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## CURRENT LEGAL AND REGULATORY MECHANISM FOR STAFFING AND A PLACE OF LABOUR LEGISLATION IN IT

**Abstract. Purpose.** The purpose of the article is to formulate a conceptual perspective on the current legal and regulatory mechanism for the staffing of the National Police and to establish a place of labour law provisions in it. **Results.** The article analyses the content and importance of the general legal concept 'legal and regulatory mechanism'. The content of the category 'legal and regulatory mechanism for the staffing of the National Police of Ukraine' is defined. The body of regulations that constitute the structure of the legal and regulatory mechanism for the staffing of the National Police of Ukraine is determined. It is stated that the legal and regulatory mechanism for the staffing of the National Police of Ukraine is the body of legal regulations, provisions of which regulate public relations, which arise in the process of the staffing of the police, as well as the activity of participants of this process. **Conclusions.** It is concluded that the legal and regulatory mechanism for the staffing for all categories of employees in general, as well as police officers directly, is carried out by means of provisions, of both international and national law. Moreover, it should be noted that international documents, the Constitution of Ukraine and general regulations of labour law, such as the Law of Ukraine 'On vacation', etc., mainly consolidate the basic labour rights of police, guarantees of realisation and protection of these rights, as well as other labour standards in the state, which should be implemented, including in the employment of police officers. Along with the general regulations, a departmental regulatory framework is formed on the basis of the Law of Ukraine 'On the National Police', as well as the by-laws of the Ministry of Internal Affairs and the National Police. They contain legal levers that regulate the procedure and peculiarities of the staffing mechanisms of the National Police of Ukraine, namely: powers and functions of the actors of staffing; forms, methods and techniques of the staffing of the police; procedures arising within the staffing and their legal effects, etc.

**Key words:** staffing, legal and regulatory mechanism, National Police of Ukraine.

### 1. Introduction

An important aspect of the content of the staffing of the National Police bodies is the legal and regulatory mechanism for this type of activity, which determines its regularities, specifics and mechanisms of implementation. However, the importance of this category in general is determined by the fact that it concentrates the general legal basis for the staffing in the NPU. These are numerous provisions of official state and international regulations, which are characteristic of various branches of law. However, considering our perspective on the labour-law nature of the staffing, the place of labour legislation and certain labour provisions in the system of the legal and regulatory framework should be analysed.

The issue of the legal and regulatory mechanism for activities of the National Police of Ukraine in general and its staffing in particular have been considered in the studies by S.S. Aleksieiev, A.S. Piholkin, P.M. Rabinovych, V.S. Nersesiants, Yu.S. Reshetov, R.O. Khalina, A.T. Komziuk, M.M. Marchenko, O.F. Skakun, and other scientists. However, despite a considerable number of scientific achievements, the legal literature lacks comprehensive studies of the characteristics of the current legal and regulatory mechanism for staffing.

The purpose of the article is to formulate a conceptual perspective on the current legal and regulatory mechanism for the staffing of the National Police and to establish a place of labour law provisions in it.

## 2. Scientific approaches to definition of the concept of 'Legal and regulatory mechanism'

To understand all the features of the category 'legal and regulatory mechanism', it should be noted that it comes from the words 'regulation', 'regulate', which means: to introduce a certain order, system; to organise; to make operational; to achieve correct interaction, coordination, separate components; to reach a certain degree reducing or increasing, etc. (Felicyn, Shmelev, Medvedev, Kruglikova, 1961, pp. 1111-1112).

In the legal field, 'regulatory' is frequently endowed with meaning of 'legal', and according to S.S. Alekseev, is defined as a legal influence on social relations, which is carried out by means of law and the body of legal means (Alekseev, 1966). A.S. Piholkin offers a broader definition of the legal and regulatory mechanism: 'It represents all forms of influence of the right on public life: the issuance of law provisions, the general influence of law, the implementation of legal provisions in specific actions of legal actors, the enforcement of these provisions, i.e. the very legal conduct, and all that creates a basis and a prerequisite for such conduct, provides it' (Kurakin, 2013, p. 10). In addition, P.M. Rabinovich argues that the value of the legal and regulatory mechanism is expressed in its use for the development of both individual and entire society (Hizhevskiy, Hlovchenko, Kovalskiy, 2002, p. 369).

Moreover, in the context of the legal and regulatory mechanism, the term 'regulatory and legal' is often used, which scientists consider in several ways. For example, many scientists emphasise that 'regulatory' is an important feature of the legal and regulatory mechanism. V.S. Neresiants divides legal and regulatory mechanism into such that exists in an abstract-general form, which provides that the law provision does not yet have a specific regulatory and legal significance in relation to the specific conduct of a particular person in specific conditions; and legal and regulatory mechanism in a boundary-specified form, which is a specific regulatory and legal action of the law provision on the specific conduct of a particular person in a specific situation (Neresiants, 2001, p. 98). Yu.S. Reshetov proves that the regulatory feature is one of the features of the law, where the content of the law is of a general character, reflected in the form of state power provisions, and the rules of the law allow to make the life of people organised, arranged, secure. According to the scientist, this is achieved by means of the law action connected with the legal and regulatory mechanism. The scientist proves that the place of the legal and regulatory mechanism in the law action is determined by its

social role, and the purpose of law is to regulate social relations, therefore, the main function of law is regulatory, since the vector of influence of law on consciousness and actions of people differs from the informational, educational and value orientation action of law (Reshetov, 2013, p. 113). According to R. O. Khalfina, the regulatory feature of the legal and regulatory mechanism is in general something more legally deep and socially significant, directly connected with the value of law. The regulatory feature in this sense, according to the scientist, means that legal and regulatory mechanism by means of general rules meets the need of the society concerning the approved regulatory principles and therefore covers all spheres of social life, which require to be legally regulated (Pashchenko, 2019).

Therefore, summing up different scientific approaches, and allowing for general conceptual understanding of the category 'legal and regulatory mechanism', we believe that the legal and regulatory framework for the staffing of the National Police of Ukraine is the body of legal regulations, provisions of which regulate public relations, which arise in the process of the staffing of the police, as well as the activity of participants of this process. According to the logic of the formulated definition, the state of the legal and regulatory mechanism for the staffing of the NPU directly depends on the scope and target orientation of the legal regulations that form the content of the category. Therefore, in order to assess in general how public relations in the given field are regulated, as well as to determine the place of labour law provisions in this issue, the entire system of regulations, provisions thereof are related to the regulations of the staffing of the National Police of Ukraine should be revealed.

The first of the legal regulations of the national law system necessary for the allocation in the research aspect of the principles of the legal and regulatory mechanism of the staffing in the National Police is the Constitution of Ukraine of June 28, 1996 No. 254k/96-VR. This document is the basis of all Ukrainian law, the Basic law, which is at the centre of the legal and regulatory mechanism of all legal relations that arise on the territory of the state in various fields of public life. Directly as a source of the legal and regulatory mechanism of the staffing of the police, the effect of the Constitution is expressed in three aspects. First, the Basic Law establishes the principles of the labour sector of the state, common for the activity of all employees without exception. Secondly, the Basic Law establishes the legal status, powers, functions, format and procedure for performance of the higher state authori-

ties, namely: the Verkhovna Rada of Ukraine, the President of Ukraine and the Cabinet of Ministers of Ukraine. Third, the Constitution defines the principles of the legal and regulatory mechanism in the state, including in the field of the staffing of the National Police (The Constitution of Ukraine, 1996).

Next, following the Constitution of Ukraine in the hierarchical construction of the regulatory system of our state, comes the Labour Code of Ukraine of December 10, 1971, No. 322-VIII (hereinafter – the LC), which constitutes the legal and regulatory basis for the staffing of the National Police. This document regulates the labour relations of all employees, contributing to the growth of labour productivity, improving the quality of work, making public production efficient and raising on this basis the material and cultural standards of life of workers, strengthening labour discipline and gradually transforming labour for the benefit of society into the first vital need of every able-bodied person (Labour Code of Ukraine, 1971). That is, the LC is a kind of ‘constitution’ in the field of labour relations. This legal regulation defines the fundamental aspects of regulating all relations that arise in the field of labour, and applies to all categories of workers, including police. For example, the provisions of the Code provide for the mechanisms for ensuring the labour rights of employees, the procedure for dismissal and employment, the basic social security, standards of working time and rest, and so on. Due to the general, initial nature of the LC, police personnel units in their activities, first, shall be guided by the provisions of this document, and then allow for the provisions of special legislation. In addition, the formation of a special legal and regulatory mechanism for the staffing of the National Police should comply with the requirements and provisions of the LC.

### **3. Legal and regulatory mechanism for the staffing**

In addition to these aspects, Law of Ukraine 580-VIII ‘On the National Police’ of July 02, 2015 regulates the issue of police oath-taking, movement of police officers by the service, peculiarities of working time distribution of the National Police personnel, specifics of professional training of police officers, etc. (Law of Ukraine On the Disciplinary Statute of the National Police of Ukraine 2018). Therefore, as well as the LC, the departmental legal regulation governing the police activity is the basic special document for authorised units to be guided in the implementation of the staffing in the system of NPU.

Law of Ukraine 2337-VIII ‘On the Disciplinary Statute of the National Police of Ukraine’

of March 15, 2018, which defines the essence of the service discipline in the National Police of Ukraine, the powers of police officers and their managers on its enforcement, types of disciplinary charges and the procedure for their application and appeal, is important in the regulatory basis of the staffing (Law of Ukraine On the Disciplinary Statute of the National Police of Ukraine, 2018). The provisions of the law state that the service discipline is observance by a police officer of Constitution and laws of Ukraine, international agreements, consented by the Verkhovna Rada of Ukraine as binding, regulations of the President of Ukraine and the Cabinet of Ministers of Ukraine, orders of the National Police of Ukraine, legal regulations of the Ministry of Internal Affairs of Ukraine, the oath of police, orders of senior officers. Service discipline is based on an enabling organisational and socio-economic environment for honest, unbiased and decent performance of the duties of the police officer, observance of the honour and dignity of the police officer, teaching of conscientious attitude to the fulfilment of the duties of the police officer by the reasonable application of methods of persuasion, encouragement and coercion (Law of Ukraine On the Disciplinary Statute of the National Police of Ukraine, 2018).

A large range of official regulations defining the areas and specificities of the regulatory framework for the staffing in the National Police are concentrated at the sublegal level and presented by organisational and executive documents of the Ministry of Internal Affairs of Ukraine and the leadership of the National Police of Ukraine, most of which contain labour law provisions, or generally refer to the labour law branch.

In particular, most legal regulations of the Ministry of Internal Affairs of Ukraine are focused on peculiarities of professional (official) training of police officers. For example, according to Order 50 of the Ministry of Internal Affairs ‘On approval of the Regulations on the organisation of training of employees of the National Police of Ukraine’ of January 26, 2016, the service training is defined as a system of measures aimed at strengthening and updating the necessary knowledge and skills of the police officer allowing for the specifics and profile of his/her service activity (Order of the Ministry of Internal Affairs of Ukraine On approval of the Regulations on the organisation of training of employees of the National Police of Ukraine, 2016).

In addition, the basis of the legal and regulatory framework for the staffing of the National Police includes Order 90 of the Ministry

of Internal Affairs 'On approval of the Regulations on the organisation of the inspection of the physical fitness level of candidates for entry to the National Police of Ukraine' of February 09, 2016, Order 105 of the Ministry of Internal Affairs 'On approval of the Regulations on the organisation of primary professional training of police officers, for the first time in the police service' of February 16, 2016.

Some by-laws of the MIA regulate the issue of ensuring the legality of the labour activity of the police and the mechanisms of their promotion in the service. For example, Order 1179 of the MIA 'On Approval of the Rules of ethical conduct of police officers' of November 09, 2016 is a generalised collection of professional-ethical requirements concerning the rules of conduct of police officers and is aimed at ensuring the service of the police to the society by providing protection of human rights and freedoms, counteracting crime, maintaining public security and order at the basis of ethics and universal values (Order of the Ministry of Internal Affairs of Ukraine On approval of the Rules of ethical conduct of police officers, 2016). Other legal document, Order 1465 of the MIA 'On approval of the Instruction on the procedure for attestation of police officers' of November 17, 2015, establishes mechanisms for evaluation of business, professional, personal qualities of police officers, their educational and qualification levels, by means of deep and comprehensive study, determination of conformity with positions, and prospects of their career (Order of the Ministry of Internal Affairs of Ukraine On approval of the Instruction on the procedure for attestation of police officers, 2015).

As for the legal regulations of the National Police, Order 136 of the National Police of Ukraine 'On approval of the Regulations on the Personnel Department of the National Police of Ukraine' of December 03, 2015 (Order of the Ministry of Internal Affairs of Ukraine On approval of the Regulations on the Personnel Department of the National Police of Ukraine, 2015).

#### 4. Conclusions

The review of various legal sources reveals that the legal and regulatory mechanism for the staffing for all categories of employees in general, as well as police officers directly, is carried out by means of provisions, of both international and national law. Moreover, it should be

noted that international documents, the Constitution of Ukraine and general regulations of labour law, such as the Law of Ukraine 'On vacation', etc., mainly consolidate the basic labour rights of police, guarantees of realisation and protection of these rights, as well as other labour standards in the state, which should be implemented, including in the employment of police officers. Along with the general regulations, a departmental regulatory framework is formed on the basis of the Law of Ukraine 'On the National Police', as well as the by-laws of the MIA and the National Police. They contain legal levers that regulate the procedure and peculiarities of the staffing mechanisms of the NPU, namely: powers and functions of the actors of staffing; forms, methods and techniques of the staffing of the police; procedures arising within the staffing and their legal effects, etc.

However, despite the above-noted, the current legal and regulatory mechanism for the staffing of police bodies composed of the provisions of labour laws can be defined as extremely low. For example, these documents form the general regulatory basis of labour relations in the police, while within the departmental regulatory framework this issue is under focus only in certain provisions of the by-laws, which are generally referred to the administrative branch of law. In our opinion, such situation requires correction, because the discrepancy between the general regulatory framework and special one generates numerous legal gaps, as a result of which labour rights of police officers can be violated. We argue that this negative factor can be remedied by the adoption of a separate document, the Law of Ukraine 'On labour activities of police officers'. The document should become a basic legal source that regulate all legal relations that arise in the activity of police officers and constitute a subject matter of the staffing. The Constitution, the Labour Code and other general labour regulations should be the basis of this Law. The provisions of the Law should be focused on the functions and powers of specially authorised entities responsible for the implementation of the staffing of the police. In our opinion, such approach will improve the quality and full legal and regulatory mechanism for all issues related to the staffing of the National Police of Ukraine.

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## **СУЧАСНИЙ СТАН НОРМАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ КАДРОВОГО ЗАБЕЗПЕЧЕННЯ ТА МІСЦЕ В НЬОМУ ТРУДОВОГО ЗАКОНОДАВСТВА**

**Анотація. Мета** статті полягає у тому, щоб сформулювати концептуальну позицію щодо сучасного стану нормативно-правового регулювання кадрового забезпечення Національної поліції та встановити місце у ньому норм трудової галузі права. **Результати.** У статті проаналізовано зміст та значення загально юридичного поняття «правове регулювання». Сформульовано визначення змісту категорії «нормативно-правове регулювання кадрового забезпечення Національної поліції України». Визначено сукупність актів, які становлять структуру нормативно-правового регулювання кадрового забезпечення Національної поліції України. Визначено, що нормативно-правове регулювання кадрового забезпечення Національної поліції України – це сукупність нор-

мативно-правових актів, норми яких упорядковують суспільні відносини, що виникають в рамках реалізації процесу кадрового забезпечення поліцейських, а також діяльність суб'єктів цього процесу. **Висновки.** Зроблено висновок, що нормативно-правове регулювання кадрового забезпечення всіх категорій працівників в цілому, а також поліцейських безпосередньо, відбувається за допомогою норм як міжнародного? так і національного права. При цьому варто зазначити, що міжнародні документи, Конституція України та загальні акти трудового права, на кшталт КЗпП, Закон України «Про відпустки» і т.д., здебільшого закріплюють основні трудові права поліцейських, гарантії реалізації та захисту даних прав, а також інші стандарти праці в державі, які мають втілюватись у тому числі в трудовому процесі поліцейських. Водночас поряд із загальними актами існує відомча нормативна база, сформована на основі Закону України «Про Національну поліцію», а також підзаконних документів Міністерства внутрішніх справ та Національної поліції. Саме в них закріплено юридичні важелі, котрі регулюють порядок та особливості роботи механізмів кадрового забезпечення Національної поліції України, а саме: повноваження та функції суб'єктів кадрового забезпечення; форми, методи та способи кадрового забезпечення поліцейських; процедури, що виникають в межах кадрового забезпечення та їх юридичні наслідки тощо.

**Ключові слова:** кадрове забезпечення, нормативно-правове регулювання, Національна поліція України.

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