CHAPTER 2.2. LEGAL BASIS OF ACTIVITY OF THE NATIONAL POLICE OF UKRAINE IN THE CONTEXT OF THE RUSSIAN-UKRAINIAN WAR

The peculiarities of the legal foundations of the functioning of the National Police of Ukraine in the conditions of the ongoing Russian-Ukrainian war is analyzed, as well as proposals for improving its status and activities during martial law are provided. The essence of the legal basis for the activities of the National Police of Ukraine is to establish, organize, protect and develop managerial relations in the field of its organization and activities to combat crime and ensure public safety, in particular under martial law. It was established that the legal support for the activities of the National Police of Ukraine under martial law is characterized by insufficient systematic nature of its formation, and more thorough legislative regulation compared to the legal principles of the previously operating police. However, there is some fragmentation of regulation of the principles of interaction, order of activity, competence and organizational structure of the National Police of Ukraine. A significant share of bylaw departmental regulation is also maintained with a low level of orderliness and consistency. It was stated that there is a significant amount of rule-making powers of the Ministry of Internal Affairs of Ukraine with limited competence of the National Police of Ukraine on the legal regulation of its activities, as well as partial uncertainty of the mechanisms for implementing legal norms. Elimination of existing gaps and shortcomings primarily requires further development of the legal foundations of the National Police of Ukraine, in particular on the issues of its participation in the prevention of Russia’s armed invasion of Ukraine, ensuring effective observance of citizens’ rights and maintaining law and order under martial law.
Introduction

The functioning of the National Police of Ukraine as a qualitatively new (relatively pre-existing militia) law enforcement agency requires the use of new progressive approaches to its organization and activities, increasing the level of material and financial support, as well as, last but not least, improving the legal foundations of functioning. The complexity, balance and consistency of legal regulation of the activities of the National Police of Ukraine directly depend on its productivity and legality under martial law. And in a more general sense – the level of protection of citizens from unlawful encroachments, the state of public security and order.

Significant shortcomings in the organization and practical activities of the militia of Ukraine, as stated by I. P. Petrova [1], were not least due to the lack of necessary basic laws, the prevalence of bylaws, its non-compliance with laws, restriction of citizens’ rights bylaws, the insufficient scientific validity of regulations, lack of a mechanism for their implementation, etc. At the same time, the current legal support for organizing the activities of the National Police of Ukraine under martial law is also characterized by excessive declarativeness, inconsistency and unsettled certain aspects of the status of this law enforcement agency, which cannot negatively affect the institutionalization and practical activities of the National Police of Ukraine.

It should be noted that certain issues of legal regulation of the organization and activities of the police/militia have already been considered by such scientists as V. V. Bondar [2], V. M. Burdenyuk [3], D. V. Vlasenko [4], V. O. Ilnytsky [5], M. N. Kurko [6], I. P. Petrova [7] and others. At the same time, their scientific works reveal only some aspects of the legal foundations of the functioning of police bodies and units, without directly characterizing the current state and patterns of legal support for the activities of the current National Police of Ukraine under martial law. Therefore, in the context of improving the status and increasing the productivity of law enforcement activities of the National Police of Ukraine, the issues of the legal basis for its functioning under martial law are considered relevant.

2.2.1. International legal and constitutional foundations of functioning of the National Police of Ukraine

First of all, we note that, based on the definitions of legal (administrative-legal) regulation established in the scientific literature [8, p. 289; 9, p. 488; 10, p. 152], the legal regulation of the activities of the National Police of Ukraine can be generally defined as implementation to effectively combat crime and maintain public security and order through a system of legal means of consolidating, streamlining, protecting and developing organizational and managerial relations in the field of organization and activities of the National Police of Ukraine. At the same time, inseparable from the completeness, consistency and timeliness of legal regulation of the status of the National Police of Ukraine, its exact and unconditional application in practice should also be considered, which ensures the reality and legal realization of such legal principles.
The legal status of the National Police of Ukraine under martial law, taking into account its purpose and the nature of its powers, is regulated by a set of various international legal documents, the Constitution of Ukraine, the Laws of Ukraine, as well as bylaws (including departmental) acts that comprehensively determine the organization and activities of the National Police of Ukraine and its bodies/units, the status of police officers and the procedure for their service, etc.

A significant part of the legal support for the functioning of the National Police of Ukraine is international legal regulation, the widespread application of which to the National Police of Ukraine is determined by the law enforcement orientation of its activities, the diversity of law enforcement powers and the implementation of various coercive (restrictive) measures. Thus, the observance by the police and other employees of the National Police of Ukraine of such fundamental international legal treaties as the Universal Declaration of Human Rights of 10.12.1948, the European Convention on Human Rights of 04.11.1950, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment of 10.12.1984, etc. are being updated first of all. The norms of international law outlined in them define basic human rights and guarantee their observance, for example, the right to freedom and personal inviolability, which makes it possible for law enforcement agencies to deprive law enforcement agencies of a person’s freedom only on specific grounds and in compliance with the established legal procedure. At the same time, it should be emphasized that the National Police of Ukraine, as a law enforcement agency, must not only comply with international legal guarantees of human rights but also ensure their general observance (promote implementation) in the state.

In addition to the foregoing, it is also necessary to highlight international legal agreements that reflect world standards for combating crime and relate to certain areas of activity of the National Police of Ukraine. In particular, it concerns the International Convention for the Suppression of Hostage-Taking of 17.12.1979, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 07.09.1990, the UN Convention against Transnational Organized Crime of 15.11.2000, etc. This practice of international legal regulation greatly contributes not only to the observance of the rights of citizens but also to the equally effective maintenance of public order and counteraction to crime in different states, including Ukraine. The norms of international law establish the necessary legal basis for productive interaction of the National Police of Ukraine with international law enforcement agencies (Europol, Interpol, etc.) and law enforcement agencies of other states (on the basis of the Agreement on Cooperation between the Ministry of Internal Affairs of Ukraine and the Ministry of Internal Affairs of the Republic of Latvia dated 30.05.1992, the Agreement on Cooperation between the Ministry of Internal Affairs of Ukraine and the Ministry of Internal Affairs of the Republic of Armenia dated 21.10.1992 and other bilateral and multilateral agreements on cooperation and mutual assistance).
In addition to direct regulation of the activities of the National Police of Ukraine, the international legal principles also contain relevant, unified recommendations designed to ensure the coherence and uniformity of the police status in different states, the compliance of their functioning with the interests of man, civil society and the rule of law. In this perspective, first of all, it is necessary to indicate the Code Officials for the Maintenance of Law and Order, approved by the UN General Assembly Resolution of 17.12.1979 No. 34/169, and the Model Law on Police (Militia), approved by the Resolution of the Interparliamentary Assembly of Member States of the CIS of 07.12.2002 No. 20-12. At the same time, both mandatory and recommendatory international acts, taking into account their predominantly conceptual, general nature, require proper implementation in national legislation, which is an indispensable condition for the real implementation of international standards and rules in the activities of the National Police of Ukraine. Here we must agree with E.V. Belozerov [11, p. 98] that bringing departmental acts of the Ministry of Internal Affairs of Ukraine and other national legislation in line with the requirements of international legal documents will contribute to the establishment, dissemination and deepening of international police cooperation.

The legal basis of the National Police of Ukraine, along with international legal agreements, also includes the provisions of the Constitution of Ukraine of 28.06.1996 No. 254k/96-VR [12]. At the constitutional level, the status of the National Police of Ukraine is not directly regulated (although the Minister and the Ministry of Internal Affairs of Ukraine are directly called), but the basic rights, freedoms and duties of a person and a citizen and the principles of their protection (that is, in essence, law enforcement) are enshrined. In addition, the National Police of Ukraine also applies to the constitutionally defined general features of the organization of the activities of state (executive) authorities, namely the principles of the rule of law and legality (Articles 8, 19 of the Constitution of Ukraine), the social orientation of state activity (Article 3 of the Constitution of Ukraine), government coordination (clause 9 of Article 116 of the Constitution of Ukraine), etc. Such constitutional principles ensure the unity of the state mechanism and indirectly determine the law enforcement content of the Ukrainian national police and its essence as an executive body.

At the same time, for us, given the supreme legal force and constituent nature of the Constitution of Ukraine, it would also be appropriate to enshrine in it the initial conceptual provisions on the functioning of the law enforcement system, including the status, purpose and place in the state mechanism of the National Police of Ukraine as a leading law enforcement agency of general competence. This expansion of the subject of constitutional regulation will contribute to strengthening the guarantees of the functioning of the police institution in Ukraine, the orderliness of its legal foundations and the stability of development vectors. On the other hand, it should be borne in mind that the Constitution of Ukraine cannot meaningfully cover all the basic aspects of the organization and activities of the National Police of Ukraine, which updates the simultaneous in-depth settlement of these issues at the legislative and subordinate levels.
2.2.2. Legislative basis of activity of the National Police of Ukraine

Part 3 of Article 17, Paragraph 12 of Part 1 of Article 92 of the Constitution of Ukraine explicitly provides for the legislative definition of the organization and procedure of activity of law enforcement agencies of the state and executive bodies. The legislation regulating the activities of the National Police of Ukraine consists of several general and specialized legislative acts. First of all, it is necessary to specify the Law of Ukraine «On the National Police of Ukraine» dated 02.07.2015 No. 580-VIII [13], which comprehensively determines the organization of the activities of the National Police of Ukraine, the status of police officers and the procedure for their service. The adoption of this Law of Ukraine made it possible to eliminate the general shortcomings of the previous Law of Ukraine «On Militia» of 20.12.1990 No. 565-XII [14], the provisions of which were already quite outdated and did not fully correspond to the modern understanding of the institute of police/militia and approaches to the organization of its activities.

Thus, the Law of Ukraine of 02.07.2015 No. 580-VIII provides for the formation of a qualitatively new law enforcement agency - in the form of a separate executive body from the Ministry of Internal Affairs of Ukraine (but subordinate to it) with an updated structural organization, a list of powers and police measures, rules for police service, etc. At the same time, the Law of Ukraine of 02.07.2015 No. 580-VIII is not without certain shortcomings in terms of the final unsettled status, principles of interaction and order of activity, as well as a somewhat superficial legal definition of the principles of activity, powers and specific organizational structure of the National Police of Ukraine, the model of management of its bodies and divisions.

A significant gap in the legislative regulation of the Activities of the National Police of Ukraine is the unsettledness of the first version of the Law of Ukraine of 02.07.2015 No. 580-VIII of the maximum number of its employees. At the same time, earlier the number of police officers was directly established by the Law of Ukraine of 10.01.2002 No. 2925-III [15], which, by the way, despite the loss of relevance of the general structure and number of the Ministry of Internal Affairs of Ukraine, was not timely canceled or changed. At the same time, clause 13 of the Regulations of 28.10.2015 [16] provides for the approval of the maximum number of employees of the National Police (except for the security police) by the Cabinet of Ministers of Ukraine.

We believe that the number of employees of a militarized law enforcement agency of general competence with significant state powers in a modern legal state should be subject exclusively to legislative regulation, which will guarantee the consistency of competence, structural organization and several employees of the National Police of Ukraine, the validity of state funding, the proper implementation of its law enforcement functions and respect for the rights of citizens. Moreover, today, in connection with the formation of a qualitatively new police institute in Ukraine, a certain decrease in the number
of employees of the National Police of Ukraine and ensuring its compliance with the practice of leading European countries and the current needs of combating crime in Ukraine is urgent. Therefore, it is necessary for general to support the establishment later by the Law of Ukraine of 06.12.2016 No 1774-VIII of the limit on the number of police in 140 thousand people.

At the same time, as a positive, it should be noted the orderly and more detailed regulation by the relevant Law of Ukraine of 02.07.2015 No. 580-VIII of the types, rules and procedures for applying preventive and coercive police measures, which is an effective guarantee not only of the proper performance by the police of their official duties but also of respect for the rights of citizens, preventing their unlawful and excessive restriction (for example, due to the prohibition of the use of water cannons at air temperatures below +10 °C or apply shackles for more than 2 hours of continuous use or without easing their pressure). It is in connection with the restriction of the rights of citizens underlying the police measures that the rules for their application can be regulated only at the legislative level, and not by the government, as previously provided for in Part 3 of Article 14 of the Law of Ukraine of 20.12.1990 No. 565-XII regarding the rules for the use of special means.

In addition, in contrast to the Law of Ukraine of 20.12.1990 No. 565-XII, the current Law of Ukraine of 02.07.2015 No. 580-VIII consistently regulates not only the initial principles, but also the real content of the status, (legal, organizational and social) guarantees of police officers, the procedure for their selection, training and service in the National Police of Ukraine. At the same time, the subject of legislative regulation essentially included issues previously regulated by the Regulations on the service of ordinary and commanding staff of internal affairs bodies (Resolution of the Cabinet of Ministers of the Ukrainian SSR dated 29.07.1991 No. 114 [17]), which generally contributes to the integrity and coherence of the legal foundations of the National Police of Ukraine and minimization of the contradictory practice of bylaw regulation of the status of police/militia in Ukraine.

At the same time, we note the inexhaustibility of regulating the status of police officers by the relevant Law of Ukraine dated 02.07.2015 No. 580-VIII due to the uncertainty of the types and procedures for applying incentives and disciplinary penalties. Ensuring official discipline in the bodies/units of the National Police of Ukraine, taking into account its armament, broad powers and socially important purpose, is an integral condition (guarantee) for the legitimate and effective implementation of its law enforcement tasks and functions. One way or another, the issues of incentives and disciplinary penalties of police officers should now be determined by a special Disciplinary Statute of the National Police of Ukraine, approved by a separate law. At the same time, a feature of the legal support for the functioning of the National Police of Ukraine is the absence of its Disciplinary Statute at the time of the actual formation of the National Police of Ukraine. In connection with this Law of Ukraine of 23.12.2015 No. 901-VIII, police officers were subject to the Disciplinary Statute of the Internal Affairs Bodies of Ukraine (Law of Ukraine of 22.02.2006 No. 3460-IV [18]), although, obviously, its provisions...
no longer corresponded to modern approaches to the development of the police institute in Ukraine and the needs of maintaining the official discipline of police officers. We believe that such a practice of legal regulation of the status of the National Police of Ukraine testifies to its not too high level and importance, as well as to the lack of preparedness and comprehensiveness of measures for the formation of the National Police of Ukraine. As a result, the Disciplinary Statute of the National Police of Ukraine was approved only by the Law of Ukraine of 15.03.2018 No. 2337-VIII [19].

The activity of the National Police of Ukraine as a militarized law enforcement agency is directly related to its use of a wide range of coercive measures, including physical force, special means and firearms. Therefore, an important place in regulating the functioning of the National Police of Ukraine is occupied by the Law of Ukraine dated 21.06.2018 No. 2469-VIII [20], which defines the main tasks, principles, and subjects of democratic civilian control over the Military Organization and law enforcement agencies of the state. On the other hand, the named Law of Ukraine is mostly only conceptual, without revealing in detail the content and procedure for carrying out certain control and verification measures by authorized entities, as well as their consequences for correcting the identified shortcomings and bringing the perpetrators to justice.

As for us, effective control over the activities of the National Police of Ukraine requires an optimal combination of various types and forms of state, municipal, public and internal control, taking into account the specifics of the status, competence and methods of activity of the National Police of Ukraine. Taking into account that the relevant legislation does not provide for sufficient means of municipal and public control, we consider as a positive the specific definition by the Law of Ukraine of 02.07.2015 No. 580-VIII of such relevant measures of public control of the National Police of Ukraine as periodic reporting on its activities, the possibility of local councils adopting a resolution of no confidence in the heads of the National Police of Ukraine, etc. However, in addition to such a regulation of public control measures, it is also expedient to legislatively consolidate at least the basic issues of internal control over the activities of the National Police of Ukraine, the intensification of which will contribute to greater control of the bodies and units of the National Police of Ukraine, more thorough and prompt identification and elimination of violations and shortcomings in their work.

As you know, the National Police of Ukraine, along with the National Guard of Ukraine and other bodies, is part of the system of the Ministry of Internal Affairs of Ukraine. At the same time, we must indicate the absence of the relevant Law of Ukraine on internal affairs bodies, which would holistically determine the organization of the activities of the system of internal affairs bodies of Ukraine, guarantees of ensuring their activities and, not least, the principles of relations and interaction of the National Police of Ukraine with other internal affairs bodies and the Ministry of Internal Affairs of Ukraine. It should be emphasized that a well-thought-out systematic approach to the formation of a qualitatively new police institute in Ukraine certainly
requires the definition of all key aspects of its organization and activities, in particular the approval of the Law of Ukraine «On Internal Affairs Bodies», especially since the relevant draft law of 06.04.2015 register. No. 2561 [21] was originally to come into force together with the Law of Ukraine «On the National Police» of 02.07.2015 No. 580-VIII.

In the legislation regulating the activities of the National Police of Ukraine, it is necessary to single out the Law of Ukraine of 14.10.2014 No 1700-VII [22]. It generally defines the system of subjects and measures to prevent corruption in Ukraine, although it is indisputable that effective counteraction to corruption offenses requires further detailing of the initial provisions of this Law of Ukraine also at the bylaw level. Prevention of corruption, reduction and elimination of corruption risks in the activities of the National Police of Ukraine is especially actualized in connection with the exercise of its most significant law enforcement powers, its organizational ramifications and militarization, which creates preconditions for non-fulfillment or use of power in extra-official interests. Although at the same time, taking into account the law enforcement appointment of the National Police of Ukraine and the general criminal sphere of its functioning, organized infrastructural and external counteraction not only to corruption but also to any other offenses of its employees becomes a priority. It should be emphasized here that in the context of the above-mentioned Law of Ukraine of 14.10.2014 No. 1700-VII, the National Police of Ukraine should simultaneously be considered as one of the specially authorized entities in the field of combating corruption, which participates in the special inspection, carries out general prevention, detection and termination of offenses, etc.

Beyond this, legislative regulation is carried out not only regarding the status and organization of the National Police of Ukraine, but also about the directions of its law enforcement activities. In particular, we are talking about the Law of Ukraine of 18.02.1992 No. 2135-XII [23], which defines the tasks and grounds for operational-search activity, as well as its subjects, their duties and rights. At the same time, it is especially important to observe and implement in the practical work of the operational units of the National Police of Ukraine the guarantees of legality defined by Article 9 of this Law of Ukraine in the (primarily covert) implementation of operational-search activities – for example, this is the launch of an operational-search case by decision of the head of the relevant body of the National Police of Ukraine, the prohibition of the use of harmful to health means and substances for obtaining information, the right to citizens to appeal against the restriction of their rights, etc. In addition, in the context of European integration processes in Ukraine, by analogy with the adoption of the Law of Ukraine «On the National Police», for us, it would be expedient to significantly update the Law of Ukraine «On Operational-Search Activity». First of all, in terms of clarifying the grounds for conducting operational-search activities, expanding its control and guarantees of legality, streamlining the types of operational-search measures and expanded regulation of the procedure for their implementation.
Certain areas of law enforcement activity of the National Police of Ukraine are regulated by the Law of Ukraine «On Combating Terrorism» of 20.03.2003 No. 638-IV [24]. The list of rules and conditions for the anti-terrorist operation set out in it was once brought in line with the current needs of countering terrorism. Although somewhat ambiguous can be called the preventive detention of citizens provided for in Article 15-1 of this Law of Ukraine for up to 30 days without a court ruling only based on reasonable suspicion of terrorist acts committed by a citizen. It should be noted that provided that this significant departure from the usual rules of detention of citizens is justified, it becomes necessary to establish additional guarantees to prevent the abuse of these powers by police officers.

As a drawback of the Law of Ukraine of 20.03.2003 No. 638-IV, it is necessary to indicate the absence of the National Police of Ukraine for a certain time in the list of entities engaged in the fight against terrorism determined by it. At the same time, the Ministry of Internal Affairs of Ukraine is defined as such entities, which is no longer true, since, if earlier the bodies and units of the police were part of the Ministry of Internal Affairs of Ukraine, today the National Police of Ukraine personifies an independent executive body that prevents, detects and stops terrorist crimes. This deficiency in regulating the principles of the fight against terrorism (which is a consequence of the insufficiently prepared formation of the National Police of Ukraine) created obstacles to the full participation of the National Police of Ukraine in counterterrorism measures, the elimination of which was increased actualized in connection with the ongoing Russian-Ukrainian war since 2014. This gap was eliminated only by the Law of Ukraine of 23.12.2015 No. 901-VIII.

In addition, the law enforcement activities of the National Police of Ukraine are regulated by the Law of Ukraine «On the organizational and legal basis for the fight against organized crime» of 30.06.1993 No. 3341-XII [25], as well as the Code of Ukraine on Administrative Offenses of 07.12.1984 No. 8073-X [26] and the Criminal Procedure Code of Ukraine of 13.04.2012 No. 4651-VI [27]. At the same time, although the bodies of the National Police of Ukraine are determined by state bodies involved in the fight against organized crime, the current version of the Law of Ukraine of 30.06.1993 No. 3341-XII almost does not regulate their organization and competence in this area of law enforcement (except for the basic principles of interaction with other law enforcement agencies). This is primarily due to the lack of special powers or units in the field of combating organized crime in the National Police of Ukraine. This is due to the ambiguous practice of functioning in the police of the relevant departments for combating organized crime.

In turn, the Code of Ukraine on Administrative Offenses and the Criminal Procedure Code of Ukraine regulate certain aspects of the activities of the National Police of Ukraine related to the consideration and adoption of decisions in cases of bringing persons to administrative or criminal liability. Thus, according to the Administrative Code of Ukraine dated 07.12.1984 No. 8073-X, the bodies of the National Police of Ukraine are authorized to consider certain categories of cases of administrative offenses, to conduct
administrative detention and personal inspection and inspection of things, to ensure the execution of administrative arrest, etc. As for criminal offenses, based on the provisions of the CPC of Ukraine dated 13.04.2012 No. 4651-VI, the bodies of the National Police of Ukraine should carry out a pre-trial investigation and covert investigative (inquiry) actions, comply with decisions on the choice of a preventive measure, use electronic means of control, etc. It should be noted that the activities of the National Police of Ukraine related to the consideration and adoption of decisions in cases of administrative and criminal offenses should be aimed at respecting the rights of both victims and persons brought to justice. Therefore, the content and procedure for carrying out such activities of the National Police of Ukraine (outlined in the sectoral codes in general terms) additionally require a more complete and exhaustive settlement already in the bylaws.

It should be noted that the legislative principles of the functioning of the National Police of Ukraine, in addition to the above-mentioned laws of Ukraine, may also include several other legislative acts that in one way or another relate to the activities of the National Police of Ukraine. In particular, we are talking about the Law of Ukraine dated 23.12.1993 No. 3781-XII [28] (defines the principles of the police state protection of law enforcement officers), the Law of Ukraine of 21.06.2018 No. 2469-VIII (determines the role of the police in ensuring national security), the Law of Ukraine of 12.05.2015 No. 389-VIII [29] (determines the participation of the police in the implementation of measures of the legal regime of martial law), etc. At the same time, it is clear that legislative regulation cannot cover absolutely all aspects of the organization and activities of the National Police of Ukraine as a law enforcement agency of general competence, in particular under martial law.

2.2.3. Bylaw regulation of the status of the National Police of Ukraine

Equally important is the proper bylaw regulation of the status of the National Police of Ukraine. At the same time, the advantages of bylaws are their greater specificity and efficiency, while compared to legislative regulation, it may have less stability and consistency. In any case, given the contradictory experience of the prevalence of often unsystematic bylaw regulation of the police, the priority is to ensure the integrity, consistency and consistency of legislative and subordinate legal foundations for the functioning of the National Police of Ukraine. Here we should agree with O.M. Kaplia [30] that the law, not the bylaw, should be the main source of law in the field of activity of the police (police) of Ukraine, which, among other things, requires a reduction in the number and systematization of relevant departmental acts, their regulation only of the internal activities of the police, not related to the rights of citizens, as well as its organizational structure and resource support.

The main bylaw regulating the organization of the activities of the National Police of Ukraine is its Regulation, approved by the Resolution of the
This Regulation quite comprehensively enshrines the status, tasks, powers and rights of the National Police of Ukraine, and the competence of its Chairman, although, for example, it does not regulate the principles of interaction, forms of activity and structural organization of the National Police of Ukraine, the legal definition of which would contribute to the unity of the functional and organizational basis of its activities. It should be noted as a positive observance in the Regulation of 28.10.2015 of the requirements for the exclusively legislative establishment of the powers of the National Police of Ukraine, the need for which, first of all, is determined by their state-power nature, law enforcement nature, connection with the rights, freedoms and legitimate interests of man and citizen.

At the same time, it should be noted that this Regulation concerns the National Police of Ukraine not as a whole as a law enforcement body of general competence (that is, the central governing body and territorial bodies) but only as a central executive body (not concerning territorial police bodies). It should be emphasized that the use of the term «National Police of Ukraine» to simultaneously refer to the entire police system, and only its central management body reveals imperfections and inconsistencies in the legal regulation of the status of the National Police of Ukraine (for example, the Law of Ukraine of 02.07.2015 No. 580-VIII and the relevant Regulation somewhat differently formulate its main tasks), which may adversely affect the relevant law enforcement practice.

Certain aspects of the activities of the National Police of Ukraine are also regulated by the Regulation on the Ministry of Internal Affairs of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 28.10.2015 No. 878 [31]. Compared to the previous Regulation, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 13.08.2014 No. 401, the role of the Ministry of Internal Affairs of Ukraine to the police (police) was reduced only to ensuring the formation of state policy in the field of protection of citizens’ rights, combating crime, ensuring public security and order, as well as providing police services. In turn, the implementation of this state policy is within the competence not of the Ministry of Internal Affairs of Ukraine but of the National Police of Ukraine, which determines the nature of their relations. In particular, according to clause 11 of the current Regulation on the Ministry of Internal Affairs of Ukraine, the Minister of Internal Affairs of Ukraine directs and coordinates the activities of the National Police of Ukraine and controls the implementation of its relevant state policy. It also determines the priority areas of work and ways to perform the assigned tasks, participates in personnel appointments of management, etc.

In addition to regulating the status and competence of the National Police of Ukraine in the above-mentioned relevant Regulations, the government’s rulemaking is also aimed at ensuring the proper institutionalization of the police in Ukraine. Thus, it was by acts of the Cabinet of Ministers of Ukraine that the National Police of Ukraine itself (Resolution of 02.09.2015 No. 641) and its relevant territorial bodies – the main departments in the regions, the
Patrol Police Department (Resolution of 16.09.2015 No. 730), the Department of Cyber Police (Resolution of 13.10.2015 No. 831), the Department for Combating Drug Crime (Resolution of 28.10.2015 No. 886), etc. somewhat ambiguous is the heterogeneity of the formation of these and other bodies of the National Police of Ukraine (which indicates the lack of preparedness of such organizational and legal measures), which in the interests of the effective implementation of all the powers of the National Police of Ukraine should be formed simultaneously (at least at the legal level). Moreover, according to clause 7 of the Final and Transitional Provisions of the Law of Ukraine of 02.07.2015 No. 580-VIII, the government had to ensure the creation of both the central executive body of the Police of Ukraine and its territorial bodies within a month.

Of great importance in organizing the functioning of the National Police of Ukraine is the Resolution of the Cabinet of Ministers of Ukraine dated 11.11.2015 No. 988, which generally defines uniform rules and norms of monetary support for police officers of the National Police of Ukraine. This Government Resolution provides for a significant increase in the monetary support of police officers, which is one of the necessary conditions for the productive and lawful performance of police duties by police officers, and the minimization of corruption in the National Police of Ukraine. The increase in the amount of monetary support for police officers should be considered solely inextricably linked with a commensurate increase in professional requirements for them, strengthening their responsibility and control, the foundations of which are generally laid down in the basic Law of Ukraine of 02.07.2015 No. 580-VIII.

Regarding the legal support for the functioning of the National Police of Ukraine, the powers of the Ministry of Internal Affairs of Ukraine regarding the legal regulation of its activities, as well as the submission to the government of drafts of its acts and bills on these issues should be highlighted. Therefore, the Ministry of Internal Affairs of Ukraine, along with the National Police of Ukraine itself, is one of the main subjects of by-law departmental regulation of its organization and activities. At the same time, here we can agree with O.S. Dotsenko [32, p.139] that despite the proclaimed principle of legality, earlier there was often a discrepancy and inconsistency in the form and content of departmental regulation of police activities with legislative norms. Therefore, today it is being updated not only to increase the level of legislative regulation of the National Police of Ukraine but also to streamline and even minimize its subordinate departmental legal principles, which should not replace but only clarify and detail the relevant provisions of the legislation.

Today, the issue of police service is regulated by several different bylaws. In particular, these are the Orders of the Ministry of Internal Affairs of Ukraine dated 12.03.2016 No. 177 and on 25.12.2015 No. 1631, which determine the organization of selection and promotion of police officers and the procedure for assigning and depriving special police ranks. In this context, it is necessary to separately indicate the Instruction on the procedure for certifying police officers approved by the Order of the Ministry of Internal Affairs of Ukraine
dated 17.11.2015 No. 1465. Certification of police officers, that is, a deep and comprehensive assessment of their qualifications, and professional and personal qualities, is one of the key measures to ensure a high professional level of personnel, promotion of police officers in the service, timely detection and response to cases of service inconsistency.

Compared to the previous Instruction on the procedure for certifying personnel of the internal affairs bodies of Ukraine, approved by the Order of the Ministry of Internal Affairs of Ukraine dated 22.03.2005 No. 181, the Instruction of 17.11.2015 already more comprehensively regulates the procedure for organizing, preparing and conducting certification of police officers, provides for their computer testing (mandatory) and polygraph testing (voluntarily), as well as the possibility of appealing the conclusion of the attestation commission. At the same time, for us, greater objectivity and impartiality of certification will be facilitated not by voluntary but by the mandatory passage of polygraph testing by the police; in general, certification should be permanent and periodic (for example, according to the Instruction of 22.03.2005, it was to be carried out after 4 years in each of the positions held); it is also necessary to prevent formalism in the certification of police officers.

The leading role of the Ministry of Internal Affairs of Ukraine in the legal support of the National Police of Ukraine is also confirmed by the direct imposition on it by the relevant Law of Ukraine of 02.07.2015 No. 580-VIII powers to regulate specific aspects of the organization and activities of the National Police of Ukraine. In particular, these are the rules for the storage, carrying and use of special means that are in service with the police (Part 8 of Article 45), requirements for the level of physical training for police officers and candidates entering the police service (Part 2 of Article 49), the procedure for preparing and issuing orders for police service (Part 5 of Article 59), the procedure, organization and terms of professional training of police officers (Part 2 of Article 72), etc., however, a significant part of these and other regulatory documents after the formation of The National Police of Ukraine has been de facto absent for a long time. At the same time, the situational nature of the formation of the National Police of Ukraine and the legal support for its activities leads to the ambiguous dissemination by the Ministry of Internal Affairs of Ukraine to the National Police of Ukraine of its departmental orders relating to the activities of the police (for example, for a long time this was provided for in terms of issuing and revoking permits by the Order of the Ministry of Internal Affairs of Ukraine dated 29.12.2015 No. 1644).

At the same time, as a negative, it should be noted the long-term absence of a special Ethical Code for employees of the National Police of Ukraine, by analogy with the Rules of Conduct and Professional Ethics of ordinary and commanding officers of the internal affairs bodies of Ukraine previously in force concerning police officers (Order of the Ministry of Internal Affairs of Ukraine dated 22.02.2012 No. 155). The value of the Ethical Code is primarily determined by its focus on strengthening official discipline and
legality, greater observance of the rights of citizens in law enforcement, increasing the authority of the National Police of Ukraine and compliance with standards of ethical behavior. Approval of codes or standards of ethical behavior is provided for in Article 37 of the Law of Ukraine «On Prevention of Corruption» of 14.10.2014 No. 1700-VII, although it would be more optimal to directly define in the relevant legislation the need to adopt the Ethical Code of employees of the National Police of Ukraine (in particular, as previously defined in Part 13 of Article 18 of the Law of Ukraine «On Militia» of 20.12.1990, No. 565-XII). Directly, the Rules of ethical conduct of police officers were approved only by the Order of the Ministry of Internal Affairs of Ukraine dated 09.11.2016 No. 1179 [33].

To properly regulate the status of the National Police of Ukraine, it is expedient to clearly define all such rulemaking powers of the Ministry of Internal Affairs of Ukraine and distinguish them from similar functions of other entities, including the National Police of Ukraine itself (whose powers to regulate their organization and activities are almost not established normatively at all). The proposal of I.P. Petrova on fixing the exhaustive list and subject of the regulation of legal acts of the Ministry of Internal Affairs of Ukraine, the procedure for their preparation and publication, and the principles of interpretation and systematization are also considered constructive [1]. In addition to timeliness and compliance with legislation, such departmental legal regulation should be as consistent as possible and reflect a unified approach (concept) to the development of a modern police institution in a democratic legal socially oriented state.

Conclusions

The essence of the legal foundations of the National Police of Ukraine is manifested in the consolidation, ordering, protection and development of managerial and administrative relations in the field of organization and activity of the National Police of Ukraine to effectively combat crime and maintain public security and order, in particular under martial law.

Legal support for the activities of the National Police of Ukraine under martial law is characterized, first of all, by the insufficient systematic nature of its formation, and more specific legislative regulation compared to the legal principles of the previously operating police (for example, in terms of police measures and the status of police officers). At the same time, there is some fragmentation of regulation of the principles of interaction, order of activity, competence and organizational structure of the National Police of Ukraine, as well as a significant share of by-law departmental regulation remains with a low level of orderliness and consistency. It should also be noted the significant scope of rulemaking powers of the Ministry of Internal Affairs of Ukraine with limited competence of the National Police of Ukraine on the regulatory regulation of its activities, as well as the partial uncertainty of the mechanisms for implementing legal norms.

The elimination of existing gaps and shortcomings primarily requires further development of the legal framework for the activities of the National Police
of Ukraine, in particular on the issues of its participation in the prevention of Russia’s armed invasion of Ukraine, ensuring effective observance of citizens’ rights and maintaining law and order under martial law.

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