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ADMINISTRATIVE AND LEGAL FRAMEWORK FOR PREVENTION AND COUNTERACTION OF DISCRIMINATION BY DISTRICT POLICE OFFICERS

Abstract. Purpose. The purpose of the article is to clarify and thoroughly reveal the specificities of the administrative and legal regulatory mechanism for prevention and counteraction of discrimination by district police officers. **Results.** The article elaborates on the specificities of the administrative and legal regulatory mechanism for prevention and counteraction of discrimination by district police officers. Persons with disabilities are found to be one of the most vulnerable segments of the population and are subject to a wide range of discrimination forms. In view of this, the provisions of the Convention on the Rights of Persons with Disabilities, the Law of Ukraine “On Fundamentals of Social Protection of Persons with Disabilities in Ukraine” and a number of other legal regulations are being implemented at the legislative level. The focus should be on recent introduction of evaluation methodologies for ensuring the rights of persons with disabilities by all central executive authorities that guarantees an increase in the quality and efficiency of implementing the relevant State anti-discrimination policy of Ukraine. **Conclusions.** The study makes proposals on five clusters of legal regulations, among which a general cluster provides for the framework for the exercise of powers by public authorities against discriminatory acts; reveals the specificities of implementing basic administrative and legal relations between public institutions, the population, etc.; a competence cluster provides for the powers of executive authorities and individual officials regarding the implementation of State anti-discrimination policy; human rights cluster concerns administrative and legal regulations, organizational and steering documents of the Human Rights Commissioner of the Verkhovna Rada; a sectoral cluster enshrines guidelines to ensure the principle of non-discrimination in the implementation and protection of specific groups of citizens; an expert-analytical cluster represents the organization of anti-discrimination and gender-based legal examination of draft laws and other materials provided for in the legislation in force.

Key words: administrative and legal regulations, anti-discrimination examination, discrimination, district police officers, National Police, human and civil rights and freedoms.

1. Introduction

The authorized actors implement measures to prevent and combat discrimination within the framework of the relevant public policy of Ukraine, considering their specific competence. This legal relationship is regulated by a certain general and specific frame of anti-discrimination legislation, which should be carefully considered and grouped into clusters in the context of administrative law.

What is needed now is a thorough exposition of the issue from the perspective of performance of the police and district police officers. Indeed, in specific areas, these officials play an exclusive role in the organization of observance of the principle of non-discrimination and the protection of the rights and freedoms of a particular cat-

egory of citizens at the local level, when other public institutions are not provided with the necessary administrative coercion means and other similar legal instruments.

The purpose of the article is to clarify and thoroughly reveal the specificities of the administrative and legal regulatory mechanism for prevention and counteraction of discrimination by district police officers.

2. Administrative and legal regulations defining the basic powers of the central and local executive authorities to guarantee the principle of non-discrimination

The first cluster is general, represented by a number of legal regulations, such as the Law of Ukraine On the Principles of Prevention and Counteraction of Discrimination in

Ukraine, On Ensuring Equal Rights and Opportunities for Women and Men, On Education, On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine, Fundamentals of Health Care Legislation of Ukraine, Labour Code of Ukraine, etc. These documents provide for the framework for the exercise of powers by public authorities against discriminatory acts at different levels of the public and State life; outlines the foundations and specificities of implementing basic administrative and legal relations between public institutions, the population, and representatives of civil society, etc.

The second cluster is a competence one that consists of administrative and legal regulations, which provide for the powers of executive authorities and individual officials regarding the implementation of State anti-discrimination policy. Such documents have been analysed in the context of the system and powers of the actors authorised to combat discrimination, so to make the logic of the text more visible and consistent, we will only present their list, which is not exhaustive. Initially, these instruments are:

1) Authorized officials appointed by the Cabinet of Ministers: Regulations on the Government Plenipotentiary on Gender Policy, approved by Resolution 390 of the Cabinet of Ministers of 7 June 2017, Regulations on the Government Commissioner for the Rights of Persons with Disabilities, approved by Resolution 125 of 21 February 2017, Regulations on the Education Ombudsman, approved by Resolution 491 of the Cabinet of Ministers of 06 June 2018;

2) Centralexecutive authorities: Regulations on the Ministry of Internal Affairs of Ukraine, approved by Resolution 878 of the Cabinet of Ministers of 28 October 2015, Regulations on the Ministry of Justice of Ukraine, approved by Resolution 228 of the Cabinet of Ministers of Ukraine on 02 July 2014, Regulations on the Ministry of Reintegration of the Temporarily Occupied Territories, approved by Resolution 376 of the Cabinet of Ministers of Ukraine on 08 June 2016, Regulations on the Ministry of Social Policy of Ukraine, approved by Resolution 423 of the Cabinet of Ministers of 17 June 2015, Regulations on the State Labour Service of Ukraine, approved by Resolution 96 of the Cabinet of Ministers of 11 February 2015, Regulations on State Service of Ukraine for Ethnopolitics and Freedom of Conscience, approved by Resolution 812 of the Cabinet of Ministers of 21 August 2019.

The third one, human rights cluster, concerns administrative and legal regulations, organizational and steering documents of the Human Rights Commissioner of the Verkhovna Rada, having a significant and continuous

positive impact on all the structural elements of the human rights machinery in the country, on the law-making and law application by the public authorities, and promote a sustainable social environment in accordance with the general requirements of the principles of non-discrimination. The key areas of implementation of the official's orders are: the organization of the work of his/her secretariat and structural units; the work of the advisory and coordinating councils by the areas of activity; establishment of working groups by areas of activity; regulations on the organization and monitoring visits by areas of activity (Official site of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine 'ombudsman.gov.ua').

The focus should be on the Regulations for Organizing and Conducting Monitoring Visits on Observance of the Rights of the Child and the Family by Public Authorities, Local Self-Government Bodies, Enterprises, Institutions, Organizations Regardless of Ownership, approved by Order 83.15/19 of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights of 05 September 2019 (Order of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights On Approval of the Regulations for Organizing and Conducting Monitoring Visits on Observance of the Rights of the Child and the Family by Public Authorities, Local Self-Government Bodies, Enterprises, Institutions, Organizations Regardless of Ownership, 2019).

Considering that the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, the structural units of his/her secretariat and regional offices have not only monitoring and information-analytical functions but also specific supervisory, administrative and jurisdictional powers, the Procedure for Carrying Out Proceedings of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, approved by Order 18/02-13 of the Commissioner of the Verkhovna Rada for Human Rights of 12 August 2013, Procedure for Registration of Materials on Administrative Offences, approved by Order 3/02-15 of the Commissioner of the Verkhovna Rada for Human Rights of 16 February 2015 have entered into force (Order of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights On Approval of the Procedure for Carrying Out Proceedings of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, 2013). Specifically, these measures provide for the preparation of reports on misconduct, governed by articles 188³⁹, 188⁴⁰ and 212³ of the Code of Administrative Offences. When a person commits more than one separate

offence, records are drawn up for each offence (Order of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine on the Procedure for Registration of Materials on Administrative Offenses, 2015).

3. Legal regulations guaranteeing the principle of non-discrimination in the implementation and protection of specific groups of citizens

The fourth one, sectoral cluster, comprises a set of administrative and legal regulations that provide guidelines to ensure the principle of non-discrimination in the implementation and protection of specific groups of citizens. Certain areas of State anti-discrimination policy in Ukraine have a clearly defined specialty, due to steady trends towards the implementation of international law in domestic legislations. This includes ensuring gender equality, particularly in the security and defence sectors. (Volobuieva, Viatkina, Hanaba, Honcharenko, Hushchyn, Zhukovska, et al., 2021, p. 16), therefore, a significant regulatory framework deals with this issue. Article 12 of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” stipulates that the executive authorities and local self-government bodies within their competence (Law of Ukraine On Ensuring Equal Rights and Opportunities for Women and Men, 2005):

1) ensure equal rights and opportunities for women and men, prevent and combat gender-based violence; implement national and regional programmes to ensure equal rights and opportunities for women and men; prevention and counteraction of gender-based violence;

2) create conditions for combining professional and family responsibilities by women and men; provide accessible social and household services; carry out educational activities on gender equality, prevention and counteraction of gender-based violence;

3) cooperate with voluntary associations and foreign non-governmental organizations to ensure equal rights and opportunities for women and men and to prevent and combat gender-based violence; submit proposals for improving legislation on gender equality, prevention and counteraction of gender-based violence; collect and disseminate information on gender-based violence; as well as general and specialized victim support services;

4) participate in the training of specialists in the realization of equal rights and opportunities for women and men, in the prevention and combating of gender-based violence; promote scientific developments in the field of gender research; observe the principle of equal rights and opportunities for women and men in their activities; take positive action.

These legislative requirements are specified in certain methodological materials, such as the Methodological Recommendations on introducing provisions, aimed at ensuring equal rights and opportunities for women and men in labour relations, into collective agreements and contracts, approved by Order 56 of the Ministry of Social Policy of Ukraine of 29 January 2020, in order to ensure gender equality in the workplace by respecting the principle of non-discrimination, aimed at resolving conflicts caused by inappropriate acts or omissions.

The logical follow-up to the document under consideration are the Methodological Recommendations on Identification of Cases of Gender Discrimination and the Mechanism of Legal Aid, approved by Order 33 of the Ministry of Justice of 12 March 2019, aimed at identifying cases of gender-based discrimination and determining a legal aid scheme, in particular free legal aid (Order of the Ministry of Justice of Ukraine On Approval of Methodological Recommendations on Identification of Cases of Gender Discrimination and the Mechanism of Legal Aid, 2019). At the same time, the Methodological Recommendations on Gender Audits by Enterprises, Institutions and Organizations, approved by Order 448 of the Ministry of Social Policy of 09 August 2021, specify that the purpose of such an audit may be to evaluate the state of gender equality ensured by legal persons, to identify problems, to determine ways of reducing inequalities, to analyse changes in this field, as well as raising awareness of employees on the application of an integrated gender approach in their activities.

Persons with disabilities are one of the most vulnerable segments of the population and are constantly subjected to various forms of discrimination. In view of this, the provisions of the Convention on the Rights of Persons with Disabilities, the Law of Ukraine “On Fundamentals of Social Protection of Persons with Disabilities in Ukraine” and a number of other legal regulations are being implemented at the legislative level. The focus should be on recent introduction of evaluation methodologies for ensuring the rights of persons with disabilities by all central executive authorities that guarantees an increase in the quality and efficiency of implementing the relevant State anti-discrimination policy of Ukraine.

For example, the Methods for evaluating the work on ensuring the rights of persons with disabilities in the Ministry of Justice of Ukraine, its territorial bodies, enterprises, institutions and organizations within the scope of its management, approved by Order 1646/5 of the Ministry of Justice of 29 May 2018, outlines that the evaluation shall be carried out by the heads

of structural subdivisions, territorial bodies, enterprises, institutions and organizations of the Ministry by submitting written answers to the questions, which have been compiled in the form of tests on 11 incendiary issues. A structural unit is considered to be one in which the rights of this category of persons are not fully protected if, on the basis of an evaluation, the overall evaluation is less than the required minimum score (Order of the Ministry of Justice of Ukraine On approval of the Methodology for evaluating the work on ensuring the rights of persons with disabilities in the Ministry of Justice of Ukraine, its territorial bodies, enterprises, institutions and organizations within the scope of its management, 2018). Similar documents are available in all other ministries, such as the Working Group on evaluating the work on ensuring the rights of persons with disabilities in the Ministry of Internal Affairs and central executive bodies, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine, approved by Order 294 of the Ministry of Internal Affairs of Ukraine of 11 April 2018 (Order of the Ministry of Internal Affairs of Ukraine On approval of the Methodology for evaluating the work on ensuring the rights of persons with disabilities in the Ministry of Internal Affairs of Ukraine and central executive bodies, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine, 2018).

The fifth cluster, expert-analytical cluster, represents constitutes an important part of the procedural component of the National legal mechanism for prevention and counteraction of discrimination in Ukraine in the context of implementing administrative and legal relations in the field under consideration, regulated by a set of legal instruments providing the proper organization of the examination of draft laws and other materials provided for in the legislation in force by authorized actors.

According to the Law of Ukraine "On Fundamentals of Prevention and Counteraction of Discrimination in Ukraine", anti-discrimination examination is analysis of draft laws,

on the results of which an opinion is given on their conformity with the principle of non-discrimination. In order to identify provisions with the signs of discrimination in the draft laws, the examination is carried out. Its results are subject to mandatory review when a decision is taken to issue (adopt) the document. Draft laws of Ukraine, acts of the President of Ukraine, and legal regulations drawn up by executive authorities, oblast and Kyiv city State administrations are subject to mandatory review (Law of Ukraine On Principles of Prevention and Counteraction of Discrimination in Ukraine, 2012). The procedure for this examination is specified in the Procedure for an anti-discrimination examination of draft laws by the executive authorities, approved by Resolution 61 of the Cabinet of Ministers of Ukraine of 30 January 2013.

4. Conclusions

To sum up, domestic administrative legislation in the field of prevention and counteraction of discrimination implies five clusters of legal regulations:

1) General cluster provides for the framework for the exercise of powers by public authorities against discriminatory acts at different levels of public and State life; outlines the specificities of implementing basic administrative and legal relations between public institutions, the population, etc;

2) Competence cluster provides for the powers of executive authorities and individual officials regarding the implementation of State anti-discrimination policy;

3) Human rights cluster concerns administrative and legal regulations, organizational and steering documents of the Human Rights Commissioner of the Verkhovna Rada;

4) Sectoral cluster enshrines guidelines to ensure the principle of non-discrimination in the implementation and protection of specific groups of citizens on certain discriminatory grounds;

5) Expert-analytical cluster represents the organization of anti-discrimination and gender-based legal examination of draft laws and other materials provided for in the legislation in force.

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АДМІНІСТРАТИВНО-ПРАВОВЕ ПІДГРУНТЯ ЗАПОБІГАННЯ ТА ПРОТИДІЇ ДИСКРИМІНАЦІЇ ДІЛЬНИЧНИМИ ОФІЦЕРАМИ ПОЛІЦІЇ

Анотація. Мета. Метою статті є з'ясування та ґрунтовне розкриття особливостей адміністративно-правового регулювання запобігання та протидії проявів дискримінації дільничними офіцерами поліції. **Результати.** У статті детально розкрито особливості адміністративно-правового регулювання запобігання та протидії проявів дискримінації дільничними офіцерами поліції. З'ясовано, що особи з інвалідністю є однією з найбільш незахищених верств населення, що постійно

піддаються різноманітним проявам дискримінації. З огляду на це на законодавчому рівні реалізуються у практичну площину положення Конвенції про права осіб з інвалідністю, Закону України «Про основи соціальної захищеності осіб з інвалідністю в Україні», низки інших нормативно-правових актів. На особливу увагу заслуговує впровадження останніми роками методик оцінювання роботи із забезпечення прав осіб з інвалідністю всіма центральними органами виконавчої влади, що гарантує підвищення якості та ефективності реалізації відповідного спрямування державної антидискримінаційної політики України. **Висновки.** Запроновано п'ять блоків відповідних нормативно-правових актів, де загальний блок визначає основи реалізації владних повноважень публічними органами у сфері боротьби з дискримінаційними проявами, розкриває особливості здійснення базових адміністративно-правових відносин між публічними інституціями, населенням тощо; компетентнісний блок – визначає повноваження органів виконавчої влади, окремих посадових осіб у сфері реалізації державної антидискримінаційної політики; правозахисний блок – стосується адміністративно-правових актів та організаційно-розпорядчих документів Уповноваженого Верховної Ради України з прав людини; галузевий блок – закріплює керівні приписи щодо забезпечення принципу недискримінації у сфері реалізації та захисту окремих груп громадян; експертно-аналітичний блок – репрезентує забезпечення організації здійснення антидискримінаційної та гендерно-правової експертизи проектів нормативно-правових актів, інших матеріалів, передбачених чинним законодавством.

Ключові слова: адміністративно-правові акти, антидискримінаційна експертиза, дискримінація, дільничні офіцери поліції, Національна поліція України, права і свободи людини та громадянина.

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