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PARTICULARITIES OF FORMING PRINCIPLES OF COMBATING DOMESTIC VIOLENCE IN NATIONAL POLICE ACTIVITIES

Abstract. Purpose. The purpose of the article is to determine the particularities of forming the principles of combating domestic violence in the activities of the National Police. **Results.** The relevance of the article is that the activities of the National Police with regard to actions aimed at combating instances of domestic violence are administrative in nature and in some cases have a coercive power character, and it should be noted that in order to comprehensively characterise such activities, it is necessary to study the guidelines on which such activities are based. Therefore, we propose to consider a set of such principles and classify them for a better understanding of their essence and functional purpose. It should be noted that it is the study of the principles of legal framework for regulating the activities of the National Police in combating domestic violence that ensures the correct and effective application of administrative and legal provisions, and the effectiveness of administrative and legal coercion in this field. The principles of combating domestic violence in the activities of the National Police shall be understood as the basic starting points, guiding ideas enshrined in the provisions of the current legal regulations on which the activities of the National Police are based, as well as the administrative and legal impact they have on legal relations arising from domestic violence. **Conclusions.** A key aspect of effective combating of domestic violence by the structural units of the National Police is the statutory duty of the National Police to cooperate on this issue with local self-government bodies, non-governmental organisations and individuals on a partnership basis. The activities of the authorised units of the National Police in the field of combating domestic violence are a specific type of activities, because, firstly, they cover a very wide range of social relations that are subject to administrative and legal influence, and secondly, in most cases, they involve violations of the rights and freedoms of a person guaranteed by the current legislation, including the right to respect for private life and inviolability of the home. The list of principles of the National Police's activities in combating domestic violence is not currently enshrined in any legal regulation.

Key words: guarantees, criminal proceedings, offender, restraining order, relevant person.

1. Introduction

Considering that the activities of the National Police with regard to actions aimed at combating instances of domestic violence are administrative in nature and in some cases have a coercive power character, and it should be noted that in order to comprehensively characterise such activities, it is necessary to study the guidelines on which such activities are based. Therefore, we propose to consider a set of such principles and classify them for a better understanding of their essence and functional purpose. It should be noted that it is the study of the principles of legal framework for regulating the activities of the National Police in combating domestic violence that ensures the correct and effective

application of administrative and legal provisions, and the effectiveness of administrative and legal coercion in this field.

The purpose of the article is to determine the particularities of forming the principles of combating domestic violence in the activities of the National Police.

2. Formation of the principles of combating domestic violence

The literature review reveals different definitions of the concept of administrative law principles, but these interpretations are based on well-known ideas and provisions. According to the most popular approach to understanding the above concept among scholars, the principles of administrative law are the guiding foundations that determine the content and focus

of administrative and legal regulatory framework for social relations (Kolpakov, Kuzmenko, Pastukh, Sushchenko, 2012, p. 34). However, some scholars, when defining this concept, rely on certain reasons, depending on which a certain provision enshrined in a provision can be called a principle. In his research, Yu.P. Bytiak argues that the principles of administrative law are the initial, objectively determined foundations according to which the system and content of this branch of law are formed and function. In his opinion, the principles of administrative law cannot be formed and enshrined, let alone implemented, outside social activities and practical activities of participants. Moreover (and this is important for the legislator), the principles of administrative law should objectively reflect the needs and interests of both society and the State, and by their origin should actually correspond to the existing relations (Bytiak, Harashchuk, Bohutskyi, 2010, p. 33).

Therefore, the principles of combating domestic violence in the activities of the National Police shall be understood as the basic starting points, guiding ideas enshrined in the provisions of the current legal regulations on which the activities of the National Police are based, as well as the administrative and legal impact they have on legal relations arising from domestic violence.

Moreover, the quality of administrative and legal influence exercised by the National Police units in the field of combating domestic violence depends on the correct understanding of the content of such principles and their essence.

We believe that the prevailing opinion in the science of administrative law is that the principles of administrative law should be classified according to their direct impact on social relations into general and special (Halunko, Dikhtiiivskyi, Kuzmenko, Stetsenko, 2018, p. 34).

For example, general principles are fundamental to the formulation of provisions of any branch of law, including administrative law. Meanwhile, the content of general principles of law is specified in more special (sectoral) legal principles (Serdiuk, 2014, p. 73). Furthermore, it is quite logical to conclude that the general principles of administrative law include: the principle of the rule of law; the principle of legality; the principle of priority of human and civil rights and freedoms; the principle of equality of citizens before the law; the principle of mutual responsibility of the state and the individual; the principle of humanism, etc. (Paseniuk, 2007, p. 109).

Thus, specialised principles should be understood as: service of public administration bodies

to each individual and society as a whole (all administrative law rules are built primarily on the basis of the interests of both each individual and society in general and are aimed at the realisation of their legitimate rights and interests); inadmissibility of unlawful interference by public administration bodies in the public and private life of a person (prohibition of interference in the public and private life of persons, except in cases clearly defined by the provisions of the current legislation of Ukraine, with the justification of the legality of such interference being entrusted to the entity that performed such interference); availability of full rights and freedoms in relations with public administrators (in relations with public administrators, a person has the widest possible range of rights to ensure the achievement of his/her goals); restriction of public administrators by the provisions of legislation, as well as judicial control over their activities (a public administrator shall act in accordance with the powers established by the current legislation of Ukraine, and a person is not deprived of the right to apply to the court and initiate a process to establish compliance of the actions taken by such an entity with the requirements of the law); principles of publicity (a public administrator in the exercise of its powers shall act openly, and in some cases inform the public about the results of its work) (Halunko, 2019).

It should be noted that this classification fully meets the requirements of the current administrative law doctrine, which is of great importance for law-making and law application in general, since the approach set out therein can be used both in the course of theoretical research and in the course of rulemaking.

However, we consider it necessary to note that the activities of the authorised units of the National Police in the field of combating domestic violence are a specific type of activities, because, firstly, they cover a very wide range of social relations that are subject to administrative and legal influence, and secondly, in most cases, they involve violations of the rights and freedoms of a person guaranteed by the current legislation, including the right to respect for private life and inviolability of the home.

The list of principles of the National Police's activities in combating domestic violence is not currently enshrined in any legal regulation.

Furthermore, we can state with certainty that the principles that regulate the activities of the National Police in combating domestic violence are enshrined in various legal regulations, as mentioned above, and have different degrees of detail.

Therefore, we propose to deviate somewhat from the above position of classification

of principles and offer the author's classification of guiding ideas that regulate the activities of the National Police in combating domestic violence.

The next criterion for distinguishing between the principles of the National Police is the focus of action and their impact on the effectiveness of combating domestic violence (functional focus). According to this criterion, the principles can be divided into:

- Principles-guidelines, which include virtually all constitutional principles and international standards, dominated by moral and ethical prescriptions, ideological guidelines (humanism, respect for human rights, etc.);

- Principles-conditions, principles ensuring the effectiveness and legitimacy of activities to combat domestic violence (rule of law, legality, legal certainty, good governance, transparency, etc.);

- Principles-actions, principles that describe certain actions that are necessary to achieve a positive social effect (continuity, interaction with the public on the basis of partnership, etc.);

- Principles-guarantees, principles ensuring certain standards in the activities of the National Police in the field of combating domestic violence (guaranteeing the safety of victims, confidentiality of information about victims and persons who have reported domestic violence, etc.) (Skakun, 2019, p. 145).

This classification enables to understand that the principles of the National Police in the field of combating domestic violence have different functional orientation, which in turn determines their different impact on the formation of legal provisions for the effective exercise of administrative and legal influence.

The third criterion for classifying the principles in the activities of the National Police to combat domestic violence is the degree of specification in the provisions of existing legal regulations. According to this criterion, the principles can be grouped into:

- General (set out in the provisions of the Constitution of Ukraine, international legal acts, etc.);

- Special (set out in the Law of Ukraine "On the National Police");

- Specialised (set out in the Law of Ukraine "On Preventing and Combating Domestic Violence").

For example, the general principles are subject to a broad interpretation, which is why any activity of the bodies authorised to perform state functions in the implementation of administrative and legal measures, including the National Police in combating domestic violence, is based on these principles.

Instead, the special and specialised principles in the activities of the National Police to

combat domestic violence differ in that the special principles enshrined in the Law of Ukraine "On the National Police" focus on regulating any activity of the employees of this body aimed at performing their functions, including those aimed at combating domestic violence.

Moreover, the specialised principles provide the basis for more specific activities, namely, aimed at creating an effective process of combating domestic violence, starting with the identification of domestic violence and ending with the legal prosecution of the perpetrator and assistance to victims.

Given that a large number of scholarly works reveal general principles, such as the rule of law and legality, we consider it necessary to focus on a more detailed analysis of the principles we have classified as special and specialised.

Therefore, the principles set out in the Law of Ukraine "On the National Police" will be considered special principles, while the principles set out in the Law of Ukraine "On Preventing and Combating Domestic Violence" meet the characteristics of specialised principles.

In particular, Section II of the Law of Ukraine "On the National Police" stipulates that the National Police is guided by the following principles in its activities: 1) the rule of law; 2) respect for human rights and freedoms; 3) legality; 4) openness and transparency; 5) political neutrality; 6) interaction with the public on the basis of partnership; 7) continuity.

According to the Law of Ukraine "On the National Police", Article 6, Part 1, the police in its activities is guided by the principle of the rule of law, according to which a person, his or her rights and freedoms are recognised as the highest values and determine the content and focus of the state's activities.

It should be noted that, considering the provisions of the Law of Ukraine "On the National Police", Article 6, Part 1, the essence of the principle of "the rule of law" is primarily that a person, his/her rights and freedoms are determined by the highest values, which in turn is decisive in the activities of all state bodies and structures, including the National Police of Ukraine (Law of Ukraine On the National Police, 2015).

The Law of Ukraine "On the National Police", Article 7, Part 1, establishes the principle of respect for human rights and freedoms, which is proposed to be understood as ensuring respect for human rights and freedoms guaranteed by the Constitution and laws of Ukraine, as well as international treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine, and facilitating their implementation. Restriction of human rights and freedoms shall be allowed only on the grounds and in accordance

with the procedure defined by the Constitution and laws of Ukraine, when necessary and to the extent required for the performance of police tasks, while measures restricting human rights and freedoms shall be immediately terminated if the purpose of such measures is achieved or there is no need for their further application (Law of Ukraine On the National Police, 2015).

For example, when taking measures aimed at combating domestic violence, police officers should first of all use “proportionate” coercive measures vested in them, act exclusively within the limits of their powers and proceed from a particular situation to prevent abuse of power.

The Law of Ukraine “On the National Police”, Article 8, Part 1, establishes the principle of legality which implies that the police shall act exclusively on the basis, within the scope of powers and in the manner prescribed by the Constitution and laws of Ukraine (Law of Ukraine On the National Police, 2015).

With regard to this principle, the Venice Commission states, “...The importance of the principle of legality was already underlined by Dicey. It first implies that the law must be followed. This requirement applies not only to individuals, but also to authorities. In so far as legality addresses the actions of public officials, it requires also that they act within the powers that have been conferred upon them. The legality also implies that no person can be punished unless he or she has violated previously adopted law that has already come into force, and that there should be liability for violations of the law. The implementation of the law should, to the extent possible, be ensured in practice. The term “law”, as used in this chapter, refers primarily to national legislation and common law. However, the development of international law as well as the importance given by international organisations to the respect of the rule of law lead to addressing the issue at international level as well: the principle *pacta sunt servanda* is the way in which international law expresses the principle of legality” (Holovaty, 2011).

Thus, when adapting the understanding of this principle to the issue raised, it should be noted that in this case, the principle of legality is considered not only as binding the National Police, in the course of taking measures to combat domestic violence, to act only within the powers conferred by law, but also to use coercion and other actions provided for by the current legislation only if necessary.

In other words, the relevant temporary restraining order against the perpetrator can only be applied if the latter has actually committed domestic violence and only if the evidence collected shows “an objective observer,

beyond reasonable doubt” that the latter has committed such acts.

In this case, the guarantees inherent in criminal proceedings, such as the standard of proving “beyond reasonable doubt”, should be applied, because if a National Police officer applies a measure to combat domestic violence such as a temporary restraining order to the abuser, even though it may be for a while, his or her fundamental rights and freedoms may be violated. Therefore, when performing certain actions aimed at combating domestic violence, and even more so those aimed at restricting constitutional rights and freedoms, the relevant person of the National Police shall be sure of the correctness, validity, legality and expediency of their actions that implement coercion.

According to the Law of Ukraine “On the National Police”, Article 9, the police shall operate on the basis of openness and transparency within the scope defined by the Constitution and laws of Ukraine. The Police shall provide access to public information in its possession in accordance with the procedure and requirements established by law. The Police may disclose (disseminate) restricted information only in cases and in accordance with the procedure established by law (Law of Ukraine On the National Police, 2015).

3. The role of the National Police in combating domestic violence

According to the Resolution of the Cabinet of Ministers of Ukraine “On approval of the Regulations on data sets that are subject publication in the form of open data” No. 835 of 21 October 2015, all information administrators shall publish in the form of open data a Directory of enterprises, institutions (establishments) and organisations of the information administrator and its subordinate organisations, including their telephone numbers and addresses; information on the organisational structure of the information administrator; a report on the use of budgetary funds (for information administrators using budgetary funds), in particular for certain budgetary programmes; regulations approved by the information administrator; lists of national standards, which, if voluntarily applied, are proof of compliance of products with the requirements of technical regulations; reports, including on meeting requests for information; annual procurement plans; information on the accounting system, types of information stored by the administrator; registers (lists) of open data sets; lists of administrative services, information cards of administrative services and application forms required to apply for an administrative service; administrative data collected (processed) by the information administrator; legal regulations

subject to disclosure in accordance with the Law of Ukraine “On Access to Public Information”; financial statements of public sector economic entities that fall within the scope of management of the information administrator (Resolution of the Cabinet of Ministers of Ukraine on the approval of the Regulation on data sets that are subject to publication in the form of open data, 2015).

For example, the implementation of this principle in the field of domestic violence prevention by the National Police is based on the maintenance of the Unified State Register of cases of domestic and gender-based violence, which will contain information about the perpetrators and those subject to measures to combat domestic violence.

In view of the above, maintaining this Register will not only make the work of the National Police in combating domestic violence open, but will also help potential victims avoid harm from their abusers.

A key aspect of effective combating of domestic violence by the structural units of the National Police is the statutory duty of the National Police to cooperate on this issue with local self-government bodies, non-governmental organisations and individuals on a partnership basis.

In order to ensure the effectiveness of this partnership, the Cabinet of Ministers of Ukraine approved the Procedure for assessing the level of public trust in the National Police. The procedure defines the main tasks, principles, frequency of the assessment (at the national level at least once a year, at the territorial level as needed), the procedure for the National Police and the independent sociological service to act in organising and conducting the assessment, etc. Assessment of the level of public trust in the National Police will enable to identify problematic issues in their activities, consider public opinion to improve their work, which will contribute to the efficiency of the police, make their activities more transparent, understandable and controlled by the society (Resolution of the Cabinet of Ministers of Ukraine on the approval of the Procedure for assessing the level of public trust in the National Police, 2018).

Following the analysis of the general principles of the National Police’s activities in implementing measures aimed at combating domestic violence, we should move on to the specialised principles, which, in our opinion, are enshrined in the provisions of the Law of Ukraine “On Preventing and Combating Domestic Violence”.

For example, according to the Law of Ukraine “On Preventing and Combating Domestic Violence”, Article 4, Part 1, activities

aimed at preventing and combating domestic violence are based on the following principles: 1) guaranteeing victims security and protection of fundamental human rights and freedoms, including the right to life, liberty and personal integrity, respect for private and family life, fair trial, and legal aid, with due regard to the case law of the European Court of Human Rights; 2) due regard for each fact of domestic violence in the implementation of measures to prevent and combat domestic violence; 3) consideration of the disproportionate impact of domestic violence on women and men, children and adults, adherence to the principle of ensuring equal rights and opportunities for women and men in the implementation of measures to prevent and combat domestic violence; 4) awareness of the social danger of domestic violence and ensuring intolerance to any cases of domestic violence; 5) respect, impartial and caring attitude to victims by actors implementing measures to prevent and combat domestic violence, ensuring the priority of rights, legitimate interests and safety of victims in the implementation of measures to prevent and combat domestic violence; 6) confidentiality of information about victims and persons who reported domestic violence; 7) voluntary nature of assistance to victims, save for children and legally incapable people; 8) consideration of the special needs and interests of victims, in particular persons with disabilities, pregnant women, children, legally incapable persons, the elderly; 9) effective cooperation between actors implementing measures to prevent and combat domestic violence and public associations, non-governmental organisations, mass media and other stakeholders (The Law of Ukraine On Preventing and Combating Domestic Violence, 2017).

Next, we consider the key principles that guide the National Police in its efforts to combat domestic violence.

Thus, the first principle enshrined in the Law of Ukraine “On Preventing and Combating Domestic Violence”, Article 4, Part 1, clause 1, is “...guaranteeing victims security and protection of fundamental human rights and freedoms...” (The Law of Ukraine On Preventing and Combating Domestic Violence, 2017). In the context of the activities of the National Police and their measures to combat domestic violence, it should be noted that this principle is disclosed in the first stages after the fact of domestic violence is detected.

According to the Law of Ukraine “On the National Police”, Article 43, part 1, a police officer shall warn the person in advance of any use of physical force, special equipment and firearms, and give him/her enough time to fulfil the lawful demand of the police officer, unless

a delay may cause an assault against life and health of such person and/or the police officer or lead to other grave consequences, or if in the given situation such warning is unreasonable or impossible. (Law of Ukraine On the National Police, 2015).

For example, if a patrol police officer responds to a phone call received via the 102 network for his or her personal protection or to protect victims of domestic violence, if the offender poses a direct threat, the officer has the right to use special means, physical force or even firearms against the offender.

In addition, one of the means of implementing this principle in the activities of the National Police is the application of a temporary restraining order against the offender.

The Law of Ukraine "On Preventing and Combating Domestic Violence", Article 4, Part 1, clause 2, establishes that one of the principles of combating domestic violence is due cognisance to every case of domestic violence during the implementation of measures to prevent and combat domestic violence (The Law of Ukraine On Preventing and Combating Domestic Violence, 2017).

Accordingly, the initial fact of responding to domestic violence may be the recording of a reported act with signs of domestic violence on the 102 telephone line.

In accordance with clause 5 of Section II of the Procedure for keeping a unified record in the police bodies (units) of statements and reports of criminal offences and other events, approved by the Order of the Ministry of Internal Affairs of Ukraine No. 100 of 8 August 2019, an application (message) received by telephone using the abbreviated emergency number of the police "102" is registered in the ITS IPNP with automatic assignment of serial numbers to the UR (Order of the General Prosecutor's Office of Ukraine On the approval of the Regulation on the procedure for maintaining the Unified Register of Pretrial Investigations, 2016).

Therefore, the procedure for responding to incidents of any kind, including cases of domestic violence, is regulated by the current legislation of Ukraine, and the conscientious implementation of these instructions by the police officers will ensure a quick and high-quality response to any case of domestic violence, which in turn is a guarantee of preventing possible more serious consequences.

The Law of Ukraine "On Preventing and Combating Domestic Violence", Article 4, Part 1, clause 3, establishes that the National Police acts in compliance with the principle of ensuring equal rights and opportunities for women and men when taking measures to prevent and combat domestic violence (The Law

of Ukraine On Preventing and Combating Domestic Violence, 2017).

For example, in accordance with clause 1 of section 3 of the Regulations on the Procedure for maintaining the Unified Register of Pretrial Investigations, approved by Order No. 139 of the PGO of 06 April 2016, the information in the Register is entered in compliance with the terms set by the CPC of Ukraine (Order of the General Prosecutor's Office of Ukraine On the approval of the Regulation on the procedure for maintaining the Unified Register of Pretrial Investigations, 2016).

Following the CPC of Ukraine, Article 214, Part 1, the investigator, public prosecutor shall be required immediately but in any case no later than within 24 hours after submission of a report, information on a criminal offense that has been committed or after he has learned on his own from any source, about circumstances which are likely to indicate that a criminal offence has been committed, to enter the information concerned in the Unified Register of Pre-Trial Investigations, and to initiate investigation and within 24 hours of entering such information, provide the applicant with an extract from the Unified Register of Pre-trial Investigations (Criminal Procedure Code of Ukraine, 2012).

5. Conclusions

The principles that regulate the activities of the National Police in combating domestic violence are based on the following criteria: 1) by legal force of the legal regulation that enshrines the principles of the National Police in the field of combating domestic violence: a) principles enshrined in the Constitution of Ukraine; b) principles enshrined in international legal acts; c) principles enshrined in the Laws of Ukraine; 2) by the focus of action and their impact on the effectiveness of combating domestic violence (functional focus): a) principles-guidelines, which include virtually all constitutional principles and international standards, dominated by moral and ethical prescriptions, ideological guidelines (humanism, respect for human rights, etc.); b) principles-conditions, principles ensuring the effectiveness and legitimacy of activities to combat domestic violence (rule of law, legality, legal certainty, good governance, transparency, etc.); c) principles-actions, principles that describe certain actions that are necessary to achieve a positive social effect (continuity, interaction with the public on the basis of partnership, etc.); d) principles-guarantees, principles ensuring certain standards in the activities of the National Police in the field of combating domestic violence (guaranteeing the safety of victims, confidentiality of information about victims and persons who have reported domes-

tic violence, etc.); 3) by the degree of specification in the provisions of existing legal regulations: a) general (set out in the provisions of the Constitution of Ukraine, international legal acts, etc.); b) special (set out in the Law of Ukraine “On the National Police”); c) specialised (set out in the Law of Ukraine “On Preventing and Combating Domestic Violence”).

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ОСОБЛИВОСТІ ФОРМУВАННЯ ПРИНЦИПІВ ПРОТИДІЇ ДОМАШНЬОМУ НАСИЛЬСТВУ В ДІЯЛЬНОСТІ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ

Анотація. Мета. Метою статті є визначення особливостей формування принципів протидії домашньому насильству в діяльності Національної поліції. **Результати.** Актуальність статті полягає в тому, що діяльність Національної поліції щодо вчинення дій, які направлено на протидію про-

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явам домашнього насилля, носить адміністративний характер та має в деяких випадках владно-примусовий характер. Слід зауважити, що для надання комплексної характеристики такої діяльності є необхідним дослідження керівних засад, на яких базується така діяльність. Тому запропоновано розглянути комплекс таких принципів та надати класифікацію для більш кращого розуміння їх суті та функціонального призначення. Варто звернути увагу на те, що саме дослідження принципів правового регулювання у сфері регулювання діяльності Національної поліції зі здійснення протидії проявам домашнього насильства забезпечує правильне та дієве застосування адміністративно-правових норм, забезпечення дієвості адміністративно-правового примусу в зазначеній сфері. Під принципами протидії домашньому насильству в діяльності Національної поліції слід розуміти основні вихідні положення, керівні ідеї, закріплені положеннями чинних нормативно-правових актів, на яких будується діяльність Національної поліції, а також здійснюваний ними адміністративно-правовий вплив на правовідносини, що виникають у зв'язку із вчиненням домашнього насильства. **Висновки.** Ключовим аспектом здійснення ефективної протидії проявам домашнього насильства структурними підрозділами Національної поліції є нормативно встановлений обов'язок Національної поліції співпрацювати із зазначеного питання з органами місцевого самоврядування, неурядовими організаціями та окремими громадянами на партнерських засадах. Діяльність уповноважених підрозділів Національної поліції у сфері протидії проявам домашнього насильства є специфічним видом діяльності, адже, по-перше, охоплює дуже широкий спектр суспільних відносин, на які здійснюється адміністративно-правовий вплив, а по-друге, в більшості випадків стосується порушення прав і свобод особи, гарантованих чинним законодавством, у тому числі й права на повагу до особистого життя та недоторканості житла. Перелік принципів діяльності Національної поліції щодо протидії домашньому насильству натепер не закріплений у жодному нормативно-правовому акті.

Ключові слова: протидія домашньому насильству, кримінальне провадження, кривдник, обмежувальний припис, відповідна особа.

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