

SECTION 1. ADMINISTRATIVE LAW, ADMINISTRATIVE PROCESS

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1.1 The mechanism of legal regulation of the application of police measures in Ukraine

An important function of the state is to ensure law and order in the country. Human rights and freedoms are enshrined at the legislative level, so their observance and guarantee by the state can be enforced. Among the government's obligations in the field of protection of human and citizen rights, an important role is played by prevention, prevention of offenses and timely response to them. This function of the state is entrusted to law enforcement agencies, in particular to the National Police of Ukraine. The implementation of the given powers takes place within the framework of the application of police measures that limit a number of human rights and freedoms, especially this applies to coercive measures. The powers of the police, enshrined in law, should contribute to the maintenance of law and order, and not create grounds for violating people's rights. It is quite logical that the use of police measures violates certain rights and freedoms, but it is forbidden to abuse this right on the part of the police officer. The prohibition of torture by National Police officers during the performance of official duties is particularly pronounced in national legislation [2, p. 53].

In order to protect human rights and freedoms, prevent threats to public safety and order or stop their violation, preserve the health and lives of citizens, the National Police of Ukraine, as an executive authority, takes measures to respond to offenses defined by the Code of Ukraine on Administrative Offenses and the Criminal Procedure Code by the Code of Ukraine, on the grounds and in the order determined by the current national legislation.

Chapter V of the Law of Ukraine "On the National Police" [6] provides a definition: a police measure is an action or set of actions of a preventive or coercive nature that restricts certain rights and freedoms of a person and is used by the police in accordance with the law to ensure the fulfillment of the powers assigned to the

police. The police received a clearly defined list of such measures within the framework of the law.

To fulfill the tasks assigned to the police, police preventive measures and coercive measures defined by the Law of Ukraine "On the National Police" are applied within their competence. However, the police may sometimes apply other measures defined by separate laws. Each type of police measure has appropriate grounds for its use.

The list of preventive police measures (Article 30 of the Law of Ukraine "On the National Police"), which, in accordance with the law, can be applied by police officers during the performance of their duties and functions:

1) verification of a person's documents (Article 32 of the Law of Ukraine "On the National Police");

2) interviewing a person (Article 33 of the Law of Ukraine "On the National Police");

3) surface check (Article 34 of the Law of Ukraine "On the National Police");

4) stopping a vehicle (Article 35 of the Law of Ukraine "On the National Police");

5) requirement to leave a place and restriction of access to the specified territory (Article 36 of the Law of Ukraine "On the National Police");

6) restriction of movement of a person, vehicle or actual possession of an object (Article 37 of the Law of Ukraine "On the National Police");

7) breaking into a person's home or other property (Article 38 of the Law of Ukraine "On the National Police");

8) verification of compliance with the requirements of the permit system of internal affairs bodies (Article 39 of the Law of Ukraine "On the National Police");

9) use of technical devices and technical means that have the functions of photo and film shooting, video recording, photo and film shooting equipment, video recording (Article 40 of the Law of Ukraine "On the National Police");

10) verification of compliance with restrictions established by law regarding persons under administrative supervision and other categories of persons;

11) police custody (Article 41 of the Law of Ukraine "On the National Police").

The term "preventive measures" means preventive, preventive, precautionary actions. Therefore, preventive measures, as a way of preventing offenses, have their own characteristics:

- *are applied:*

- for the purpose of prevention, prevention of offenses;
- and provided there is no illegal act;
- to ensure public order and public safety during emergency situations;

- *may have a purpose:*

- prophylactic;
- prevention of harmful consequences.

The application of preventive measures by the police is not an end in itself, they are designed to complement other measures, such as educational, informational and explanatory measures. Preventive measures are based on the principles of necessity, efficiency, legality, proportionality and with respect for human rights and freedoms. They provide for the application of restrictions on certain rights and freedoms to people and organizations in cases established by law, which is of a coercive nature, but offenses may not be present. These preventive measures are aimed at protecting the interests of public safety and order, preventing crimes.

The essence of preventive police measures is manifested in:

- illegal behavior on the part of a specific person who is prone to it is prohibited,
- elimination of reasons contributing to the commission of an offense, creation of conditions for their commission.

Preventive police measures include one or a set of actions that limit certain rights and freedoms of a person, the use of which is not always related to the illegal behavior of a person, are applied in accordance with the requirements established by law to ensure the fulfillment of the powers entrusted to the police.

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List of coercive police measures (Article 42 of the Law of Ukraine "On the National Police"), which, in accordance with the law, may be used by police officers in the course of exercising their powers [4]:

- 1) physical impact (force);
- 2) use of special means;
- 3) use of firearms.

In the theory of administrative law, the basis of the classification of measures of administrative coercion was the purpose of their application. These measures are used with a threefold purpose: a) to prevent various anti-social manifestations, to prevent the creation of a certain illegal situation (prevention); b) to stop a started or already committed illegal act and ensure proceedings in cases of administrative misdemeanors (termination); c) to punish persons who have committed offenses (responsibility) [1, p. 60]. According to the triple purpose, measures of administrative coercion are divided into three groups: administrative preventive measures, measures of administrative suspension and administrative fines.

In the context of distinguishing preventive measures from coercive measures, it is necessary to proceed from the fact that, firstly, this measure is used in the state administration to protect social relations that arise in the sphere of state activity; secondly, it is used for the purpose of protecting law and order, i.e. preventing or stopping offenses or bringing perpetrators to justice (as a rule, administrative); thirdly, such a measure is applied precisely in a coercive manner, that is, regardless of the will and desire of the subject to whom it is applied, often with the possibility of using other coercive measures for its implementation; fourth, it applies to persons not subordinate to the body or official who uses it, and, fifth, the grounds and procedure for applying this measure are established by administrative and legal regulations [5, p. 19].

Administrative and coercive police measures occupy the main place in the administrative activities of the police, as they ensure, in particular: unimpeded implementation of preventive measures to prevent the commission of offenses; protection of rights, freedoms and interests of people and citizens, public order and

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public safety; termination of committed offenses; collection of evidence; identification and detention of the offender; bringing guilty persons to justice; restoration of justice in society, etc. Therefore, the more effective the administrative coercion measures that the National Police of Ukraine will be able to apply, the better the crime prevention and the more effective the crime prevention process will be.

Article 29 of the Law of Ukraine "On the National Police" outlines the requirements for police action:

- The police measure is used exclusively for the execution of police powers. The chosen police measure must be legal, necessary, proportionate and effective.

- The chosen police measure is legal if it is defined by law. The police officer is prohibited from applying any measures other than those defined by the laws of Ukraine.

- The chosen police measure is necessary if it is impossible to apply another measure for the performance of police powers or its application will be ineffective, and also if such a measure will cause the least harm both to the addressee of the measure and to other persons.

- The applied police measure is proportionate if the damage caused to the rights and freedoms of a person protected by law or the interests of society or the state does not exceed the good for the protection of which it is applied or the created threat of damage.

- The chosen police measure is effective if its application ensures the fulfillment of police powers.

- A police measure is terminated if the goal of its application is achieved, if the impossibility of achieving the goal of the measure is obvious, or if there is no need for further application of such a measure.

It is important that during the implementation of preventive police measures, the police officer is obliged to inform the person about the reasons for the application of the police measure to him, to inform him of the normative legal acts on the basis of which they are applied.

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The warning about the application must be clear, both for one person and for a group of people. The police officer must warn the person in advance about the use of a certain police measure against him, as well as give him enough time to comply with the legal requirement, and only then apply it. However, there are exceptions when it is impossible to give such a warning and a delay may cause harm to the life and health of a person or a police officer.

A police officer is obliged to follow the rules of personal identification, which includes a uniform and a special token (breast badge) that is placed on the uniform, an official ID card. When a citizen addresses a police officer, or when he addresses a person, the police officer must state his surname, position, special rank and present his official ID upon request, giving the opportunity to familiarize himself with the information contained in it, without issuing the ID out of hand.

The reasons for the use of police measures depend on the degree of the specific threat of personal danger or the danger of other people.

The application of any police measure must comply with the provisions of the Law. The chosen police measure is legal if it is defined by law. The police officer is prohibited from applying any measures other than those defined by the laws of Ukraine. The chosen police measure is necessary if it is impossible to apply another measure for the performance of police powers or its application will be ineffective, and also if such a measure will cause the least harm to both the addressee of the measure and other persons. The legality of the procedure for its implementation and the specifics of its application depends on the employee of the internal affairs bodies himself, on the conscientious performance of his duties, compliance with the principles of the National Police of Ukraine.

Today, police measures and the conditions for their application are clearly prescribed at the level of the law, and not at the level of instructions, as was the case earlier. They have a leading role in the administrative activities of the police, because they ensure: overcoming resistance to conducting a preventive police measure; restoration of public order and security; protection of life and health of citizens; localization of negative consequences, including preservation of the scene of the

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incident in its original, unaltered state, recording and collection of material evidence at the scene of the incident in the manner prescribed by law; termination of the commission of the offense; identification of the offender; detaining the offender in a legal manner, delivering him to the territorial division of the police, ensuring the drawing up of a report on an administrative offense in the event that it is impossible to draw it up at the place of the offense; conducting a pre-trial investigation of criminal offenses within the limits of the specified jurisdiction; searching for persons who are hiding from pre-trial investigation bodies, the investigating judge, the court, who are evading the execution of a criminal sentence, who have gone missing; regulation of traffic, control over legality of operation of vehicles; escorting vehicles in cases specified by law; conducting proceedings in cases of administrative offenses, making decisions on the application of administrative fines and ensuring their implementation; taking measures to prevent and stop domestic violence; implementation of the protection of individuals and objects of private and communal property rights on a contractual basis; control over compliance by individuals and legal entities with special rules and procedures for the storage and use of weapons, special means of personal protection and active defense, ammunition, explosive substances and materials, other objects, materials and substances covered by the permit system of internal affairs bodies; the personal safety of the police officer, the safety of others and the violator, and others.

An important direction of the strategy of police activity is a reasonable balance of choice between preventive and coercive actions in the course of countering offenses. When applying police measures, the rights and freedoms of a person are restricted, but the crimes must be directly proportional to the values of the legal sovereign state.

These restrictions must necessarily take into account the interests of the individual, society and the state, which creates the necessary balance for the application of a certain police measure. Respect for a person, protection, protection of his honor and dignity is the duty of all state bodies, including the National Police of

Ukraine. Ensuring legal guarantees of legality is a constitutional duty of the police to ensure that people exercise their rights, freedoms and responsibilities.

Preventive police measures are used to prevent and prevent crimes; to ensure the protection of human rights and freedoms, as well as the interests of society and the state; combating crime; maintenance of public safety and order; providing, within the limits defined by law, assistance services to persons who need it for personal, economic, social reasons or as a result of emergency situations.

The preventive effect of the application of preventive police measures can be ensured during the detection of offenses or attempts to solve them. They do not contain the element of punishment of the person to whom they can be applied, their use is often not related to the illegal behavior of a specific person.

Preventive police measures do not have a punitive nature, they do not require establishing the guilt of the offender as a mandatory condition of use, or other mandatory signs of illegal action. Through the use of these measures, police officers create conditions for strict compliance with laws, detection and termination of offenses, warn and avert the possibility of encroachment on the interests of society and the state, which are protected by law.

Grounds for applying such preventive police measures as a surface check, stopping a vehicle, may be a real assumption of a person's intention to commit a crime; measures – the requirement to leave a place and restriction of access to a certain territory, restriction of movement of a person or vehicle or actual possession of an object in the event of the occurrence of circumstances threatening public safety and order, etc.

A distinctive feature of preventive measures from a legal point of view is the regulation and ordering of social relations with the help of administrative and legal norms and preventive action. Coercive police measures involve the use of physical force, the use of special means and firearms. However, they are used only in exceptional situations, when preventive measures were not effective or when socially dangerous actions cannot be stopped in any other way, except by coercive measures.

The police measure cannot be used by authorized bodies and officials other than on the basis and in the manner established by law [3]. The application of police measures is carried out within the competence of the police, in direct accordance with the law. The application of these measures must comply with constitutional and legal principles and "legally" limit the rights and freedoms of offenders. Police measures can be applied exclusively by employees of the authorized central executive body for the purpose of fulfilling the assigned powers.

Employees of the National Police of Ukraine must know and be able to appropriately apply police preventive measures or coercion that do not go beyond the limits established by law. Their application is regulated not only by national legislation, but also by international legal acts, for example: Recommendation of the Committee of Ministers to the member states of the Council of Europe "On the European Code of Police Ethics"; Code of conduct for law enforcement officials; Resolution of the Parliamentary Assembly of the Council of Europe "On the Declaration on the Police"; Resolution of the UN General Assembly "Code of Conduct for Law Enforcement Officials" and other international acts.

Compliance with the requirements of the law in their application is ensured by systematic control by higher authorities and officials, the right of appeal, and other methods established by law.

Conclusions. Police measures are used in public administration and management, in administrative and jurisdictional activities to protect social relations that arise in certain areas of public activity on the basis of national legislation. The mechanism of legal regulation of their application provides grounds and determines the procedure for the application of appropriate preventive or coercive measures by Ukrainian police officers throughout the territory of the Ukrainian state.