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Competences and Authority of the Corps of the Operative-Flash Action

Компетенции и полномочия Корпуса оперативно-внезапного действия

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Abstract

The purpose of the article is a comprehensive study of the competences and authority of the Corps of the Operative-Flash Action (KORD), as a special body implementing public security and order.

The authors used the following methods of scientific knowledge when writing the article: formal logical; comparative analysis; systemic structural; formal legal; logical and normative.

A comprehensive study of the competence and powers of KORD has been conducted in the article. It has been determined that the authority of this unit of the National Police of Ukraine are represented by a set of rights and obligations, and the competence includes its powers. The competence of this unit includes both rights and obligations fixed at the legislative level, and professional knowledge that a policeman must have at a high level and correctly apply it in his official activities. It has been argued that the KORD is provided with competence in order to consolidate the scope of the rights and powers of a police officer, which allows regulating the prohibition of going beyond its borders at the legislative level. The analysis of the existing regulatory framework and existing studies related to the competence of law enforcement agencies has been conducted. Three groups of rights of the KORD have been distinguished: 1) rights that directly contribute to the

Аннотация

Целью статьи является комплексное исследование компетенций и полномочий Корпуса оперативно-внезапного действия, как особого органа, осуществляющего публичную безопасность и порядок.

При написании статьи авторами использовались следующие методы научного познания: формально-логический; сравнительного анализа; системно-структурный; формально-юридический; логико-нормативный.

В статье проведено комплексное исследование компетенций и полномочий Корпуса оперативно-внезапного действия. Определено, что полномочия этого подразделения Национальной полиции Украины представлены совокупностью прав и обязанностей, а компетенции включают в себя его полномочия. К компетенциям данного подразделения входят как права и обязанности, зафиксированные на законодательном уровне, так и профессиональные знания, которыми полицейский должен обладает на высоком уровне и правильно применяет их в своей служебной деятельности. Аргументировано, что Корпус оперативно-внезапного действия наделен компетенцией в целях закрепления объема прав и полномочий полицейского, что на законодательном уровне позволяет регламентировать запрет выхода за ее пределы.

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performance of official duties; 2) rights that have an indirect effect on the performance of the special unit employees' duties; 3) the right to exercise constitutional rights and freedoms.

Key words: Corps of the Operative-Flash Action, competence, authority, rights, legislation.

Introduction

Public legal relationship aimed at ensuring security and public order arose as a result of increased levels of danger, increased natural disasters, disturbance of public order, aggression from a neighboring state, and the like.

As you know, the creation and development of the KORD is in accordance with the General Plan of Action regarding the implementation of the project of international technical assistance. The basis for this was the Agreement between the Government of the United States of America and the Cabinet of Ministers of Ukraine on assistance in the field of law enforcement and criminal justice of March 13, 2015.

It is in the competence of the new universal special unit of the National Police of Ukraine - KORD - is to ensure law and order in extremely complex and emergency conditions. Depending on the specifics of the functions, official (functional) duties assigned to the police, structural divisions are divided into two types:

- type "A" (assault units) - departments (departments, sectors) that are designed to directly conduct special police operations and other activities in the field of combating crime associated with an increased threat to the life and health of police officers, the likelihood of armed resistance and service in which provides that the police must have a high level of physical fitness, professional skills, in particular possess special tactical skills, as well as be able to confidently act in extreme conditions;
- type "B" (support units) - designed to support the activities of structural units of type "A".

Проведен анализ существующей нормативной базы и имеющихся исследований, касающихся компетенции правоохранительных органов. Выделены три группы прав Корпуса оперативно-внезапного действия: 1) права, непосредственно способствующие выполнению служебных обязанностей; 2) права, которые имеют косвенное влияние на выполнение обязанностей работниками подразделения особого назначения; 3) права на реализацию конституционных прав и свобод.

Ключевые слова: корпус оперативно-внезапного действия, компетенция, полномочия, права, законодательство.

The peculiarity of CORD is not so much in the specifics of the powers and competencies that this unit is endowed with, but in new approaches and capabilities for fulfilling the assigned tasks. In particular, the implementation of the tasks is carried out thanks to the high-quality and professional staff, technical equipment, tactical training, as well as taking into account domestic and international work experience of special law enforcement agencies of European countries.

Nevertheless, now the question of competence and authority of the KORD is poorly understood and relevant, due to the need to strengthen public security in the difficult economic and political conditions of our time.

Based on the foregoing, the purpose of this study is the analysis of competence and authority of the KORD, as a special body National Police of Ukraine implementing public security and order. To achieve this, the scientific positions of scientists were studied and analyzed, and legislative provisions were investigated in which the competencies and authority of the Corps were abated.

Theoretical framework

The competence and powers of public authorities have always been in the focus of lawmakers. Scientific works that are in one way or another devoted to the problems studied in this article can be divided into two general groups.

The first group includes studies on general issues of competencies and authority of state authorities. In particular, these are the scientific works of scientists such as Andriyev M. M. (The concept and structure of public authorities,

2017), Bondarchuk V. D. (The essence and content of the concept of "competence" in public administration, 2016), Carabin T. O. (Competence of local state executive bodies and local self-government bodies: theoretical and terminological aspects, 2005), Filutovich-Gerasimenko V. S. (Administrative and legal principles of counteraction to illegal gambling in Ukraine, 2016), Galyamina I. G. (2 Designing of state education standards for next generation higher vocational education using a competency-based approach. Russia in the Bologna Process, 2004), Lyubchenko P. M. (The competence of the self-determination: the organization of law and implementation issues, 1998).

The second group consists of studies that directly relate to the activities of the police, in particular, including its competencies and authority. Scientists such as Garbarino S., Cuomo G., Chiorri C. (Association of work-related stress with mental health problems in a special police force unit 2013), Garbuzov V. V. (Administrative and Legal Status of Internal Security Units of the National Police of Ukraine, 2006), Koshikov D. O. (Administrative and legal bases of activity of special-purpose police units, 2016), Panov O. O. (Competence of law enforcement agencies in the field of public order and security, 2015), Ponomarenko G. O. (Functions of general competence subjects in the sphere of ensuring the internal security of the state, 2007), Šimenko J., Škof B., Hadžić V. (General and specific physical abilities of the members of a special police unit, 2016), Sirokha D., Felyk V., Podorozhnii Y., Podorozhnii A. (Basic aspects of the compliance with discipline and legitimacy within the official activities of police, 2020) have dedicated their research to this issue.

However, a comprehensive study of the competence and authority of the recently created KORD has not been carried out yet, and, therefore, the relevance of this issue is beyond doubt. The scientific achievements of these scientists allow to form an idea of the competence and authority of law enforcement agencies. Moreover, most of the scientific research available today was carried out even before the adoption of the Law of Ukraine "On the National Police" (2015).

However, despite the significant role and importance of creating CORD in the system of bodies of the National Police of Ukraine, the functioning of this unit is complicated by the fragmentation of administrative and legal regulation and the legal base of its activities.

Accordingly, the issues raised in this article by these authors have not been studied.

Methodology

The research process begins with the discovery and formulation of a scientific problem, the resolution of which is the goal of each work. After setting the goal of the study, a prerequisite is the comprehension of the methodological prerequisites on which it will be based, and the corresponding methods of cognition. The method is characterized by the specificity of the choice of path for solving a particular problem.

To achieve this goal, to fulfill its tasks, to ensure the receipt of scientifically sound research results, a complex of general scientific and special methods applied in legal science was used. In particular: *formal logical* to clarify and deepen understanding of the conceptual apparatus used in the article; *comparative analysis* when summarizing the opinions of scientists regarding the content of concepts, competence and authority; *systemic structural* to determine the place of competence and authority in the activities of the KORD; *formal legal* in the study of legislative provisions regarding the subject of research; *logical and normative* to justify and formulate amendments and additions to the current legislation of Ukraine.

Results and discussion

As noted in the legal literature, tactical or special units are terms used to describe elite military and police tactical teams, trained to perform dangerous missions or tasks with a high risk with which conventional units are unable to cope. Their high physical requirements demand continuous improvement and the maintenance of a certain level of physical fitness and operational performance through simulation of real conditions in training through a variety of polygons and situational scenarios (Šimenko, Škof, Hadžić, 2016).

Taking into account the above, it seems that in the context of reforming the law enforcement agencies of Ukraine, the issue of determining their competence and authority is very relevant and important. Not an exception to this is the special units of the National Police, which the KORD is assigned to. At the same time, the study of this issue is hampered by the factor that there is no consensus on the competence definition in the scientific community today. There are various approaches to determine the essence of the competence of law enforcement agencies;

there is no clear description of the nature and content of the main elements of competence. Directly, the concept of "competence" in the legal literature applies exclusively to state bodies that are representatives of public authority.

Turning to the etymology of the word, competence can be defined as:

- the totality of the rights and obligations defined at the legislative level, the powers of an organization, official or government body performing managerial functions (Tikhomirova, Tikhomirov, 2000, p. 205-206);
- the authority, knowledge and experience in a particular field granted by a law or other regulatory act to a specific person or body (Soviet encyclopedic dictionary, 1984, p. 613);
- good knowledge of a particular issue, the terms of reference of an official or organization (Slipushko, 1999, p. 235; Bilodid, 1973, p. 250).

Competence is a combination of authority, which is fixed at the legislative level, legal responsibility and elements of competence. That is, the legal personality of the state body, as the subject of legal relations, is expressed in its competence (Skakun, 2000, p. 10). Competence is also considered as a set of rights and obligations fixed by law, as well as the legal capacity of a state body (Lyubchenko, 1998, p. 38).

Studying the theoretical and legal aspects of the competence of authorities, we find its definition as a combination of the authority of a state body, legal responsibility and functional purpose, defined by law or by-law (Skakun, 2006, p. 547). It is worth paying attention to the definition of competence of the power body, which offers D. M. Bahrah (1997, p. 85), namely how «the totality of power and departmental affiliation». In turn, other scientists defines competence as a combination of a subject of authority and authority (rights and obligations) of a state body (Bityak, 2007, p. 79).

In his research I. G. Galyamin (2004, p. 7) offers competence to understand the willingness and ability to apply knowledge or skills in solving professional tasks in any industry; ability to be flexible in accordance with labor market conditions. Some scientists under the competence understand the amount of state activity defined by the law or the range of issues

of the state body, which are solved in the process of practical activity (Ponomarenko, 2007, p. 12). V. V. Garbuzov (2006, p. 60) considers the notion of competence slightly different. In particular, the lawyer notes that the competence is the direction of a state body or official activity, clearly defined by legal norms, and only in this case the practical fulfillment of tasks set by the body or official is possible. In his turn, D. A. Koshikov (2016, p. 18) considers competence of the special units as the unity of the powers and subjects of law defined by the legislation, noting that precisely these elements of competence in the implementation of their tasks and functions by units determine the real meaning and content of the activity.

Given the above, we single out the competence of the KORD as the authority of the entity, fixed at the legislative level; certain knowledge that the subject possesses at a high level and applies it to professional problem solving and the like.

Considering the competence structure of the KORD, it is worth paying attention to the research of T. A. Karabin (2005, p. 224). So, a lawyer singles out among the elements of competence authority, tasks, rights and obligations, as well as responsibility. D. V. Bondarchuk (2016, p. 22) suggests the authority, legal responsibility and subject matter as components of the competence of public authorities. At the same time, the lawyer notes that legal responsibility should be understood as legal rights to implement the functions and legal obligations that are assigned to a state body. However, such approaches are quite controversial. For example, P. N. Lyubchenko (1998) focuses on the fact that there is a significant difference between function and competence, and a number of lawyers attribute legal responsibility not to the competence, but to the administrative and legal status of a particular subject of public administration.

Considering the constituent elements of competence, M. M. Andreev (2017, p. 7) highlights the main and organizational. Thus, the researcher suggests the rights, duties, powers and subject matter of the relevant authority to be the main elements of competence. Organizational elements concern the appointment of a state body, the goals and objectives of the body, legal responsibility and professional competence of officials of a state authority.

As noted, one of the competence components is the authority of the body. Therefore, in order to understand the concept of competence of the

KORD, it is necessary to dwell on the definition of the unit authority in more detail. When examining the powers of state bodies, lawyers consider this concept as a set of rights and obligations granted to a body in order to carry out its functions (Skakun, 2006).

In our opinion, the powers of the KORD are represented precisely by the totality of the rights and obligations of the unit. This conclusion is due to the fact that the employees of the KORD, within their competence, have the right to demand compliance with certain standards of behaviour and at the same time must fulfill their duties, in the case of non-compliance there is legal liability.

Some scientists, considering the powers and competence of law enforcement agencies, distinguish three groups of powers falling within the competence of police units (Panov, 2015, p. 185):

- 1) the right granted to facilitate the direct performance of official duties;
- 2) the right to perform official duties indirectly;
- 3) the right to actively exercise the rights and freedoms granted by law.

In the activities of the KORD, the first group of powers should include the process of familiarizing employees with the regulatory documents that regulate their rights and obligations in accordance with the positions they hold. Now, such a document can be considered the Regulation "On Special Police Units", approved by the Order of the Ministry of Internal Affairs of Ukraine dated 04.12.2017 No. 987 (Regulation, 2017).

Analyzing the theoretical and legal approaches to the definition of the authority concept, we propose to consider the authority of the KORD as defined by the rule of law areas of activity, rights and obligations, authoritative behavior in relation to ensuring order and security in extremely complex situations, and the like. In our opinion, the powers of the KORD should be used in the presence of relevant legal factors and circumstances in order to implement the division's tasks and functions.

It is worth agreeing with the opinion of V. S. Filyutovich-Gerasimenko (2016, p. 86), who focuses on the fact that the main elements of competence and their detail should be fixed in departmental normative legal acts regulating the activities of the National Police of Ukraine.

In our opinion, the competence and authority of the KORD is established by applicable laws, in particular the Law of Ukraine "On the National Police" (2015) and the Regulation "On Special Police Units" (2017), approved by the Order of the Ministry of Internal Affairs of Ukraine. The Law of Ukraine "On the National Police" plays an important role in the formation of the competence of the KORD. So, the Law "On the National Police" directly regulates the activities of all components of the National Police of Ukraine, it enshrines the tasks and powers of the police, the rights and duties of police officers, generalized for all structural units, which are subsequently detailed in the relevant by-laws. It should be noted that the Regulation "On Special Police Units" (2017), approved by the Order of the Ministry of Internal Affairs of Ukraine, defines:

- 1) *the tasks of the Units (Section II);*
- 2) *duties and rights of managers (Section VI);*
- 3) *police duties (Section VII). However, the functions and powers of the unit are not clearly delineated. So, section III is called "Functions (powers) of Units".*

Analyzing the existing regulatory framework for the competence of the special forces unit and relying on studies of the rights of employees of the National Police (Panov, 2015), three groups of rights can be distinguished:

- 1) rights directly contributing to the performance of official duties, such as familiarization with the Law of Ukraine "On the National Police", the Regulation on special police units, job descriptions, criteria for assessing the quality of work, familiarization with personal files and reviews of their activities, explanations and possibilities entering them into a personal file and other documents that determine the rights and obligations of employees of the KORD. Also, this group of rights should include the right to conduct an investigation at the request of an official on the refutation of data discrediting the honor and dignity of an employee;
- 2) the rights that have an indirect effect on the performance of duties by employees of the special unit, such as to request in the prescribed manner and receive from officials of the bodies (units) of the National Police, the Ministry of Internal Affairs of Ukraine, other executive bodies, local self-government, enterprises, institutions, organizations regardless of ownership, documents, references and other materials

(in writing or verbally) necessary for making decisions on issues related to competence KORD; making decisions in accordance with official duties; to use in the established manner the databases (banks) of data of the National Police of Ukraine and the Ministry of Internal Affairs of Ukraine, their bodies and units on issues within the competence of the unit; advanced training and retraining of staff at the expense of budgetary funds and the like;

- 3) the right to exercise the constitutional rights and freedoms of employees - participation in the vacant position contest; right to promotion. Association in trade unions to protect their rights and legitimate interests; retirement benefits in accordance with work experience; the right to pay in accordance with applicable law and the like.

The KORD, within its powers and in accordance with certain functions in the process of activity, interacts with law enforcement bodies and other state authorities, and also cooperates with local authorities in accordance with applicable law. Also, representatives of the KORD have the authority to take measures to ensure public safety and order in public places and during mass events when such events cease to be peaceful.

Within its competence, the KORD is empowered in the fight against terrorism and in the conduct of anti-terrorism actions; suppression of identified criminal and administrative offenses; to take possible measures to provide emergency (medical and medical) assistance to victims of criminal or administrative offenses, accidents, as well as those who are in situations that are dangerous to their life and health; ensuring the safety of persons taken under protection on the grounds and in the manner prescribed by law. The important powers of the KORD are the organization and implementation of measures to save people, ensuring their safety in case of emergencies, natural disasters, accidents of high complexity, catastrophes and the elimination of their consequences.

It is worth noting that the government is currently working on improving the regulatory framework governing the activities of the KORD. In particular, active work is underway to expand the list of powers of the KORD.

It is worth supporting the position of scientists about 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 (Sirokha, Felyk, Podorozhnyi, Podorozhnyi, 2020).

Conclusions

The competence of the KORD includes the powers fixed at the legislative level; certain knowledge that the subject possesses at a high level and applies it to solve problems professionally, etc. The unit is endowed with competence in order to consolidate the scope of rights and powers, which allows regulating the prohibition to go beyond it at the legislative level. Within its competence, the KORD is endowed with broad powers in the field of law enforcement. In addition, since Special Forces police officers have to perform sensitive tasks for which a healthy psychological functioning is needed, should be taken to prevent distress and improve the mental well-being of these workers (Garbarino, Cuomo, Chiorri, 2013).

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