

PUBLIC SAFETY AND ORDER ENSURING IN THE COURSE OF LAW ENFORCEMENT SYSTEM REFORMING IN UKRAINE

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Abstract. Article provides analysis of legislative acts in the area of public safety and order maintenance by NPU. International practices of relevant legislative regulation are studied and systematized. Key problems of public safety and order maintenance are defined and optimal solutions are presented.

Keywords: public safety, public order, police units, legislative act, mass events.

PROBLEM STATEMENT

Current process of intensive reforming in political, social and economic areas in Ukraine affects the dynamics of social relations and shapes major trends of the state development as transitional period is essentially characterized with lack of social stability and aggravation of crime situation.

Therefore social-economic and political environment in our state is marked with such attribute as public order maintenance problems and law enforcement is tasked to develop and apply the most optimal solutions.

According to Decree of the President of Ukraine «Decision of Council of National Security and Defence of Ukraine dd. March 4, 2016 «On the Concept of National Security and Defence Sector Development» of March 14, 2016 № 92/2016, public safety and order maintenance by the Ministry of Interior of Ukraine and National Police of Ukraine is defined as one of the priority issues of national security and defence sector development in Ukraine [1].

Objective principles of amplification of relations in the area of public safety define specific requirements to its legislative regulation aimed at systematization of social processes in the abovementioned area with due consideration of existing threats. Accordingly, it is necessary to study the mechanisms of mentioned issues legislative regulation in EU Member States in the context of domestic laws adaptation.

ANALYSIS OF RECENT RESEARCH AND PUBLICATIONS

Legislative regulation of public safety and order maintenance and the role of police in this process is still one of the most intensively studied issues – due attention to this research

area is paid by numerous Ukrainian theoreticians including V. Averianov, M. Anufriiev, O. Bandurka, O. Batrachenko, A. Vasylyshyn, M. Holub, S. Husariev, O. Dovhan, A. Dolynnyi, I. Zozulia, M. Kachynska, A. Kolodii, A. Kryshchenko, D. Muliavka, O. Panova, V. Sokurenko, V. Fathutdinov, V. Shakun, Y. Shemshuchenko etc.

Still, modified legislation regulating area of public safety and order maintenance by the National Police of Ukraine requires further theoretical study and the problems outlined in this paper are still the matter of topical interest.

The aim of this article is to analyze applicable legislation regulating area of public safety and order maintenance, systematize its enforcement practices along with foreign expertise, define the key problems of public safety and order ensuring by the National Police of Ukraine with optimal solutions formulation.

RESEARCH BACKGROUND

Ukraine along with other states is currently under strong influence of global democratization and social relations humanization – these trends promote deep qualitative transformations in the process of state development, its political, social and economic spheres also affecting the lawmaking and law enforcement processes.

The abovementioned reforms are naturally followed by revitalization of civic and activist movements aimed at expression of certain viewpoints and positions of different social categories targeting at raising awareness of specific problems and concerns with search for adequate solutions (demands on rights and freedoms protection, meeting their needs and consideration of interests) – often this objective is attempted to be accomplished in the format of mass event where dozens of voices are united as one bringing their messages more vividly and clearly.

The Constitution of Ukraine guarantees every citizen a right to take part in peaceful gathering or mass event held in strict adherence to the law but often different meetings, demonstrations, marches which have become a common way to express objection or disapproval by the citizens are organized with multiple violations of relevant requirements and procedures (mostly due to the fact that applicable legislation lacks consistency and full of discrepancies), with increased risk of violent acts commission and extremist involvement posing direct threat to public safety and order and, in some cases, threatening to the state security. Taking into account the specificity of current economic, political and social risks, public safety and order maintenance task delegated to National Police of Ukraine becomes even more important.

According to O. Panova mass disturbances in Ukraine are mostly characterized as deeply politicized and somewhat of platforms for the separatist groupings to demonstrate their intentions. Events that took place in 2013–2014 – all over Ukraine and in the centre of Kyiv – proved that any mass event held in accordance with international legislative acts may potentially turn into mass disorders due to extremist provocations resulting in tragedy [2, p. 42].

Currently due to high level of criminalization, economic instability and other negative factors we can claim that state power bodies fail to ensure public safety and order.

The Law of Ukraine «On National Police» dd. 02.07.2015 № 580-VIII envisages key legislative framework of NPU activity organization, status of police officers and relevant career programs [3]. For the first time Ukrainian legislator has incorporated the term «public safety» into provisions related to activities of law enforcement agencies and structures but traditional definitions of «civic security» and «civic order», still present in separate acts, lead to multiple discrepancies and misinterpretations. It leads to conflict of laws regulating public safety and order maintenance.

European and global legal practice justifies application of public security and order definition due to its positive perception by the international community. That is why research of public security and order maintenance during mass events as administrative-legal protection object should be followed by relevant amendments to applicable legislation with aim to harmonize it and eliminate existing discrepancies.

It should be noted that the Constitution of Ukraine never mentions definitions of «public safety» or «public order». Instead the term «civic order» is used. Thus, paragraph 17 of Article 92 of the Constitution of Ukraine defines foundations of national security, Armed Forces organization and public order maintenance. Also Article 34 of the Constitution of Ukraine, which envisages right for freedom of expression and speech, free expression of opinions and beliefs, mentions opportunity to restrict the abovementioned rights for the sake of national security, territorial integrity protection or public order maintenance. It is similar for Article 39 which envisages the right of citizens to participate in peaceful gatherings without weapons stating that any restriction regarding the enjoyment of this right may be established by the court in accordance to the law serving the interests of national security and public order [4]. It means that public order is given the same status by the constitution as the national security.

But the Law of Ukraine «On national security of Ukraine» dd. 19.06.2003 № 964-IV definitions of «public safety and «public order» are not mentioned. Interpretation is provided only for the essence of «national security» by the legislator – protection of vitally important citizen's and human, society and state interests aimed at ensuring the sustainable social

development, due detection, prevention and neutralization of existing and potential threats posed to national interests in law enforcement area, corruption combating, border service and armed forces activity, migration policy, health care, education and science, innovations and technical progress, cultural development of society, informational security and freedom of speech, social policy and pension coverage, housing and utilities infrastructure, financial services market, proprietary rights protection, stock and security markets, tax, budget and customs policy, business activity, bank services market, investment policy, audit activity, monetary and currency police, data protection, licensing, industry and agriculture, transport and communication, IT, energy sector and energy efficiency policy, natural monopolies functioning, utilization of extractable resources (land and water), environmental protection and other sectors of public administration in case if any negative tendencies arise for the abovementioned threats to exist [5].

In our opinion this definition is too extended and complicated but after thorough analysis we conclude that public safety and order are essential elements of national security corresponding fully to the citizens' interests. Decree of the President of Ukraine «Decision of Council of National Security and Defence of Ukraine dd. March 4, 2016 «On the Concept of National Security and Defence Sector Development» of March 14, 2016 № 92/2016 envisages that one of the key concepts of security and defense sector is public safety maintenance along with 1) efficient execution of functions delegated to NPU as the central executive power body in the area of public safety maintenance and crime combating; 2) enhancement of National Guard capacity in terms of public safety and order tasks accomplishment [6].

We can see that legislator simultaneously uses definitions of civic safety and order and public safety and order without providing proper separation of these definitions and adequate explanations. If we refer to Decree of the President of Ukraine «Decision of Council of National Security and Defence of Ukraine dd. May 6, 2015 «On Strategy of National Security of Ukraine» dd. May 26, 2015 № 287/2015, we will find the information that National Police of Ukraine as the in the area of public safety maintenance and crime combating, subordinated to Minister of Interior of Ukraine, performs functions related to crime combating (including organized crime) and public order maintenance and that establishment of municipal police units by local self-governance bodies funded by the local budgets for performing the abovementioned functions is one of priorities in the framework of law enforcement system reforming[7]. At the same time the Law of Ukraine «On National Police» dd. July 2, 2015 № 580-VIII gives direct reference to the statement that National Police of Ukraine is a central

executive power body providing services to citizens on human rights and freedoms protection, crime combating, public safety and order maintenance [3].

The abovementioned also proves that legislator uses definitions of public (civic) safety and order as synonyms and sometimes as analogues – we consider this approach to be incorrect due to the lack of proper explanation and absence of these definitions in the text of Constitution which evidently results in additional legislative discrepancies.

We agree with opinion of V. Fatkhutdinov that definitions of «public safety» and «public order» started to appear in legislative acts and other documents during Soviet times, so the intention to update the terminology is clear. In the process of drafting the Law of Ukraine «On National Police» legislator used primarily foreign practices (the USA, France, Great Britain, Germany) which led to automatic transfer of relevant definitions [8, p. 49].

It is important to note that public safety and order maintenance during mass events is an essential object of administrative-legal protection with methods, forms, procedures, means envisaged by the law. Applicable legislation in the abovementioned area requires completion of terminology harmonization with official definitions of public safety and order to be established.

While defining the optimal ways of Ukrainian legislation improvement we must refer to specific foreign practices.

In Germany during mass events federal and local police may be involved (in Germany 2-level law enforcement system functions – federal police and local (land) police). Also in Germany public safety and order are maintained by special units subordinated to Federal Agency of the Ministry of Interior which perform some police functions. For example, Federal Border Protection Service is involved to public safety operations during different mass events. On the local level in federal lands function of public safety and order maintenance is performed by public safety police (patrol police) and readiness police (in case if any threat is posed, Federal Government may give direct orders to police forces of one or several lands) [9, p. 76]. As a rule, readiness police functions stipulate provision of support to public safety police and criminal police during mass events with use of «power-based» methods.

Also Ukrainian legislators must consider German experience in the area of communication – organizers must notify the police of any scheduled events (not the local self-governing bodies) responsible for processing of these requests and grants relevant permission or prohibits the event to take place [10, p. 58].

French law enforcement system is a complex structure – the majority of functions in the area of public safety and order are performed by the gendarmerie according to the Law «On

enhancement of personal safety and freedom protection» (1981) [11, p. 602]. Legislation envisages detailed regulation of police activity in the area of public safety and order maintenance.

In Britain these activities are regulated by the Law «On police» (1996). Key function of the British police is to ensure public safety while any measure regarding public order maintenance may be taken by any police officer regardless of his/her rank and position. At the same time the abovementioned functions in Great Britain are not defined as administrative activity [12, p. 8].

In Portugal according to the Law «On public safety police» (2007) special police units are established which mission is to ensure the legitimacy, internal security and protect citizens' rights according to Constitution and law. Public safety police is directly subordinated to the government official responsible for internal administration with unified structure nationwide [13, p. 202]. Portuguese legislation envisages functioning of autonomous extended law enforcement network responsible for public safety maintenance.

In Sweden organizers of mass events with records of previous violations registered (if a demonstration or meeting once organized by these people has already been marked as potentially troublesome or resulted in conflicts) get no permission to hold these events in future.

Analysis of foreign practices brought us to conclusion that in EU state non-lethal weapon is allowed for use by the law if any threat is posed during the riotous disturbances. Also violators arrested during mass events after demonstrations of improper behaviour may be kept in detention up to 8 hours and immediately taken to the court as in such cases judiciary is functional at any time of the day.

CONCLUSIONS

Taking the abovementioned into account we offer to interpret the public security and order maintenance during mass events as object of administrative-legal protection – an open system of public systematized social relations aimed at ensuring of appropriate conditions for the society existence and protection of national interests in case of natural and technological disasters, social, political or military conflicts, including prevention and elimination of any negative consequences resulting in damage by application of legislation.

Comprehensive analysis of best foreign practices in the area of public order maintenance by police proves that the following positive aspects may be implemented in Ukraine:

- establishment of specialized police agency to maintain public security and order with extended authority (including;

- enshrine in legislation certain provisions for terms of preliminary notification of law enforcement on mass event organization, grounds and procedure of holding the violators (both participants who violated the established rules of behaviour and organizers who violated the procedures) liable with clear identification of imposed sanctions, right to use non-lethal weapon to eliminate the detected violations;
- prohibit the permission granting for the mass event to be held in future if any violations/restrictions have been registered concerning specific facilitators or organizers;
- involve NGOs and civic formations to public order operations.

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VIEŠOJO SAUGUMO IR TVARKOS UŽTIKRINIMAS REFORMUOJANT UKRAINOS TEISĖSAUGOS SISTEMĄ

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Santrauka

Straipsnyje pateikiama visuomenės saugumo ir viešosios tvarkos priežiūros srities teisės aktų analizė. Išnagrinėta ir susiteminta atitinkamo teisinio reguliavimo tarptautinė praktika. Visuomenės saugumo ir viešosios tvarkos esminės problemos yra apibrėžtos ir pateikti optimalūs sprendimo būdai.

Raktiniai žodžiai: visuomenės saugumas, viešoji tvarka, policijos padaliniai, teisės aktas, masiniai renginiai.

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