

UDC 342.9

DOI <https://doi.org/10.32849/2663-5313/2022.2.14>

Vladyslav Sulatskyi,

Postgraduate Student at the Department of Police Law, National Academy of Internal Affairs, 1, Solomianska square, Kyiv, Ukraine, postal code 03035, Sulatskyi_Vladyslav@ukr.net

ORCID: orcid.org/0000-0002-2142-7209

Sulatskyi, Vladyslav (2022). Concept and system of methods of an administrative and legal mechanism of preventive activities of the National Police of Ukraine. *Entrepreneurship, Economy and Law*, 2, 92–96, doi <https://doi.org/10.32849/2663-5313/2022.2.14>

CONCEPT AND SYSTEM OF METHODS OF AN ADMINISTRATIVE AND LEGAL MECHANISM OF PREVENTIVE ACTIVITIES OF THE NATIONAL POLICE OF UKRAINE

Abstract. The *purpose of the article* is to establish the concept and system of methods of preventive activities of the National Police of Ukraine based on the analysis of scientists and researchers' perspectives.

Results. By reviewing scientists and researchers' perspectives, as well as the provisions of the legislation of Ukraine on the implementation of preventive activities by the National Police of Ukraine, the author defines the basic terms and concepts related to the subject matter of this article, describes the essence and content of the functioning of the administrative and legal mechanism for ensuring prevention by the National Police of Ukraine, interprets the scientific results in the context of the study and from the perspective of domestic legislation in order to make some theoretical and practical conclusions. It is established that the methods of administrative and legal support for prevention are administrative and legal regulatory framework, which is a list of ways and means that allows the existing mechanism of law (for example, on prevention) to act and ensure human and civil rights and freedoms.

Conclusions. Arguments on the separation of methods of administrative and legal regulation from the methods of administrative and legal mechanism are given, as well as the content of the relevant categories in the context of preventive activities by the National Police of Ukraine. It is substantiated that the main methods in this process are the methods of persuasion and coercion, which, given the pluralism of legislative support in this area can and should be applied only individually to each legal relationship and persons entering into them. The position of scientists that the internal structural organization of methods in the context of the functioning of the administrative-legal mechanism has a branched structure in which this mechanism operates is proved and supported, which is why this issue needs further scientific research and thorough interpretation.

Key words: administrative and legal mechanism, methods, prevention, police, forms of implementation, methods in law.

1. Introduction

The concept and system of methods of the administrative and legal mechanism for the prevention by the National Police of Ukraine is one of the urgent and topical problems of current domestic science. The definition of the main theoretical doctrinal categories determines the effectiveness of law enforcement bodies in general and their performance of local functions in particular.

The administrative and legal mechanism for the prevention by the National Police of Ukraine is an integrated element of the law enforcement system of the Ukrainian State, enabling provision of human and civil rights and freedoms both at the stage of the restoration of violated rights and for such an event, in the way of imple-

menting the list of preventive functions. The very prevention and the system of methods of its administrative and legal mechanism are the main theoretical foundations, which ensure the effectiveness of the relevant institution of law and enable the effective performance of the duties of authorised persons in the exercise of the functions and powers of prevention.

However, it should be noted that scientists still discuss the definition and system of methods of the mechanism for prevention by the National Police of Ukraine, and that is why the author focus on these issues with a view to developing the main provisions that would probably improve this institution of law.

The purpose of the article is to establish the concept and system of methods of pre-

vention by the National Police of Ukraine on the basis of analysis of scientists and researchers' perspectives. The goal set can be achievable only by fulfilling a number of research tasks, such as: to analyse and establish the concept of methods of the mechanism for prevention by the National Police of Ukraine; to clarify the system of methods of the mechanism for prevention by the National Police of Ukraine and to prove personal perspective on its streamlining; to propose personal perspective on optimising the scientific doctrine and solving the main problems of law enforcement, arising from the operation of the institution concerned.

2. Prevention by the National Police of Ukraine

Human and civil rights and freedoms in Ukraine and the world are basic concepts that determine the content and trend of any public policy. Their provision by law enforcement bodies is a priority performed in various ways. First of all, one of the most effective is the implementation of prevention, enabling to prevent offences. In addition, the preventive mechanism, like any institution of law, has its own methods, which, above all, should have a positive impact on its functioning.

Interpretation of the basic terms, which in combination constitute the subject matter of scientific research requires to focus on "mechanism", "method", "administrative and legal regulatory framework" and "mechanism for prevention".

A number of domestic scientists interpret the concept of "mechanism" and argue that it presupposes the interaction of the constituent elements that put it into action, so it usually has the form of a set of elements, which interact with each other and the environment (Averianova, 2003, p. 13; Tiunova, 1991, p. 11). In addition, Yu. Todyka argues that the category of "mechanism" is characterised by the fact that it is not enough to have material norms, a developed system of legislation, but clear mechanisms for their implementation are required, which fully concerns the administrative and legal field (Todyka, 2001). In turn, we fully agree that any mechanism, including legal one, is characterised by a branchy internal structure in which all elements interact with each other and with external factors to jointly ensure the functioning of certain relations. The purpose of the mechanism is its smooth operation.

According to A. Matviichuk, the essence and content of the concept of administrative and legal regulatory framework, which is a key form of expression of the relevant mechanism and an element of its content are executive and administrative activities of state organisations vested with state powers, aimed at sta-

bilising public relations by adopting legal regulations and ensuring their implementation (Matviichuk, 2018, p. 122). That is, the administrative and legal mechanism, from a functional point of view, is an orderly system, the main purpose of which is to carry out executive and administrative activities, ensuring observance of human and civil rights and freedoms in relationship "person – state".

However, an individual issue in the studies by scientists is the interpretation of the category "prevention", which reference publications consider as deterrence of crime, preventing something or deterring something (Busel, 2004; Kovryha, Kovalova, Ponomarenko, 2005). That is, scientists understand the concept of prevention, first of all, as the prior deterring of the commission of a certain offence, which may harm the interests protected by the legislation.

Therefore, A. Bandurko argues that more broadly the concept of prevention is most often used to reveal the basic powers of the police, one of which is preventive and precautionary activities, aimed at deterring the commission of offences (legal education; keeping the public informed of the state of affairs in law and order and combating crime; awareness-raising among the population; criticism of anti-social manifestations; encouragement measures; work with offenders, so-called groups at risk; dissemination and propagation of best practices in the fight against disturbances of public order, etc.) (Bezpalova, Dzhafarova, Kniaziev, 2017, p. 34). In addition, some scholars emphasise that the term "prevention" is used in defining the concept of police action, defined as an action or set of actions of a preventive or coercive nature, that constrain certain human rights and freedoms and is applied by police officers in accordance with law to ensure compliance with police powers (Bulatin, 2020).

Therefore, the essence and content of prevention in the context of the functioning of the administrative and legal mechanism of the National Police of Ukraine is undoubtedly leading, since the offence, the commission thereof has been stopped even before the attempt to violate human and civil rights and freedoms protected by the legislation of Ukraine is an indicator of the most effective and coordinated work of law enforcement bodies.

Moreover, the legislation of Ukraine governing the activities of the National Police of Ukraine regulates that, in accordance with the tasks assigned to it, the police carry out prevention and precaution, aimed at deterring the commission of offences (Law of Ukraine "On the National Police" dated July 2, 2015 № 580-VIII (Verkhovna Rada of Ukraine, 2015)).

Therefore, it should be emphasised that the administrative and legal mechanism for prevention by the National Police may be a system of rights, duties, powers and other functional elements, implemented within the scope of certain powers to ensure human and civil rights and freedoms in the manner of deterring offences, according to the legislation of Ukraine.

As any mechanism in the legal science system, the administrative and legal mechanism also has its list of methods, which serve as a form of expression for certain actions and ensure the implementation of certain elements (rights, duties, powers).

For example, in their study on current problematic issues of administrative science and practice, D. Bakhrakh and S. Alforov argue that in the science of administrative law, regulatory methods are understood as ways of influencing people, means, techniques of achieving any purpose, fulfilling the task, that is, the authorised actors affect the relevant objects, with certain responsibilities (Bakhrakh, 2011, p. 286; Alforov, 2011, p. 58). In general, we support this perspective, because in any case, the question of formal expression of the acts committed must be fully disclosed and covered in the writings of scholars, also considering that each institution of law has its characteristics and its exclusive methods that are formed in a particular system.

Furthermore, Z. Kisil argues that the regulatory methods show how the State addresses the management challenges (Kisil, 2011, p. 289). This justifies rise that the methods of the administrative and legal mechanism, including prevention, may not conflict with the methods of the State, since the latter are basic and fundamental provisions, shaping overall national policy.

3. Specificities of the administrative and legal mechanism for prevention by the National Police of Ukraine

The focus of scholars studying problematic issues is on the fact that the regulatory method can be a set of legal means enabling to regulate public relations in the field of public administration is carried out (Honcharuk, 2004, p. 134). That is, in fact, the methods of administrative and legal support for prevention are administrative and legal regulatory framework, which is a list of ways and means that enable the existing mechanism of law (for example, on prevention) to act and ensure human and civil rights and freedoms.

For example, in his study on the administrative and legal mechanism for ensuring the electoral rights of citizens in Ukraine, P. Shorskyi identifies methods of persuasion and coercion among the administrative and legal methods.

While applying the method of persuasion, the election commissions explain the voting procedure and responsibility for violation of the electoral legislation. As a method of coercion, the commissions may consider applications and complaints against decisions, actions or omissions of the actors of the electoral process and make decisions on these issues, which are mandatory for certain addressees. Decisions of election commissions, as well as decisions of executive authorities concerning the exercise by voters of the right to vote in elections, shall be communicated by them to citizens through the print media or, in case it is impossible, shall be made public by other means (Shorskyi, 2018). That is, definition of methods of persuasion and coercion as the main ones used in the process of interaction between the State and society requires to consider this issue thoroughly.

According to R. Liashuk, the method of persuasion is based on legal regulations and applied without detailed and specific legal regulatory framework. Persuasion is widely used in the course of the official activities of the police, border guards and other bodies, namely, working with the local population to prevent crime. In practice, however, there are significant shortcomings. This is due to the lack of experience and confidence of law enforcement officials in the use of persuasion in law enforcement (Liashuk, 2016). That is, while being defined in general terms, in order to prevent misconduct on both sides of such interaction, the method of persuasion is aimed at avoiding offences by people and citizens, is recommendatory and is aimed at further prevention of the commission of offences by persons intending to commit them, as well as at the legal education of the population.

According to S. Dembitska's analysis of Z. Kisil's perspective on the methods of administrative law, coercion is the psychological or physical influence of State bodies or officials on certain persons in order to compel them to comply with legal provisions. The method of coercion is aimed at developing individual forms of behaviour, as well as at maintaining social discipline, which is an integral part of the system of methods of public administration of society (Kisil, 2011, p. 204; Dembitska, 2014, p. 215).

Therefore, the above-mentioned perspective enables to prove by analogy that methods of persuasion and coercion are fully applicable in the context of the functioning of the administrative and legal mechanism for prevention by the National Police of Ukraine.

In such a case, the method of persuasion consists in raising awareness about the inadmis-

sibility of committing an offence, as well as carrying out activities to improve legal education and the need to respect the mutual legal culture of the population.

The method of coercion, in turn, consists in considering citizens' appeals, complaints about actions or omissions of other persons, and partly in bringing a person to administrative liability, since such fact is also preventive.

Some authors argue that methods of State property management are licensing, registration, tariffication, quota, monopoly and antimonopoly regulatory instruments, privatisation, investment and State protection (Hangel'dyev, 2009, p. 16), however, according to D. Bakhrakh, such a perspective is inadmissible, since the above is a means of administrative and legal management of economic activity, and not a regulatory method (Bakhrakh, 2011, p. 90). We advocate D. Bakhrakh's perspective, as concrete actions cannot be characterised as methods, because the method in case of the administrative and legal mechanism is not the directly committed act, but the fact of application of law, having the desired effect. Furthermore, S. Alforov advocates this perspective and considers the method of administrative and legal mechanism as the use of prescriptions (establishment of duties), prohibitions, granting of permits (Alforov, 2011, p. 58).

Therefore, generally and in view of a well-established trend in respect of defining in the sys-

tem of administrative law two basic methods of administrative and legal framework for prevention, it would be appropriate further review other perspectives on the definition of methods in this field, as a number of scholars and researchers also focus the fact that the internal structural organisation of methods in the context of the functioning of the administrative and legal mechanism has an extensive structure.

4. Conclusions

Therefore, the analysed perspectives on the interpretation of the main terms of the article, as well as the perspectives and original views of scientists on the essence and content of the functioning of the administrative and legal mechanism for ensuring prevention by the National Police of Ukraine, interpretation of the scientific results in the context of the study and from the perspective of domestic legislation, we have made a number of theoretical and practical conclusions. It is established that the methods of administrative and legal support for prevention are a list of ways and means that enable the existing mechanism of law to act and ensure human and civil rights and freedoms. Furthermore, the author argues that the main methods in such process are methods of persuasion and coercion, which, given the plurality of legal support in this field, can and should be applied exclusively to each legal relationship and its participants.

References:

- Alforov, S. (2011). *Administratyvne pravo [Administrative Law]*. Kyiv: TsUL [in Ukrainian].
- Averianova, V. (2003). *Derzhavne upravlinnia: problemy administratyvno-pravovoi teorii ta praktyky [Public administration: problems of administrative and legal theory and practice]*. Kyiv: Fakt [in Ukrainian].
- Bakhrakh, D. (2011). *Administrativnoe pravo Rossii [Administrative law of Russia]*. Moscow: Norma [in Russian].
- Bezpalova, O., Dzhafarova, O., Kniaziev, S. (2017). *Administratyvna diialnist politsii u pytanniakh ta vidpovidakh [Administrative activities of the police in questions and answers]*. Kharkiv: KhNUVS [in Ukrainian].
- Bulatin, D. (2020). *Administratyvno-pravovi zasady zdiisnennia preventyvnoi diialnosti politsiiei: porivnannia dosvidu Ukrainy ta krain YeS [Administrative and legal principles of preventive police activities: comparison of the experience of Ukraine and EU countries]*. Kharkiv [in Ukrainian].
- Busel, V. (ed.) (2004). *Velykyi tлумachnyi slovnyk suchasnoi ukrainskoi movy [Large explanatory dictionary of the modern Ukrainian language]*. Irpin: VTF "Perun" [in Ukrainian].
- Dembitska, S. (2014). Zastosuvannia administratyvnykh stiahnen yak zasobu pokarannia pravoporushnykiv [Application of administrative penalties as a means of punishing offenders]. *Porivnialno-analitychne parvo – Comparative analytical law*, no. 2, pp. 213–216 [in Ukrainian].
- Hangel'dyev, B. (2009). *Nekotorye aktual'nye voprosy upravleniya federal'noy gosudarstvennoy sobstvennost'yu [Some topical issues of federal state property management]*. Moscow [in Russian].
- Honcharuk, S. (2004). *Osnovy administratyvnoho prava [Fundamentals of administrative law]*. Kyiv: TOV "Vydavnychi budynok "Avanpost-Prym" [in Ukrainian].
- Kisil, Z. (2011). *Administratyvne pravo [Administrative Law]*. Kyiv: TsUL [in Ukrainian].
- Kovryha, L., Kovalova, T., Ponomarenko, V. (2005). *Tлумachnyi slovnyk suchasnoi ukrainskoi movy [Explanatory dictionary of the modern Ukrainian language]*. Kharkiv: Belkar-knyha [in Ukrainian].
- Liashuk, R. (2016). Metody perekonannia ta prymsu v administratyvni diialnosti pravookhoronnykh orhaniv [Methods of persuasion and coercion in the administrative activities of law enforcement agencies]. *Porivnialno-analitychne parvo – Comparative and analytical law*, no. 3, pp. 148–150. Retrieved from: http://pap-journal.in.ua/wp-content/uploads/2020/08/3_2016.pdf [in Ukrainian].

Matviichuk, A. (2018). Vyznachennia administratyvno-pravovoho rehuliuвання u sferi zabezpechennia rehuliatornoї polityky [Definition of administrative and legal regulation in the field of regulatory policy]. *Pid-priemnytstvo, hospodarstvo i pravo – Entrepreneurship, economy and law*, no. 11, pp. 121–124 [in Ukrainian].

Shorskyi, P. (2018). Administratyvno-pravovyi mekhanizm zabezpechennia vyborchkykh prav hromadian v Ukraini [Administrative and legal mechanism for ensuring the voting rights of citizens in Ukraine]. *Candidate's thesis*. Sumy [in Ukrainian].

Tiunova, L. (1991). *Sistemnye svyazi pravovoy deystvitel'nosti* [Systemic connections of legal reality]. Saint Petersburg: Izd-vo Sankt-Peterburgskogo universiteta [in Russian].

Todyka, Yu. (2001). *Konstituciya Ukrainy – osnovnoy zakon gosudarstva i obshchestva* [The Constitution of Ukraine is the fundamental law of the state and society]. Kharkiv: Fakt [in Russian].

Verkhovna Rada of Ukraine (2015). Pro Natsionalnu politsiiu: Zakon Ukrainy vid 2 lypnia 2015 r. № 580-VIII [On the National Police: Law of Ukraine dated July 2, 2015 № 580-VIII]. Retrieved from: <http://zakon.rada.gov.ua/laws/show/580-19> [in Ukrainian].

Владислав Сулацький,

ад'юнкта кафедри поліцейського права, Національна академія внутрішніх справ, площа Солом'янська, 1, Київ, Україна, індекс 03035, Sulatskyi_Vladyslav@ukr.net

ORCID: orcid.org/0000-0002-2142-7209

ПОНЯТТЯ ТА СИСТЕМА МЕТОДІВ АДМІНІСТРАТИВНО-ПРАВОВОГО МЕХАНІЗМУ ПРЕВЕНТИВНОЇ ДІЯЛЬНОСТІ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ

Анотація. *Метою статті* є встановлення поняття та системи методів механізму превентивної діяльності Національної поліції України на підставі аналізу думок учених і дослідників.

Результати. Автором на підставі проаналізованих позицій науковців, а також положень законодавства України про здійснення превентивної діяльності Національною поліцією України було здійснено тлумачення основних термінів і понять, що мають відношення до предмета статті, охарактеризовано сутність та зміст функціонування адміністративно-правового механізму забезпечення превентивної діяльності Національної поліції України, проведено інтерпретацію наукових результатів у контексті дослідження та пропущено їх крізь призму вітчизняного законодавства, завдяки чому сформовано низку теоретичних і практичних висновків. Визначено, що методами адміністративно-правового забезпечення превентивної діяльності є адміністративно-правове регулювання, яке являє собою перелік способів і засобів, за допомогою яких чинний механізм права (наприклад, превентивної діяльності) приводиться в дію та забезпечує права і свободи людини й громадянина.

Висновки. Наведено аргументи щодо відмежування методів адміністративно-правового регулювання від методів адміністративно-правового механізму, а також зазначено зміст відповідних категорій у контексті здійснення превентивної діяльності Національною поліцією України. Обґрунтовано, що основними методами в такому процесі є методи переконання та примусу, які з урахуванням плюралізму законодавчого забезпечення в цій галузі можуть і повинні застосовуватися виключно індивідуально до кожних правовідносин та осіб, які вступають у них. Доведено й підтримано позицію вчених щодо того, що внутрішньоструктурна організація методів у контексті функціонування адміністративно-правового механізму має розгалужену структуру, у якій цей механізм функціонує, а саме тому це питання потребує подальших наукових розвідок та ґрунтового тлумачення.

Ключові слова: адміністративно-правовий механізм, методи, превентивна діяльність, поліція, форми здійснення, способи у праві.

The article was submitted 10.03.2022

The article was revised 31.03.2022

The article was accepted 21.04.2022