

Artículo de investigación

Basic aspects of the compliance with discipline and legitimacy within the official activities of police**ОСНОВНЫЕ АСПЕКТЫ СОБЛЮДЕНИЯ ДИСЦИПЛИНЫ И ЗАКОННОСТИ В ПРОЦЕССЕ СЛУЖЕБНОЙ ДЕЯТЕЛЬНОСТИ ПОЛИЦЕЙСКИХ**

Recibido: 20 de septiembre del 2019

Aceptado: 3 de noviembre de 2019

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The author of this article has studied the main features of the compliance with discipline and legitimacy by the employees of the agencies of the National Police of Ukraine and special division of the Corps of Operative and Forceful Action. The scientific views on the essence of these terms have been also considered. The author has formed and provided own concepts of the terms of «discipline» and «legitimacy» in the process of serving in the Corps of Operative and Forceful Action. The classification of the types of service discipline has been offered and the features of each of them have been determined. According to the results of the study the author has suggested concrete steps to improve these legal categories within the service process, by amending the relevant specialized legislative acts. Based on the results of the study, it was concluded that discipline in the police is the strict and accurate execution by police in accordance with the procedure and rules established by the legislation of Ukraine, official duties, the exercise of their powers and compliance with job restrictions in the course of their official activities. *The objective* of this article is to study

Аннотация

В данной статье рассмотрены основные особенности соблюдения дисциплины и законности сотрудниками органов Национальной полиции Украины и спецподразделения Корпуса оперативно-внезапного действия. Также рассмотрены научные взгляды на суть данных терминов. Сформированы и представлены авторские понятия терминов «дисциплина» и «законность» в процессе прохождения службы в Корпусе оперативно-внезапного действия. Предложено классификацию видов служебной дисциплины и определены особенности каждого из них. За результатами исследования предложены конкретные шаги усовершенствования этих правовых категорий в процессе службы, с помощью внесения изменений в профильные законодательные акты. Отмечено, что дисциплина в органах полиции - это строгое и точное выполнение полицейскими в соответствии с порядком и правилами, установленными законодательством Украины, служебных обязанностей, реализация ими своих полномочий и

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and analyze the existing regulatory base regulating the activities of the National Police of Ukraine and, in particular, the special division COFA, to establish the main features of discipline and legitimacy by the employees, as well as the development of specific ways to improve these legal categories in the process of service. The research was carried out on the basis of formal-logical, comparative-legal and purely legal techniques.

Key words: Discipline, self-discipline, departmental officers' rights, special division.

соблюдения ограничений по должности в процессе своей служебной деятельности. **Целью** данной статьи является изучение существующей нормативно-правовой базы, регулирующей деятельность органов Национальной полиции Украины и, в частности, спецподразделения КОРД, установление основных особенностей соблюдения дисциплины и законности служащими, а также разработка конкретных путей усовершенствования указанных правовых категорий в процессе службы. Исследование проводилось с использованием формально-логического, сравнительно-правового и чисто правовых методов.

Ключевые слова: дисциплина, самодисциплина, права сотрудников ведомств, спецподразделение.

Introduction

At the current stage of reforming and developing Ukraine, effective steps have been taken to modernize the public administration system and its bringing into line with European standards. In this context, issues of the formation of a high legal culture of the staff of state authorities become relevant. The initiated reforms did not bypass such an important and necessary structure of the state apparatus as the law enforcement system. One of the most important factors in the effectiveness of public administration and the functioning of any state agency is the observance of discipline and legitimacy during the internal service activities of the personnel.

It is not in vain that the process of official activity of the agencies of the National Police is under careful attention on part of society. This activity is very often covered in the media, social networks, etc. There are some cases of violation of discipline and rule of law while service activities of individual employees of the National Police of Ukraine. And such information appears in mass media. Of course, such cases are rare, but in a certain way they discredit all police units in the public perception. Thus, there is a need for a detailed study, scientific analysis of the issues of improving discipline and legitimacy during the course of service in the Corps of Operative and Forceful Action (hereinafter referred to as COFA) in order to prevent the loss of trust and support from the public in this important law enforcement structure.

The **objective** of this article is to study the existing regulatory base regulating the activities

of the National Police of Ukraine and, in particular, the special division COFA, to establish the main features of discipline and legitimacy by the employees, as well as the development of specific ways to improve these legal categories in the process of service.

Methodology

Research methods follow from the requirements of a comprehensive and objective analysis of the basic aspects of the compliance with discipline and legitimacy within the official activities of police officers and an interdisciplinary approach to the tasks. The research was carried out on the basis of formal-logical, comparative-legal and purely legal techniques.

For example, using the formal-logical method, the provisions of the legal acts have been analyzed. On the basis of the comparative-legal method, a comparison of the provisions of the laws of Ukraine, which allows to define the concepts of the terms of «discipline» and «legitimacy», identify gaps in Ukrainian legislation and to resolve the problems of legal regulation.

Presentation of key research findings

First of all, we have to provide a scientific definition of the concepts of «discipline» and «legitimacy». According to the general definition, which is contained in the Explanatory Dictionary of the Ukrainian Language, discipline is a well-established order, the observance of

which is mandatory for all members of this team. The concept of legitimacy is understood as the strict and steady observance and implementation of laws by all institutions, organizations and citizens (Explanatory Dictionary, 1980).

According to Rabinovich P. M., legitimacy is a certain regime, order, state of social relations, which is characterized by their compliance (i.e. relations) with laws and by-laws (Rabinovich, 1975). From the point of view of Sai I. A., legitimacy is a legal regime in a state, when the activities of state agencies, legal entities and individuals are carried out in accordance with the requirements of the law (Sai, 2010).

Thus, the interpretation of the term of «legitimacy» is mainly presented in the works of modern scholars. As we can observe, almost all scholars support the thesis that the legitimacy is a regime established by the state (order, norms, algorithm of actions) that is mandatory for implementation in society, from our point of view, it is logical and reasonable.

In contrast, the definition of the term of «discipline» is also enshrined in the current legislation of Ukraine. According to the Art. 1 of the Disciplinary Statute of the National Police of Ukraine, service discipline is the police officers' observance of the Constitution and laws of Ukraine, international treaties, the consent of which is provided by the Verkhovna Rada of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine, orders of the National Police of Ukraine, normative legal acts of the Ministry of Internal Affairs Ukraine, the oath of the police officer, orders of leaders (Law of Ukraine, 2018).

In fact, a similar definition of the term of service discipline is contained in the Disciplinary Statute of the Civil Protection Service, according to which it is the impeccable and steady fulfillment of service duties established by the Civil Protection Code of Ukraine, this Statute, other normative and legal acts and the contract for serving within the agencies and units of civil protection by individuals of the rank and file of senior officers (Law of Ukraine, 2009). However, the concept of discipline includes a wider range of tasks than actions aimed at fulfilling the requirements of legislative acts.

The conclusion made by O. V. Krushelnitskaia and D. P. Melnichuk, who noted that discipline is a certain order of people's behavior in accordance with the norms of law and morality that have been developed in society or an

organization, or social relations that develop over the observance of social and technical norms, rules of conduct in the family, organization, society, state. Within the framework of various relations, the main properties of the discipline are called different characteristics. Besides, the scholar distinguishes two aspects in the discipline: objective – the order, without which the organization cannot exist; subjective – fulfillment of duties, observance of rights (Krushelnitskaia, Melnichuk, 2003). As we can see, the scholar pays attention to the fact that the concept of discipline includes not only the principle of compliance with the norms established by law, but also the observance of other socially significant norms and rules of behavior.

Considering the above scientific views, we offer to formulate the author's definition of the concept of legitimacy and discipline while serving in the Corps of Operative and Forceful Actions of the National Police of Ukraine.

Thus, the term of «legitimacy» during the service in the COFA of the National Police of Ukraine should be understood as established and enshrined binding regime (algorithm) of actions of the employees of the special division of the COFA at the legislative level. We offer to interpret the concept of “discipline” during the course of service as a conscious order of conduct for the employees of special division aimed at impeccably and steadily complying with the requirements established by law that regulate the activities of special forces, and compliance with social, labor, moral standards and rules.

In continuation, it is important to note that the relevant disciplinary statute stipulates that official discipline is based on the creation of the necessary organizational and socio-economic conditions for honest, unbiased and dignified performance of the duties of a police officer, respect for the honor and dignity of a police officer, and fostering a conscientious attitude towards the performance of police duties the use of methods of persuasion, encouragement and coercion. Undoubtedly, it is possible to achieve a high level of discipline through the use of these methods; however, we believe that the methods provided by the relevant legislation cannot be solely based on coercion of employees.

The main thesis is the creation of such conditions (organizational and socio-economic) of official activity that will serve as an incentive for the employee to adequately and conscientiously fulfill his duties. Such levers include the increase

in wages, the creation of appropriate and high-quality working conditions, and the effective selection of personnel for the service in the special division.

In continuation, we offer to determine four types of service discipline during the course of service, namely: 1) executive, which is expressed in the clear, steady and strict implementation of the lawful orders of the head of the special division (group, platoon, etc.) and established official duties; 2) active, which consists in the employee's ability to use the rights provided by law; 3) self-discipline, which consists in the personal development of the employee – training, self-control, initiative, etc.; 4) administrative, that is, one that is achieved through certain administrative procedures within the police agencies.

Considering the *first type* of service discipline, it should be noted that the Art. 2 of the Disciplinary Statue provides special conditions for the compliance with this type of discipline. Thus, the requirements of this Article stipulate that the head, to whom the police officer is subordinated within service duties, including temporarily, is the direct head for him. While performing official duties, the police officer is subordinated only to his immediate and direct supervisor. It is forbidden to intervene in the performance of police officers by persons who are not their direct leaders.

Along with this, there is a need to consolidate the range of authorities of the heads of territorial departments at the legislative level that relate to the activities of special divisions. For this purpose, we consider it necessary to establish a norm in the relevant disciplinary statute, according to which «the head of the Main Directorate of the National Police, which includes the COFA, has the right to issue orders related only to the organization of the structure, the establishment and improvement of the forms and methods of logistical support for the employees of special divisions». The suggested norm will ensure greater «independence» of the head of the special division, an appropriate level of service (executive) discipline and increase the effectiveness of the activities of the special division.

The *next type* of service discipline is active discipline. The Art. 1 of the Disciplinary Statue provides a number of norms and rights which assist to achieve the proper level of the discipline, namely: an employee of a special unit has the right to respect for his personality, correct

attitude on the part of managers, colleagues and other persons; require written formalization of the volume of official (functional) duties for the respective position and the creation of the conditions necessary for their implementation; take, within the limits determined by official (functional) duties, decisions or participate in their preparation; for the access to official information necessary for the performance of duties according to the position; on promotion, increase in salary, taking into account the results of performed tasks and level of qualification; for protection of personal data transferred to the disposal of the National Police of Ukraine and its territorial agencies; to get acquainted with the materials of the personal file, the conclusions of the official investigation conducted against him, and also attach own explanations; make copies of the materials of the personal file, the conclusions of the official investigation using technical means, taking into account the restrictions provided by law; on an impartial consideration of complaints filed against his decisions, actions or omission, as well as on an impartial review of complaints submitted by him, including decisions, actions or omissions of his leaders; for legal assistance and protection of own rights while considering complaints or while conducting internal investigations; for protection from prosecution in case of reports of crimes committed by the leadership and employees of the National Police of Ukraine; for the provision with special security equipment, taking into account the specifics of service.

Along with this, we consider it necessary to legislatively establish not only the right of the employee to require written execution of the volume of official (functional) duties in the relevant position, but the obligation on the part of the National Police of such written registration. This will allow the employee not only to be aware of the list of work performed, but also establish certain frameworks for the behavior of this employee, aimed at the performance of these functions, therefore, it will increase the discipline.

We also consider it expedient to establish the obligation to provide the officer of the COFA with personal safety equipment. This conclusion logically follows from the study of the specifics of the COFA activities.

The *third type* of service discipline is the self-discipline of an employee of special divisions. This type of service discipline entirely depends on the will of the employee, on his moral and ethical qualities of the individual and the desire

to constantly improve his professional level. The relevant statute provides a number of criteria that can help improve the level of discipline, namely, the employee should: be faithful to the oath of the police officer, courageously and skillfully serve the people of Ukraine; know the laws, other regulatory legal acts that determine the powers of the police, as well as their official (functional) duties; respect the rights, honor and dignity of a person, provide assistance and prevent the commission of offenses; refrain from actions that prevent other police officers from fulfilling their duties, as well as undermining the authority of the National Police of Ukraine; to refrain from statements and actions that violate human rights or degrade the honor and dignity of a person; know and implement safety measures during the performance of service, comply with internal regulations; maintain the level of own training (qualification) necessary for the performance of official duties; assist the leader in the organization of compliance with official discipline, inform him of the identified violations, including those committed by other police officers. Thus, in this aspect, the current legislation establishes certain guidelines for the employee, the observance of which increases the level of official discipline and positively affects the moral climate in the team (Law of Ukraine, 2018).

In our opinion, the employee must take the initiative and maintain the level of his discipline, suggest the ways to improve his career and be able to have a direct dialogue with his immediate supervisor. To achieve the set goals, we believe that it is advisable to organize extended quarterly meetings of the employees of special divisions with the leading staff, where establish the main positive and negative aspects of the service, discuss the ways to improve service discipline and suggestions for improving it. From our point of view, the service activities of the special divisions should be built on the thesis of «leader-employee dialogue», gradually moving away from the post-Soviet model of authoritarian (leading) command.

The fourth type of service discipline is administrative discipline. This category should include attestation of police officers, which is carried out with the aim of assessing the business, professional, personal qualities of police officers, their educational and qualification levels, on the basis of deep and comprehensive study, determining compliance with their positions, as well as their career perspectives. This procedure is not only a factor in increasing the service discipline and legitimacy during the course of

service, but also represents a complete and legislatively fixed system for evaluating service activities.

According to D. N. Ovsyanko, who should be agreed with, attestation of personnel is a step-by-step process, which includes its preparation, assessment and monitoring of the work of rank-and-file and senior officers, decision-making on the results of attestation, and the resolution of disputes arising from the conducted attestation, summing up, studying and introducing modern technologies into the practical activity of the personnel (Ovsianko, 1996). According to the general definition, which is contained in the Art. 57 of the relevant law, the attestation of police officers is carried out: 1) upon appointment to a top position, if this position is filled without a competition; 2) to resolve the issue of moving to a lower position due to official non-compliance; 3) to resolve the issue of exemption from police service due to official non-compliance (Law of Ukraine, 2015). The procedure for conducting attestation of police officers is determined by the relevant instructions of the Ministry of Internal Affairs of Ukraine (Order of the MIA, 2015). However, in our opinion, it is necessary to establish a norm in the relevant legislation, on the mandatory attestation of employees once every three years. Obviously, this procedure is the very positive lever that will help to raise the level of discipline and legitimacy during the course of service. To achieve these goals, it is necessary to supplement Part 2 of the Art. 57 of the Law of Ukraine «On the National Police» with the following paragraph: «Police attestation is carried out once every three years, except as provided for in paragraphs 1-3 of the Part 2 of this Article».

Conclusions

In the activities of each police officer an important place is the observance of official discipline, which can be considered an integral part of the principle of legality. Discipline in the police is the strict and accurate execution by police in accordance with the procedure and rules established by the legislation of Ukraine, their duties, the exercise of their powers and compliance with job restrictions in the course of their official activities.

Suggested legislative and organizational amendments do not definitely pretend to be complete and are not exhaustive, however, their introduction in the activities of the special division, from our point of view, will help to significantly increase the level of service

discipline, legitimacy during the service and establish the real level of professionalism of the special division's officers.

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