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THE NATIONAL POLICE OF UKRAINE AS AN AUTHORISED ENTITY OF CONDUCTING ADMINISTRATIVE INVESTIGATION

Abstract. ***Purpose.*** The purpose of the article is to define the fundamental principles of conducting an administrative investigation by the National Police of Ukraine as an authorised entity. ***Results***. The conduct of an administrative investigation in proceedings on administrative offenses is the competence of authorised entities, in particular, the National Police of Ukraine. Officials of the National Police are civil servants, and therefore act on behalf of the State, within their powers and in the manner prescribed by law, and express the position of state institutions, i.e., act publicly. In this way, the principle of publicity inherent in the conduct of an administrative investigation in proceedings on administrative offenses is implemented in this process. The author proposes to consider "the conduct of an administrative investigation" as the implementation by the bodies vested with administrative and jurisdictional powers of a set of procedural actions to identify and verify the circumstances and facts relevant to the preliminary qualification of an offense committed, and the grounds for commencing proceedings at the stage of administrative investigation. Therefore, the conduct of an administrative investigation by the National Police is an independent cycle of exercising competence by the authorised police bodies, which has its own specific purpose, tasks and features. ***Conclusions.*** The author concludes that the system of principles for the conduct of an administrative investigation consists of general and special principles. The implementation of these principles is essential for the effective operation of authorised entities, in particular, the National Police, in conducting administrative investigations in cases of administrative offenses. Thus, as of today, the fundamental principles of the conduct of an administrative investigation by the National Police as an authorised entity cannot be assessed unambiguously as positive or negative. This is due to the fact that, on the one hand, this issue is regulated sufficiently at the legislative level. On the other hand, this regulatory framework has a number of gaps and shortcomings which prevent the police from a full, efficient and effective exercise of their administrative and legal status in the relevant area.

Key words: principles, administrative proceedings, administrative offenses, evidence, powers.

1. Introduction

An analysis of the current legal regulations of Ukraine defining the competence of the National Police bodies suggests that one of the main areas of their activities is administrative activity, which is aimed, in particular, at providing police services in the field of human rights and freedoms, interests of society and the state, ensuring public safety and order, combating crimes and other offenses (Bezpalova, Dzhafarova, Kniaziev, 2017, p. 16). Therefore, a large share of the administrative activities of the police is proceedings on administrative offenses.

Despite certain differences in the views of administrative law scholars on the legal nature, essence and content of proceedings on administrative offenses, their perspectives coincide in one thing: that this type of administrative process consists of several phases of development that change each other (Kolomoiets, Sokolenko, Pryimachenko, 2017, p. 160). That is, in our opinion, the staging is one of the features of proceedings on administrative offenses. V. Ishchenko understands the stage of proceedings in the administrative procedure literature as "...a relatively independent part of the proceedings, which, along with its general tasks,

has its own specific, inherent features and tasks that determine its content and procedural purpose" (Ishchenko, 2011, p. 229).

Thus, in order to separate a certain part of the proceedings on administrative offenses into a separate stage of proceedings, it is necessary to establish that this part meets certain criteria, such as: independence; realisation within the framework of the procedure prescribed by law, i.e., by performing functions and tasks defined by law, which are reduced to a single goal, failure to fulfil thereof constitutes an obstacle to the sequence of actions in the proceedings; issuance of a procedural document; logical sequence of a number of procedural actions (system of interrelated actions); a definite circle of participants; issuance of a separate procedural document.

2. Particularities of the commencement of administrative proceedings

Currently, national legislation does not specify the moment from which bodies vested with administrative and jurisdictional powers are authorised to carry out a set of procedural actions to verify information, establish facts, collect evidence and make decisions. Scholars believe that the grounds for launching a case are the commission of an administrative offense, and the reasons are statements of citizens, reports of state bodies and officials, media reports, etc. (Bandurka, Tishhenko, 2001, p. 177).

The commencement of an administrative offense case is preceded by establishment of the reasons for this. The Code of Ukraine on Administrative Offenses does not define the reasons for commencing proceedings on administrative offenses. Considering the above and using criminal procedural approaches to understanding the reasons for commencing a case, the authors of the textbook *Administrative Procedure Law* under the general editorship of T. Minke suggest that such information may be: direct detection of an administrative offense by an authorised person; statements of citizens, reports of representatives of the public, institutions, organisations, mass media in the press, on radio, television, other reports; reports of an offense received from other law enforcement and control and supervisory authorities; reports of an offense received from customs, border and law enforcement authorities of foreign countries, as well as international organisations, etc. (Kolomoiets, Sokolenko, Pryimachenko, 2017, p. 162).

According to A.V. Chervinchuk, a reason is usually understood as information about an act that has signs of an administrative offense (a latent violation of a rule of law does not cause administrative procedural relations). It is the reason for commencing a case that determines the application of procedure provisions (Chervinchuk, 2019, p. 30). M.V. Zavalnyi rightly notes that the legal significance of the reason for commencing and investigating an administrative case is that it initiates public activity of public administration bodies, requires that these bodies respond appropriately to each signal of an administrative offense. It is the reason for commencing a case that necessitates the application of the administrative procedure provision (Zavalnyi, 2006).

Proceedings on administrative offenses are commenced without drawing up a relevant procedural document. However, the Code of Ukraine on Administrative Offenses mentions a material circumstance under which a case shall be initiated. Such circumstances are the signs of an administrative offense, in particular: act or omission; unlawfulness; encroachment on public order, property, rights and freedoms of citizens; guilt; criminality, etc. (Code of Ukraine on Administrative Offenses:, 1984).

Focusing on the signs of an administrative offense, it is advisable to consider the "grounds for initiating a case". The grounds for initiating proceedings on an administrative offense are sufficient data or information indicating the presence of signs of an administrative offense (misdemeanour). The legal significance of the grounds for commencing a case is that it initiates the procedural activity of the authorised bodies, and therefore requires these bodies to respond appropriately to the signal of the committed act (Hnatiuk, 2011, p. 65). In other words, the conclusion about the sufficiency of the grounds for commencing an administrative offense case can be made based on a certain set of data indicating the presence of signs of an administrative offense.

In order to commence an administrative offense case, not only reasons and grounds are required, but also the absence of circumstances that impede this. The list of these circumstances is provided for in Article 247 of the Code of Ukraine on Administrative Offenses (Code of Ukraine on Administrative Offenses, 1984). If any of these circumstances are known at the time of the commencement of an administrative case, the case is not allowed to be commenced. However, given that an administrative case may be commenced not only in respect of a person, but also on the basis of a fact, a circumstance preventing the commencement of a case may be discovered only during the conduct of an administrative investigation. In such case, the investigating authority may terminate the administrative investigation by notifying the concerned party in writing, without a formal decision. The main purpose of an adminis-

trative investigation is to establish the objective truth in a case. Therefore, the circumstances relevant to the resolution of the case shall be thoroughly investigated. This does not mean that in this case evidence shall be collected by any means. However, the conclusion about the presence or absence of the facts under investigation should be based on evidence that would leave no doubt about the reliability of the conclusions and their compliance with the objective truth in the case (Zavalnyi, 2006). Thus, only after receiving information about an administrative offense (statement, oral appeal, complaint, media reports, etc.), its verification begins and, if it is confirmed, the official, for example, of the National Police, continues to clarify the circumstances of the administrative offense – this is the initial stage of the administrative investigation in cases of administrative offenses.

In addition, it should be noted that at the stage of administrative investigation, legally significant actions may take place even before the procedural formalisation of the commencement of proceedings on administrative offenses, such as the moment when officials of the National Police of Ukraine exercise administrative and jurisdictional competence provided for by law to verify information, collect evidence, and find out the information necessary to establish the fact and preliminary qualification of an administrative offense. Therefore, the purpose of the conduct of an administrative investigation is to establish the presence or absence of an administrative offense, to identify suspects, and collect and analyse evidence of the offense.

Furthermore, the question of the moment of the commencement of an administrative offense case (drafting of the relevant procedural document) is controversial among scholars, in particular, whether this stage is the initial or final stage of the conduct of an administrative investigation in cases of administrative offenses. The Code of Ukraine on Administrative Offenses does not establish the moment when an administrative offense case may be considered commenced.

In administrative tort theory, there is a widespread view that only drawing up a report by an authorised actor indicates the commencement of proceedings on an administrative offense. For example, Yu.P. Bytiak notes that the stage of commencement of an administrative offense case consists in drawing up records by an authorised person, while without records, an administrative offense case cannot be commenced (Bytiak, 2010, p. 222). Interesting is the opinion of M.V. Zavalnyi who emphasises that this approach lacks consideration of the current state of understanding of the administrative tort sphere. This conclusion is prompted by the particularities of the records (as a separate procedural document). The records are a comprehensive document which describes not only the fact of misdemeanour, but also contains information about the offender's identity, a conclusion on the qualification of the act, information about victims and witnesses, explanations of the offender, as well as other information necessary for resolving the case and compensation for material damage (Zavalnyi, 2006).

Undoubtedly, the purpose of the conduct of an administrative investigation in proceedings on administrative offenses is to commence a case, but we should agree with the opinion of D.N. Bakhrakh that the wording "commencing a case on an administrative offense" is not without certain drawbacks, since at the stages of administrative investigation not only the case is commenced, but also an administrative investigation, which consists of a set of procedural actions, such as "detection of the circumstances of the case" or "investigation of the circumstances of the case," is conducted (Bahrah, 1997, p. 29).

Drawing up a procedural document is a phase of the conduct of an administrative investigation, implying "to perform actions aimed at recording and collecting evidence confirming or refuting guilt in committing an administrative offense (misdemeanour), collecting explanations from the participants in the proceedings, appointing an expert examination, clarifying the qualification of the misdemeanour, namely: the presence of elements of an offense (misdemeanour) provided for by the Code of Ukraine on Administrative Offenses, establishing the actual circumstances of the case" (Hnatiuk, 2011, p. 72). In our opinion, it is not quite correct to define the commencement of the conduct of an administrative investigation as the drawing up of records, because then the whole range of procedural actions taken by the authorised actor before its drawing up remains legally unregulated.

Thus, the procedural processing of the investigation results completes the conduct of an administrative investigation, and does not commence it, while the submission of administrative investigation materials to the jurisdiction is the final stage, respectively.

Therefore, we propose to consider "the conduct of an administrative investigation" as the implementation by the bodies vested with administrative and jurisdictional powers of a set of procedural actions to identify and verify the circumstances and facts relevant to the preliminary qualification of an offense committed, and the grounds for commencing

proceedings at the stage of administrative investigation. Consequently, the conduct of an administrative investigation by the National Police is an independent cycle of exercising competence by the authorised police bodies, which has its own specific purpose, tasks and features.

The analysis of the regulatory framework enables to formulate the main tasks of the conduct of an administrative investigation by the National Police as an authorised entity, namely: timely, comprehensive, complete and objective establishment of the circumstances of each case; resolution of the case in strict accordance with the law; prevention of offenses; ensuring public safety and order; protection of human rights and freedoms, as well as the interests of society and the State.

A complete and comprehensive study of the general principles of the conduct of an administrative investigation, in our opinion, requires substantiating the system of principles guiding the officials of the National Police of Ukraine at this stage of proceedings on an administrative offense, since "an important characteristic of all administrative and legal proceedings... is the principles underlying their conduct" (Livar, 2015, p. 48).

In general, the issues of the principles of proceedings on administrative offenses are sufficiently covered in the legal literature. However, it is important to emphasise that some of the principles inherent in proceedings on administrative offenses are not generally applicable to the conduct of an administrative investigation. Consequently, there is a need to distinguish such principles from the general system of principles guiding authorised officials in conducting proceedings on administrative offenses. Moreover, it is important to allow for the specifics of the administrative and procedural status of the National Police of Ukraine, in particular, that they have a significant number of full powers to conduct an administrative investigation in proceedings on administrative offenses.

In our opinion, the system of principles of the conduct of an administrative investigation should be divided into general and special principles. First, we will study the general principles of proceedings on administrative offenses and try to compare them and distinguish from them the general principles of the conduct of an administrative investigation by the National Police with due regard for the stages and procedural features.

According to O.M. Mykolenko, the principles of proceedings on administrative offenses include the principle of competitiveness, the principle of protection, the principle of national language, the principle of publicity, the principle of disposition, etc. (Mikolenko, 2004). According to M.O. Ktitorov, the main principles in administrative offense proceedings are the principles of legality and objective truth, which requires the study of their content and ways of real implementation, especially in the National Police as an authorised entity. The author believes that the main problem in this regard is the formation of a mechanism of proof (sources of evidence, methods of their recording, determination of reliability, etc.) which would ensure the achievement of objective truth in proceedings on administrative offenses and the adoption of an impartial decision on the case on this basis (Ktitorov, 2009).

In general, the principle of legality is a basic principle in the activities of actors of administrative and administrative procedure law. After all, the principle of legality means the requirement of precise and strict adherence to the rules of law. An administrative investigation by the National Police should be conducted exclusively on the basis of strict adherence to the principle of legality. All procedural actions of authorised entities should be carried out exclusively within their competence, in strict accordance with the law. Generally speaking, legality as a principle can be defined through a set of legal requirements directed to an authorised entity. Therefore, the principles of legality and objective truth are inherent not only in proceedings on administrative offenses but are also characteristic of the conduct of an administrative investigation. Therefore, the principles of legality and objective truth are decisive, basic and fundamental for authorised actors, including officials of the National Police, in the course of the conduct of an administrative investigation.

3. Principles of conducting an administrative investigation

In our view, the general principles of conducting an administrative investigation should also include the principle of fairness. Both proceedings on administrative offenses, in general, and the conduct of administrative investigations shall comply with the principles of fairness. "Fairness" should include an assessment and measure of (Dzhuha, 2011, p. 122): obtaining and verifying information, questioning witnesses, evaluating evidence and making decisions. Given the importance of the principle of fairness in the conduct of an administrative investigation, we propose to consider it as fundamental along with the principle of legality and objective truth.

V.P. Yatsenko notes that proceedings on administrative offenses are characterised by the principle of publicity, the implementation of which is associated with certain particularities (Iatsenko, 2015, p. 50). The principle of pub-

licity is often understood as the process carried out using powers, on behalf of the authorities or the state (Iatsenko, 2015, p. 50). (Kolpakov, Kuzmenko, Pastukh, Sushchenko, 2012, p. 399). An administrative investigation in proceedings on administrative offenses is the competence of authorised entities, in particular, the National Police of Ukraine. Officials of the National Police are civil servants, and therefore act on behalf of the State, within their powers and in the manner prescribed by law, and express the position of state institutions, i.e. act publicly. Therefore, the principle of publicity inherent in the conduct of an administrative investigation in proceedings on administrative offenses is implemented in this process.

The principle of official establishment of circumstances in a case, in our opinion, is inherent primarily in administrative proceedings, as provided for in Article 9 of the Code of Administrative Judicial Procedure of Ukraine (Administrative Judicial Code of Ukraine, 2005) and in proceedings on administrative offenses. First of all, this principle obliges courts to take measures to establish all the circumstances of the case, including by identifying and requesting evidence on their own initiative. During the conduct of an administrative investigation, the National Police shall also establish all the circumstances in the case of administrative offenses, as well as identify or request the necessary evidence to resolve procedural issues that arise in the course of the conduct of an administrative investigation.

Consequently, in our view, the principle of publicity (official establishment of the circumstances in the case) in the course of the conduct of an administrative investigation by officials of the National Police of Ukraine is decisive and fundamental.

The issue of correlation between the public and the dispositive in administrative offense proceedings is relevant. After all, disposition as the ability of parties to administrative process to dispose of their rights at their own discretion within the limits provided for by administrative procedure legislation also has its manifestations in proceedings on administrative offenses (Mykolenko, 2012, p. 54).

With regard to the principle of discretion in the conduct of administrative investigations, Article 19 of the Constitution of Ukraine stipulates that the legal order in Ukraine is based on the principles that no one may be forced to do anything that is not provided for by law. State authorities and local self-government bodies and their officials shall act only on the ground, within the scope of powers and in the manner provided for by the Constitution and laws of Ukraine (Constitution of Ukraine, 1996), which means that the powers of public authorities are discretionary, i.e., an official of the National Police, when making a decision, may act with a certain freedom of discretion, within the law, has the opportunity to apply the provisions of law and perform specific actions (an action), among others, each of which is lawful.

Therefore, the principle of publicity is inherent in proceedings on administrative offenses and in the conduct of administrative investigations by officials of the National Police of Ukraine.

There is a perspective that the principle of objective truth is manifested in the requirement to reflect the actual circumstances of the case correctly and fully in the relevant procedural documents. Such requirements should also be based on the philosophical category of cognition, according to which objective reality exists independently of the person and is considered to be true if the true circumstances of the case are adequately reflected in the person's mind (Kolpakov, Kuzmenko, Pastukh, Sushchenko, 2012, p. 399). During the conduct of an administrative investigation, an authorised official, in particular of the National Police, works with information that needs to be investigated and decided on whether such information corresponds to the objective truth. The principle of objectivity is most often realised in the legal qualification of an authorised entity, in particular, an official of the National Police.

According to M.V. Ktitorov, the special principles inherent in both proceedings on administrative offenses and the conduct of an administrative investigation include the principle of efficiency and the principle of simplicity and cost-effectiveness of the proceedings. The principle of efficiency, from his perspective, reflects the principles related to rapid response and timeliness of procedural actions. This is manifested in the establishment of short deadlines for the relevant procedural actions (Ktitorov, 2009, p. 49).

The principle of simplicity and cost-effectiveness of the proceedings implies the simplicity of the procedure for the conduct of an administrative investigation, compared to, for example, criminal proceedings, while the principle of cost-effectiveness is not only about saving budgetary funds in the performance of procedural actions, but also about a rational approach to the number of procedural actions to solve the tasks of the administrative investigation stage, which are determined by the individual costs of their implementation (Ktitorov, 2009, p. 50).

Therefore, these special principles are to a certain extent also determinative, and author-

ised officials, including of the National Police, shall comply with them when exercising their competence at the stage of administrative investigation.

4. Conclusions

As a result, the analysis of the principles of proceedings on administrative offenses enables to form the system of principles for the conduct of an administrative investigation consists of general and special principles. The implementation of these principles is essential for the effective operation of authorised entities, in particular, the National Police, in conducting administrative investigations in cases of administrative offenses.

Thus, as of today, the fundamental principles of the conduct of an administrative investigation by the National Police as an authorised entity cannot be assessed unambiguously as positive or negative. This is due to the fact that, on the one hand, this issue is regulated sufficiently at the legislative level. On the other hand, this regulatory framework has a number of gaps and shortcomings which prevent the police from a full, efficient and effective exercise of their administrative and legal status in the relevant area.

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НАЦІОНАЛЬНА ПОЛІЦІЯ УКРАЇНИ ЯК УПОВНОВАЖЕНИЙ СУБ'ЄКТ ЗДІЙСНЕННЯ АДМІНІСТРАТИВНОГО РОЗСЛІДУВАННЯ

Анотація. ***Мета.*** Метою статті є визначення засад здійснення адміністративного розслідування Національною поліцією України як уповноваженим суб'єктом. ***Результати.*** Здійснення адміністративного розслідування у провадженні по справах про адміністративні правопорушення є компетенцією уповноважених суб'єктів, зокрема органів Національної поліції України. Посадові особи Національної поліції є державними службовцями, а отже, діють від імені Держави, в межах своїх повноважень і у спосіб, передбачений законом, та виражають позицію державних установ, тобто діють публічно. Так, принцип публічності притаманний здійсненню адміністративного розслідування у провадженні по справах про адміністративні правопорушення і реалізовується у цьому процесі. Запропоновано розглядати «здійснення адміністративного розслідування» як реалізацію органами, наділеними адміністративно-юрисдикційними повноваженнями, комплексу процесуальних дій щодо виявлення та перевірки обставин і фактів, що мають значення для попередньої кваліфікації вчиненого правопорушення, та підстав для порушення провадження у справі на стадії адміністративного розслідування. З огляду на зазначене вище здійснення адміністративного розслідування органами Національної поліції є самостійним циклом щодо реалізації уповноваженими суб'єктами поліції своєї компетенції, що має свою специфічну мету, завдання та особливості. ***Висновки.*** Зроблено висновок, що система принципів здійснення адміністративного розслідування складається із загальних та спеціальних принципів. Реалізація цих принципів має суттєве значення для ефективної діяльності уповноважених суб'єктів, зокрема органів Національної поліції, під час здійснення адміністративного розслідування у справах про адміністративні правопорушення. Так, на сьогодні засади здійснення адміністративного розслідування органами Національної поліції як уповноваженим суб'єктом не можна оцінити однозначно з позитивного чи негативного боку. Зазначене пояснюється тим, що на законодавчому рівні вказане питання досить детально регламентовано. А з іншого боку, вказане нормативно-правове забезпечення має низку прогалин та недоліків, які заважають поліції повною мірою, якісно та ефективно реалізовувати свій адміністративно-правовий статус у відповідному напрямі.

Ключові слова: принципи, адміністративне судочинство, адміністративні правопорушення, доказ, повноваження.

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