a certain distance to the place of residence (stay), study, work, other places of frequent visit of the injured person; 5) prohibition to personally and through third parties search for the injured person if he/she is at his/her own request in a place unknown to the offender, pursue him/her and communicate with him/her in any way; 6) prohibition to conduct correspondence, telephone conversations with the affected person or to contact him/her through other means of communication in person and through third parties.

It is worth noting that the prohibitory injunction order may provide for the application of several of these measures at once. Similarly to an emergency prohibition order, a prohibitory injunction order

may not contain measures that restrict the right of residence or stay of a minor abuser in the place of his/her permanent residence (stay). The issuance of a prohibitory injunction order is carried out by making a court decision in a separate proceeding, for the purposes of which Section IV of the Civil Procedure Code (hereinafter referred to as the CPC) is supplemented with a new Chapter 13. In addition, the issuance of a prohibitory injunction order in a separate proceeding is based on the provision that this proceeding is intended to create conditions for a person to exercise personal non-property or property rights (part 7 of Article 19 of the CPC). The prohibitory injunction order is issued for a period of one to six months and may be extended by the court for a period of no more than six months [1].

The Law of Ukraine “On Preventing and Countering Domestic Violence” and the Civil Procedure Code do not provide for the possibility of revoking the prohibitory injunction order, in particular if a person is found not guilty of committing a crime or administrative offense. It appears that a possible way to resolve this issue would be to quash the judgment on newly discovered circumstances [9].

In addition, all facts of domestic violence, information on the abuser (regardless of his/her consent), as well as about victims (with their consent) are entered in the Unified State Register of Domestic and Gender-Based Violence Cases. Such information is stored in the database: 1 year – in the absence of open criminal proceedings, a court decision on a prohibitory injunction order or administrative penalty, a court verdict of guilty; 3 years – in the presence of a court decision on a prohibitory injunction order or administrative penalty; 10 years – if there is a conviction that has entered into force [16].

In addition, the abuser may be taken on preventive registration, work with him/her by the police, and sent to undergo a corrections programme for a period of three months to one year.

The next measure is the taking of abusers by a division of the National Police of Ukraine for preventive registration, conducting preventive work with them, which occurs from the moment of detection of the fact of committing domestic violence by them, for the period established by law. Removal of the offender from the preventive register is carried out by the authorized division of the National Police of Ukraine, which has ensured the preventive registration, automatically after the completion of the established period, unless otherwise provided by law. The procedure for taking on preventive registration, carrying out preventive work and removing the offender from preventive

registration is approved by the Ministry of Internal Affairs of Ukraine [9].

In turn, intervention programs for abusive behavior are available as well. The bodies responsible for implementing intervention programs for abusive behavior are local state administrations and local self-government bodies that organize and ensure that abusers complete such programs. The implementation of intervention programs for abusive behavior in relation to abusers is carried out taking into account the age and psychological characteristics of children. In order to prevent repeated domestic violence and ensure the implementation of the intervention program for abusive behavior, the abuser's child may be temporarily placed with relatives, in the family of a foster carer or in an institution for children, regardless of the form of ownership and subordination, in which appropriate conditions are created for living, upbringing, training and rehabilitation of the child in accordance with his/her needs. The implementation of intervention programs for abusive behavior is provided by specialists who have received appropriate training. The abuser may be sent by the court to complete the intervention program for abusive behavior for a period of three months to one year in cases stipulated for by law. The abuser should be able to attend the intervention programs for abusive behavior on his/her own initiative on a voluntary basis. In case of failure of the abuser to complete the intervention program for abusive behavior or evasion from completing the program without valid reasons, the bodies responsible for the implementation of intervention programs for abusive behavior shall provide within three working days a written notification about this to the authorized unit of the National Police of Ukraine for taking action. Bringing the abuser to justice for failure to complete the intervention program for abusive behavior does not release the abuser from the obligation to complete such a program. If an abuser, in particular a child abuser, is brought to criminal responsibility by the court, he/she may be required to complete a probation program in accordance with paragraph 4 of part 2 of Article 76 of the Criminal Code of Ukraine [1].

It should be noted that all these measures are preventive measures that enable state bodies to quickly respond to the facts of domestic violence, stop its commission, and

eliminate the threat of repeated violence. However, the application of such measures does not mean that the offender will not be brought to administrative or criminal responsibility if there are grounds.

In order to respect human rights and freedoms, to comply with guarantees for the protection of the rights and interests of persons affected by domestic violence, gender-based violence, as well as to ensure an appropriate response to cases of such violence, to provide assistance to affected persons, to create conditions for each child to exercise the right to grow up in a safe family environment, taking into account the growing challenges associated with the commission of domestic violence, due to the reduction of latency of such offenses, great public response and in order to effectively implement the Decree of the President of Ukraine dated September 21, 2020. No. 398/2020 "On Urgent Measures to Prevent and Counteract Domestic and Gender-based Violence, and Protect the Rights of Persons Affected by Such Violence", we propose to create sectors of countering domestic violence in the cluster police units created on the basis of regional centers and cities of Severodonetsk and Mariupol, in the prevention departments, which, in particular, will include police officers involved in working in mobile groups to respond to the facts of committing such offenses, which are now successfully operating in the implementation of the relevant project [7].

We suggest that the staffing table of the specified sector should consist of 10 positions per mobile group (depending on the quantitative load of calls about the facts of domestic violence) at the rate of: 1 – Head of the Sector, 1 – Senior Inspector and Inspectors.

Conclusions. Prevention of domestic violence is one of the priority areas of preventive police station, which includes departments of district police officers, juvenile prevention units, patrol police, etc. Ensuring the effectiveness of such activities should be accompanied by a noticeable increase in the technical security of the police, increasing the efficiency of work, implementing a number of other organizational measures, improving the legal regulation of activities aimed at countering and preventing domestic violence, which determine the competence and place of preventive units as part of the National Police of Ukraine.

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