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## RIGHTS AND DUTIES OF THE GUARD POLICE IN UKRAINE AS ELEMENTS OF THE ADMINISTRATIVE AND LEGAL STATUS

**Abstract. Purpose.** The purpose of the article is theoretical analysis of the rights and duties of the Guard Police in Ukraine as elements of the administrative and legal status. **Results.** Relying on the scientific position of many scientists, subjective law is a system of legally established, fixed and admissible options of an individual actor's behaviour used to interact with the national legal reality. By and large, subjective rights depend on the social role of the actor. For example, the set of rights of an ordinary citizen will be significantly different from the rights of the same citizen, but who is bound by labour relations with the law enforcement body of the state, and accordingly is entrusted with additional powers defined by law. In addition, regarding the subjective right in the aspect of the work of the Guard Police, it should be noted that it implies not the capabilities of any person, but the rights of the whole body defined and enshrined by law. That is, unlike a person who possesses a set of both legally stipulated and a number of natural, inalienable capabilities granted from birth, the rights and duties of the authority are conditioned by the powers that are assigned to it by regulatory documents at the time of creation. It is determined that the rights of the Guard Police in Ukraine are formally defined, legally established, guaranteed legal capabilities of the Guard Police as an elementary component of the National Police of Ukraine in terms of the competence assigned to it by law. **Conclusions.** It is concluded that today regarding activity of the Guard Police, no legal regulation defines the main rights and duties assigned to it. Currently, the rights and duties of the Guard Police of Ukraine consist of two groups of certain opportunities and requirements, general and special. The former are the rights and duties of the Guard Police as a component of the National Police of Ukraine in general, the latter are ones of an independent body within its competence. In order to clarify the legal status and increase the efficiency of legal regulation of the activities of the Guard Police in Ukraine, in our opinion, the rights and duties of this body at the legislative level in targeted legal regulations should be further clearly defined.

**Key words:** rights, regulatory framework, legal basis, Guard Police, National Police.

### 1. Introduction

The fundamental element of the administrative and legal status of a public authority is its rights and duties. They best show the competence and purpose of the authority, determine its place in the system of the state apparatus and law enforcement bodies.

Law regulates absolutely all the human life foundations in the territory of our state, including in the field of police protection. Moreover, law is not homogeneous in nature and includes separate types. For example, law coming from the state regulates the most important social relations in various fields. Along with it, the right of individual subjects is expressed in the totality of their legally guaranteed capabilities.

### 2. The rights of the Guard Police as an element of the administrative and legal status

According to V.A. Vasylieva, subjective right is a permission of the highest category and is a capacity, and necessarily legal. The authorised person is given a scope of permitted behaviour to satisfy his/her interests. While interest is not included in the content of subjective right, the moment of interest is necessary for the very existence of this right. Interest is an external, motivating factor that leads to entry into a legal relationship of law application. However, the dynamics of social relations sometimes encourages actors to seek assistance in exercising their subjective rights to other persons (intermediaries), authorising them to take certain actions. Unlike the authoriser,

the intermediary shall behave not in his/her own interests, but in the interests of another subject. From the perspective of the holder of a subjective right, the exercise of this right is the individual interest. Accordingly, the purpose of the legal relationship, which ensures a certain behaviour of the obliged persons, is ultimately reduced to the service of the interest, the satisfaction of which the subject seeks. Therefore, the interest induces the emergence of legal relations, but is beyond their limits (Vasylieva, 2006, pp. 164–165).

S.S. Alekseev argues that the subjective right is a scope of permitted behaviour, which is provided by legal duties of other persons and belongs to the person authorised to satisfy his/her interests. The word “scope” in the definition of a subjective right means that the legal capacity assigned to a person is not unlimited, it is clearly specified in content, and within these limits a person can behave (Alekseev, 1982, p. 114). M.S. Strohovich understands subjective right as a capacity enshrined in the provision to use the relevant good, to perform actions and to demand from others to perform appropriate actions, behaviour, concessions established by the legal provision (Strohovich, 1966, pp. 171).

O.S. Mazur concludes that subjective right includes several powers regardless of its content and branch: first, the capacity for rights to possess the relevant good; second, the capability to perform appropriate actions; third, the capacity enabling the subject to demand a legal duty from another participant of legal relations; fourth, in case of violation of a subjective right, non-fulfilment by the other party of its duties stipulated by the legal relationship, there is the competence to apply for protection to the judicial authority (Mazur, 2008, p. 30).

Therefore, subjective law, relying on the scientific position of many scientists, is a system of legally established, fixed and admissible options of behaviour of an individual actor to interact with the national legal reality. By and large, subjective rights depend on the social role of the actor. For example, the set of rights of an ordinary citizen will be significantly different from the rights of the same citizen, but who is bound by labour relations with the law enforcement body of the state, and accordingly is entrusted with additional powers defined by law.

In addition, regarding the subjective right in the aspect of the work of the Guard Police, it should be noted that it implies not the capabilities of any person, but the rights of the whole body defined and enshrined by law. That is, unlike a person who possesses a set of both legally stipulated and a number of nat-

ural, inalienable capabilities granted from birth, the rights and duties of the authority are conditioned by the powers that are assigned to it by regulatory documents at the time of creation.

Thus, the rights of the Guard Police in Ukraine are formally defined, legally established, guaranteed legal capabilities of the Guard Police as an elementary component of the National Police of Ukraine in terms of the competence assigned to it by law.

Moreover, we deliberately emphasise the structural relationship of the Guard Police to the National Police of Ukraine, because this aspect determines the specific comprehensive rights of the authority being investigated. Therefore, its rights include both common rights of the National Police in general and a number of special rights directly related to the competence of the Guard Police. In addition, the Guard Police's rights are neither clearly defined nor listed in any document that currently regulates their activities.

For example, based on the provisions of Law 580-VIII of Ukraine “On the National Police” of July 02, 2015 and Resolution 877 of the Cabinet of Ministers of Ukraine “On Approval of the Regulations on the National Police” of October 28, 2015, the Guard Police, as a component of the National Police in general, has rights as follows:

1. To perform preventive and prophylactic activities aimed at deterring the commission of offenses.
2. To identify the causes and conditions that contribute to the commission of criminal and administrative offenses, to take measures within their competence to eliminate them.
3. To take measures to ensure public safety and order in streets, squares, parks, public gardens, stadiums, railway stations, airports, sea and river ports and other public places.
4. To use databases (banks) of the Ministry of Internal Affairs of Ukraine and other state authorities.
5. To perform information search and analytical work.
6. To perform information interaction with other state authorities of Ukraine, law enforcement bodies of foreign countries and international organisations.
7. To apply, within the scope and forms defined by the legislation of Ukraine, police measures – actions or a set of actions of a preventive or coercive nature that restrict certain human rights and freedoms and are applied by police officers in accordance with law to ensure the implementation of the powers vested in the police.
8. To provide independently or through established institutions: installation, repair,

maintenance of security equipment, weapons, transport, communications equipment, premises provided to the National Police for the performance of its tasks, control over the proper use of material and technical resources by territorial bodies, enterprises, institutions and organisations that subject to its management; construction, reconstruction and overhaul of facilities under the jurisdiction of the National Police; ensuring proper working conditions.

9. To receive, in accordance with the procedure established by law, from state and local self-government bodies, enterprises, institutions, organisations regardless of their form of ownership and their officials, as well as citizens and their associations, information, documents and materials necessary for the performance of its tasks.

10. To use the relevant information databases of state bodies, the state system of government communication and other technical means;

11. To convene meetings, form commissions and working groups, hold scientific conferences, seminars on issues within the competence of the National Police, etc. (Law of Ukraine On the National Police, 2015).

Next, the special rights of the Guard Police, based on the mentioned above, as well as a number of other regulatory documents, such as Order 577 of the Ministry of Internal Affairs of Ukraine "On the organisation of the Guard Police service on ensuring the physical protection of objects" of July 07, 2017 are:

1) To protect the objects of state property in cases and in the manner prescribed by law and other legal regulations, as well as the implementation of state guard.

2) To guard on a contractual basis individuals and objects of private and communal property, as well as to take technical security measures in the cases and in the manner prescribed by law or other legal regulations.

3) To interact with the main departments of the National Police of Ukraine in the Autonomous Republic of Crimea and the city of Sevastopol, regions and the city of Kyiv and their territorial (separate) units, territorial (separate) units of the Patrol Police Department and other bodies and subdivisions of the National Police of Ukraine on the prevention, detection and deterrence of offenses within the posts and routes of guard, protection of objects of guard in case of complication of the operational situation, elimination of the consequences of emergencies (events), during preventive measures and special operations (introduction of operational plans), during joint trainings.

4) To form and control the activities within the scope of the Guard Police units defined by the legislation.

5) To use technical security equipment (alarm systems and complexes, systems, devices, technical surveillance equipment, lighting, technical control equipment) in their activities to increase the efficiency of the service to organise the guard of objects.

6) To use service vehicles and detection dogs in their activities to increase the capabilities of Guard Police units to detect and detain offenders, detect drugs, explosives and devices, protect certain areas and facilities, perform other tasks, etc. (Law of Ukraine On the National Police, 2015).

### 3. Duties of the Guard Police as an element of the administrative and legal status

In addition to the rights, the duties, which are of significance in the administrative and legal status of the Guard Police, are also characterised by certain specifics. In the general dictionary sense, a duty is:

1. something that must be unconditionally adhered to, that must be performed without fail in accordance with the requirements of society or based on one's own conscience;

2. a scope of work, a set of cases, limits of responsibility and so on, determined by the relevant rank, position, marital status, etc. (Bilodid, 1974).

V.M. Korelskyi and V.D. Perevalov argue that duty is a measure of socially necessary, proper human behaviour, which, together with rights and freedoms, ensures balance, stability and dynamics of the legal regulatory mechanism (Boush, 2005, p. 69). Frequently, the scientific literature distinguishes general social and legal duties. General social duties are socially recognised necessity of certain behaviour of individuals (a measure of proper, useful), which is objectively conditioned by the needs of existence and development of other individuals, social groups, nations, mankind.

In turn, the content of legal duties is somewhat broader. For example, O.Ye. Kostiuchenko defines a legal duty as a scope of necessary behaviour provided for the obligated subject of a certain branch of law and provided with the possibility of state coercion, which he/she should be guided by in the interests of the authorised actor (Kostiuchenko, 2009, pp. 9–10).

According to V.M. Fesiunin and a number of other scholars, a legal duty is an objectively necessary scope of proper behaviour established by law. The primordial nature of duties is such that they are intended to be the reverse side of subjective law as incentives. The functional purpose of duties is to ensure the very existence and implementation of rights. Rights and duties are inseparable from each other, interdependent and cannot exist in isolation.

M. Maslennikova emphasises that a legal duty is a scope of proper, socially necessary behaviour of a participant in legal relations provided for by law. It is an authoritative form of social regulatory mechanism, based on the “force”, that is, on the potential state coercion. Unlike subjective law as a form of potential behaviour, legal duty expresses a mandatory scope of proper, socially necessary behaviour established by law. The ratio of rights and duties of subjects of law is the ratio of their potential and necessary behaviour, which reflects the ratio of public and dispositive in the legal field (Maslennikova, 2000, pp. 356–357).

Y.A. Vediernikov and A.V. Papirna believe that a legal duty is a scope of the necessary behaviour of a participant in legal relations provided for by law. In other words, it is a scope of proper behaviour of the obligated party in the interests of the authorised person. The key features of a legal duty include: the need for certain behaviour; imposition of duty only on the obligated person; imposition to satisfy the interests of the authorised person; presence only in legal relations; a scope of necessary behaviour; presence only in accordance with subjective law; being established by law; being provided (guaranteed) by the state (Vediernikov, Papirna, 2008).

Therefore, a legal duty reveals a legally established requirement expressed in a command to perform or refrain from performing certain actions, conducting specific behaviour, etc. Based on this, it is appropriate to define the duties of the Guard Police as statutory requirements for the implementation of actions by this law enforcement body in accordance with its competence.

Similar to rights, the duties of the Guard Police are neither defined nor listed in the regulatory framework governing the activities of the latter. At the same time, analysis of the legal framework for the activities of the Guard Police gives grounds to similarly distinguish two groups of duties, namely: general and special (Law of Ukraine On the National Police, 2015). General ones characterise the Guard Police as a component of the National Police and consist of the requirements for:

1. To ensure the observance of the rights and freedoms of citizens guaranteed by the Constitution and laws of Ukraine during the performance of official tasks.
3. To take measures to detect criminal and administrative offenses.
4. To terminate detected criminal and administrative offenses.
5. To take measures aimed at eliminating

threats to the life and health of individuals and public safety that have arisen as a result of a criminal or administrative offense.

6. To timely respond to applications and reports of criminal, administrative offenses or events.

7. To convey, in cases and in the manner prescribed by law, of detained persons suspected of committing a criminal offense and persons who have committed an administrative offense.

8. To take measures to ensure public safety and order in streets, squares, parks, public gardens, stadiums, railway stations, airports, sea and river ports and other public places.

9. To take all possible measures to provide emergency, in particular pre-medical and medical, assistance to persons who have suffered as a result of criminal or administrative offenses, accidents, as well as to persons who have found themselves in a situation dangerous to their life or health.

10. To take measures to identify persons who are unable to provide information about themselves due to health, age or other circumstances, etc. (Law of Ukraine On the National Police, 2015).

Additional, special duties of the Guard Police are related to the implementation of targeted, security activities by the units that belong to it. These duties include:

1. Quality and continuous service to customers of guard services.
2. Prompt response to alarm notifications of technical security equipment.
3. Organisation of prompt response to reports of offenses and complications of the operational situation at the facilities to be guarded.
4. Organisation of operational interaction between the Guard Police and patrol police crews, the leadership of the Main Directorate of the National Police, the Patrol Police Department and other bodies and units of the NPU.
5. Notification of the territorial bodies of the National Police in case of detection of offenses.

6. Providing assistance to victims, identifying witnesses (eyewitnesses), ensuring the guard of the scene, the environment, traces, tools of crime and other material evidence to preserve them in their original state.

7. Providing information to the bodies of the State Emergency Service in case of detection of signs of threat or occurrence of emergencies, fires and dangerous events at the facilities to be guarded.

8. Ensuring the guard of facilities at the appropriate level, using plans for their defence in case of information about the possibility of an attack on them (Law of Ukraine On the National Police, 2015).

#### 4. Conclusions

Therefore, these are, in our opinion, the key rights and duties of the Guard Police of Ukraine. Obviously, the above list expresses only a separate theoretical opinion based on the study of many other scientific perspectives and current legislation. In addition, this analysis is complicated by the fact that to date regarding activity of the Guard Police, no legal regulation defines the main rights and duties assigned to it.

Currently, the rights and duties of the Guard Police of Ukraine consist of two groups

of certain opportunities and requirements, general and special. The former are the rights and duties of the Guard Police as a component of the National Police of Ukraine in general, the latter are ones of an independent body within its competence.

In order to clarify the legal status and increase the efficiency of legal regulation of the activities of the Guard Police in Ukraine, in our opinion, the rights and duties of this body at the legislative level in targeted legal regulations should be further clearly defined.

#### References:

- Alekseev, S.S. (1982). *Obshhaja teorija prava [General theory of law]*. Moskva: Jurid. Lit (in Russian).
- Bilodid, I.K. (1974). *Slovnnyk ukrainskoi movy [Dictionary of the Ukrainian language]*. Kyiv (in Ukrainian).
- Boush, K.S. (2005). Dogovor hranenija v grazhdanskom prave Rossii [Storage agreement in the civil law of Russia]. *Candidate's thesis*. Volgograd : Volgogradskaja akademija MVD (in Russian).
- Kostiuchenko, O.Ie. (2009). Pravove rehuliuвання pratsi likariv v umovakh rynkovoї ekonomiky [Legal regulation of doctors' work in a market economy]. *Candidate's thesis*. Kharkiv : Kharkivskiy natsionalny universytet vnutrishnikh sprav (in Ukrainian).
- Maslennikova, L.N. (2000). Publichnoe i dispozitivnoe nachala v ugovnom sudoproizvodstve Rossii [Public and dispositive principles in criminal proceedings in Russia]. *Candidate's thesis*. Moskva : Akademija upravlenija MVD Rossii (in Russian).
- Mazur, O.S. (2008). Zabezpechennja prav ta zakonnykh interesiv osoby, yaku zatrymano za pidzroiu u vchynenni zlochynu [Ensuring the rights and legitimate interests of a person detained on suspicion of committing a crime]. *Candidate's thesis*. Kyiv : Kyivskiy natsionalny universytet vnutrishnikh sprav (in Ukrainian).
- Strogovich, M.S. (1966). *Osnovnye voprosy sovetskoj socialisticheskoj zakonnosti [The main questions of Soviet socialist legality]*. Moskva (in Russian).
- Vasylieva, V.A. (2006). Problemy tsyvilno-pravovoho rehuliuвання vidnosyn z nadannja poserednytskykh posluh [Problems of civil law regulation of relations for the provision of intermediary services]. *Candidate's thesis*. Ivano-Frankivsk : Prykarpatskij natsionalny universytet imeni V.Stefanyka (in Ukrainian).
- Vediernikov, Yu., Papirna, A. (2008). *Teoriia derzhavy i prava [Theory of state and law]*. Kyiv : Znannia (in Ukrainian).
- Zakon Ukrainy Pro Natsionalnu politzii: vid 02.07.2015 №580-VIII [Law of Ukraine On the National Police: dated 02.07.2015 №580-VIII]. (2014). *rada.gov.ua*. URL: <https://zakon.rada.gov.ua/laws/show/580-19#Text> (in Ukrainian).

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### ПРАВА ТА ОBOB'ЯЗКИ ПОЛІЦІЇ ОХОРОНИ В УКРАЇНІ ЯК ЕЛЕМЕНТИ АДМІНІСТРАТИВНО-ПРАВОВОГО СТАТУСУ

**Анотація. Мета.** Метою статті є теоретичний аналіз прав та обов'язків поліції охорони в Україні як елементів адміністративно-правового статусу. **Результати.** Суб'єктивне право, виходячи із наукових позицій багатьох вчених, – це система юридично встановлених, закріплених та допустимих можливостей поведінки конкретного суб'єкта, за допомогою яких він взаємодіє із національною правовою реальністю. За великим рахунком суб'єктивні права залежать від суспільної ролі самого суб'єкта. Так, набір прав звичайного громадянина буде суттєво відрізнятися від прав такого ж громадянина, але який зв'язаний трудовими відносинами з правоохоронним органом держави, у зв'язку із чим на нього покладаються додаткові повноваження визначені законодавством. До того ж, говорячи про суб'єктивне право в аспекті роботи поліції охорони, також слід зауважити, що мова йде не про можливості якоїсь особи, а про нормативно визначені та закріплені права цілого органу. Тобто, на відміну від людини, яка володіє комплексом як законодавчо обумовлених, так і рядом природних, невідчужуваних можливостей, наданих їй від народження, права і обов'язки органу вла-

ди обумовлюються тими повноваженнями, які на нього покладаються нормативними документами в момент створення. Визначено, що права поліції охорони в Україні – це формально визначені, законодавчо встановлені, гарантовані юридичні можливості поліції охорони як елементної складової Національної поліції України в частині покладеної на неї законодавством компетенції. **Висновки.** Зроблено висновок, що на сьогодні в сфері діяльності поліції охорони не видано нормативно-правового акта, який би визначав основні покладені на нього права та обов'язки. На даний момент права та обов'язки поліції охорони України складаються з двох груп визначених можливостей та вимог, загального та спеціального характеру. Перші з яких виражають права та обов'язки поліції охорони як складового елементу Національної поліції України загалом, другі – як самостійного відомства в межах його компетенції. Для уточнення правового статусу та підвищення ефективності правового регулювання діяльності поліції охорони в Україні, на наш погляд, в майбутньому доречно чітко визначити права та обов'язки даного відомства на законодавчому рівні в межах цільових нормативно-правових актів.

**Ключові слова:** права, нормативна база, правова основа, поліція охорони, Національна поліція.

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