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Prevention of domestic violence as one of the priority areas of preventive policing: Legal regulations and international experience

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Abstract

The aim of the research was to study the norms of the current Ukrainian and international legislation, the positions of scientists, educational and reference literature, as well as statistical data, to determine the legal position of the National Police as a subject of prevention and countermeasures against families' victims of violence. In its basic content the article discloses the legal position of the National Police as a subject of prevention and action against domestic violence, performing preventive, police and human rights protection functions. In this context, it was determined that the National Police, as a public authority, implements special measures to prevent and counteract domestic violence, applying, if necessary, administrative coercive measures against offenders. The methodological basis of the research was the comparative legal and systemic analysis, the formal legal method, the method of interpretation, the hermeneutic method, as well as the methods of analysis and synthesis. As a conclusion it is noted that an important aspect of improving the activities of the National Police in Ukraine is to build confidence in the affected families, who are afraid to report the facts of domestic violence for fear of condemnation from the society.

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Keywords: international experience; domestic violence; legal regulation; preventive tasks; police units of preventive activities.

Prevención de la violencia doméstica como una de las áreas prioritarias de la actividad policial preventiva: Normativa legal y experiencia internacional

Resumen

El objetivo de la investigación fue estudiar las normas de la legislación ucraniana e internacional vigente, las posiciones de los científicos, literatura educativa y de referencia, así como datos estadísticos, para determinar la posición jurídica de la Policía Nacional como sujeto de prevención y contramedidas contra familias víctimas de violencia. En su contenido básico el artículo da a conocer la posición jurídica de la Policía Nacional como sujeto de prevención y acción contra la violencia doméstica, desempeñando funciones preventivas, policiales y de protección de los derechos humanos. En este contexto, se determinó que la Policía Nacional, como autoridad pública, implementa medidas especiales para prevenir y contrarrestar la violencia doméstica, aplicando, de ser necesario, medidas de coerción administrativa contra los infractores. La base metodológica de la investigación fue el análisis jurídico y sistémico comparativo, el método jurídico formal, el método de interpretación, el método hermenéutico, así como los métodos de análisis y síntesis. Como conclusión se observa que un aspecto importante para mejorar las actividades de la Policía Nacional en Ucrania es generar confianza en las familias afectadas, que temen denunciar los hechos de violencia doméstica por temor a la condena de la sociedad.

Palabras clave: experiencia internacional; violencia doméstica; regulación legal; tareas preventivas; unidades policiales de actividades preventivas.

Introduction

Bringing the standards of professional training and official activities for the prevention of domestic violence by the police units carrying out preventive activities of the National Police of Ukraine in line with the generally recognized norms and standards in international relations, as well as the relevant standards of European and other countries is one of the main directions of reforming the law enforcement system of Ukraine.

According to the new administrative and territorial structure, the Resolution of the Verkhovna Rada of Ukraine dated July 17, 2020. No. 807-IX “On the Formation and Liquidation of Districts” (Law of Ukraine, 2020) has introduced new organizational and staff changes in the structure of territorial bodies, police units that determines the development and definition of the following categories: goals, objectives of activities, structural and organizational, and competence elements aimed at ensuring human rights and freedoms, the interests of society and the state, and domestic violence prevention.

1. Literature review

The works of administrative scientists are devoted to the general theoretical aspects of the organizational and legal basis of the police of Ukraine. As for the study of the goals, objectives, forms and methods of activity of the units of the preventive service of the National Police of Ukraine for the prevention of domestic violence in the modern Ukrainian administrative legislation and in the context of reforming the system of the Ministry of Internal Affairs (hereinafter referred to as the Ministry of Internal Affairs) of Ukraine, there are only isolated scientific developments (*Nehodchenko, 2003*).

The goal of the article is to define the powers of preventive police units to prevent domestic violence, as well as to disclose the main organizational and legal forms, methods and measures in the field of preventing domestic violence.

2. Materials and methods

The study is based on the works of foreign and Ukrainian researchers on methodological approaches to understanding the preventive activities of the National Police of Ukraine in countering domestic violence under the current scenario.

The application of the epistemological method has enabled to clarify the essence of the preventive activity of the National Police of Ukraine on countering domestic violence, the logical and semantic method - to deepen the conceptual apparatus and to determine the essence of the preventive activity of the National Police of Ukraine on countering domestic violence in the present settings.

To get an idea of the specifics of the preventive activities of the National Police of Ukraine in countering domestic violence in the present settings over the past five years, we have analyzed statistical data, which, unfortunately,

are not based on all the canons of statistical generalization, since we have not had access to all blocks of information, but thanks to the available data, we have managed to analyze the preventive activities of the National Police of Ukraine in countering domestic violence in the present.

3. Results and discussion

In accordance with paragraph 5 of Article 1 of the Law of Ukraine “On Prevention and Counteraction to Domestic Violence”, prevention of domestic violence means the system of measures implemented by executive authorities, local self-government bodies, enterprises, institutions and organizations, as well as citizens of Ukraine, foreigners and stateless persons who are in Ukraine legally, and aimed at raising public awareness of the forms, causes and consequences of domestic violence, forming an intolerant attitude to violent behavior in private relations, caring attitude to affected persons, primarily to affected children, eliminate discriminatory attitudes about the social roles and responsibilities of women and men, as well as any customs and traditions based on them.

The powers of the preventive units of the National Police of Ukraine in the field of preventing and countering domestic violence include:

1. identification of facts of domestic violence and timely response to them;
2. receiving and reviewing applications and reports of domestic violence, including consideration of reports received by the call center for preventing and countering domestic violence, gender-based violence and violence against children, taking measures to stop it and provide assistance to affected persons, taking into account the results of risk assessment in accordance with the procedure determined by the Central Executive Authority that ensures the formation of state policy in the field of preventing and countering domestic violence, together with the National Police of Ukraine;
3. informing affected persons about their rights, measures and social services that they may use;
4. issuing urgent restraining orders against abusers;
5. taking abusers for preventive registration and conducting preventive work with them in accordance with the procedure established by law;
6. monitoring the implementation of special measures to counteract domestic violence by abusers during their validity period;

7. cancellation of permits for the right to purchase, store, carry weapons and ammunition to their owners in the event of domestic violence, as well as the seizure of weapons and ammunition in accordance with the procedure established by law;
8. interaction with other bodies that carry out measures in the field of preventing and countering domestic violence, in accordance with Article 15 of this Law;
9. reporting to the Central Executive Authority, implementing the state policy in the field of preventing and countering domestic violence, on the results of the exercise of powers in this area in accordance with the procedure determined by the Central Executive Authority that ensures the formation of state policy in the field of preventing and countering domestic violence (Law of Ukraine, 2015).

Of particular note is that in accordance with the Order of the Ministry of Internal Affairs dated December 19, 2017 No. 1044 “On Approval of Instructions for Organizing the Work of Juvenile Prevention Units of the National Police of Ukraine” (Law of Ukraine, 2017), the main tasks are as follows:

- preventive activities aimed at preventing children from committing criminal and administrative offenses, identifying the causes and conditions that contribute to this, and taking measures within their competence to eliminate them;
- keeping preventive records of children who are prone to committing offenses, and conducting individual prevention measures with them;
- participation in establishing the location of the child in the event of his/her unknown disappearance or obtaining data for this purpose in the criminal proceedings opened on the fact of the child’s unknown disappearance;
- taking measures to prevent and counteract domestic violence committed by and against children, as well as child abuse;
- taking measures to prevent child neglect, including the implementation of police custody of minors;
- carrying out activities related to the protection of the child’s right to general secondary education.

Special measures to combat domestic violence include:

1. an emergency prohibition order against the abuser;
2. a prohibitory injunction order against the abuser;
3. taking the abuser on preventive registration, conducting preventive work with the abuser;

4. referral of the abuser to the abuser program.

In accordance with paragraph 16 of Article 1 of the Law of Ukraine “On Preventing and Countering Domestic Violence”, an emergency prohibition order is a special measure to counteract domestic violence, which is used by authorized units of the National Police of Ukraine as a response to the fact of domestic violence and is aimed at immediately stopping domestic violence, eliminating the danger to the life and health of victims and preventing the continuation or repetition of such violence (Law of Ukraine, 2017).

This emergency prohibition order is issued if there is an immediate threat to the life or health of the injured person in order to immediately stop domestic violence, prevent its continuation or recommission. This legal instrument is regulated in more detail in Article 25 of this Law.

Measures that may be applied on the basis of an emergency prohibition order include: an obligation for the abuser (the person who has committed domestic violence) to leave the place of residence (stay) of the injured person; a ban on the abuser to enter and stay in the place of residence (stay) of the injured person; a ban on the abuser in any way to contact the injured person. In relation to minor abusers who have a common place of residence (stay) with the injured person, these first two measures are not subject to application.

It should be noted that the Law of Ukraine “On Preventing and Countering Domestic Violence” gives the safety of the affected person priority even over the property rights of persons to housing (Law of Ukraine, 2017). Therefore, part 3 of Article 25 of this Law provides for the possibility of issuing an emergency prohibition order in relation to residential premises that belong exclusively to the offender, provided that such housing is the place of joint residence (stay) of the injured person and the offender.

At the same time, the police are empowered to evict the offender from such residential premises, if the emergency prohibition order provides for an obligation to leave the place of residence (stay) of the injured person, and the offender refuses to voluntarily leave it. The urgency and out-of-court nature of the adoption determine the validity period of an emergency prohibition order, which is not more than ten days.

Consequently, an emergency prohibition order is applied by the police if there is a threat to the injured person and for the purpose of immediately countering an act of domestic violence. That is, at the time of issuing this order, the person in respect of whom it is issued has not been found guilty of committing domestic violence in criminal proceedings or an administrative offense.

In general, this approach is somewhat similar to the detention of a suspected person during the commission of a crime or after its commission,

if the set of signs indicates that this particular person has committed a crime (Article 208 of the Criminal Procedure Code), which takes place before the commencement of a pre-trial investigation (in other words, before the opening of criminal proceedings).

By this analogy, in our opinion, the issuance of an emergency prohibition order should be accompanied by other procedural actions of the police, namely, drawing up a protocol on an administrative offense (Article 173-2 of the Code of Ukraine on Administrative Offenses) or entering information on the relevant criminal offense in the Unified Register of Pre-Trial Investigations.

Unlike an emergency prohibition order, a prohibitory injunction order is issued by the court on the basis of an appeal from interested parties, and therefore allows for a much wider range of possible restrictions on the rights of the offender, longer periods. In particular, the measures that may be applied to the abuser on the basis of a prohibitory injunction order are:

1. prohibition to stay in a place of cohabitation (stay) with the injured person;
2. removal of obstacles in the use of property that is the object of the right of common joint ownership or personal private property of the injured person; (3) restriction of communication with the injured child; (4) prohibition to approach a certain distance to the place of residence (stay), study, work, other places of frequent visit of the injured person; (5) prohibition to personally and through third parties search for the injured person if he/she is at his/her own request in a place unknown to the offender, pursue him/her and communicate with him/her in any way; (6) prohibition to conduct correspondence, telephone conversations with the affected person or to contact him/her through other means of communication in person and through third parties. It is worth noting that the prohibitory injunction order may provide for the application of several of these measures at once.

Similarly, to an emergency prohibition order, a prohibitory injunction order may not contain measures that restrict the right of residence or stay of a minor abuser in the place of his/her permanent residence (stay). The issuance of a prohibitory injunction order is carried out by making a court decision in a separate proceeding, for the purposes of which Section IV of the Civil Procedure Code (hereinafter referred to as the CPC) is supplemented with a new Chapter 13. In addition, the issuance of a prohibitory injunction order in a separate proceeding is based on the provision that this proceeding is intended to create conditions for a person to exercise personal non-property or property rights (part 7 of Article 19 of the CPC). The prohibitory injunction order is issued for a period of one to six months and may be

extended by the court for a period of no more than six months (Fomenko, 2018).

The Law of Ukraine “On Preventing and Countering Domestic Violence” and the Civil Procedure Code do not provide for the possibility of revoking the prohibitory injunction order, in particular if a person is found not guilty of committing a crime or administrative offense. It appears that a possible way to resolve this issue would be to quash the judgment on newly discovered circumstances.

In addition, all facts of domestic violence, information on the abuser (regardless of his/her consent), as well as about victims (with their consent) are entered in the Unified State Register of Domestic and Gender-Based Violence Cases. Such information is stored in the database: 1 year - in the absence of open criminal proceedings, a court decision on a prohibitory injunction order or administrative penalty, a court verdict of guilty; 3 years – in the presence of a court decision on a prohibitory injunction order or administrative penalty; 10 years - if there is a conviction that has entered into force.

In addition, the abuser may be taken on preventive registration, work with him/her by the police, and sent to undergo a corrections programme for a period of three months to one year.

The next measure is the taking of abusers by a division of the National Police of Ukraine for preventive registration, conducting preventive work with them, which occurs from the moment of detection of the fact of committing domestic violence by them, for the period established by law.

Removal of the offender from the preventive register is carried out by the authorized division of the National Police of Ukraine, which has ensured the preventive registration, automatically after the completion of the established period, unless otherwise provided by law. The procedure for taking on preventive registration, carrying out preventive work and removing the offender from preventive registration is approved by the Ministry of Internal Affairs of Ukraine (Volokitenko, 2017).

In turn, intervention programs for abusive behavior are available as well. The bodies responsible for implementing intervention programs for abusive behavior are local state administrations and local self-government bodies that organize and ensure that abusers complete such programs. The implementation of intervention programs for abusive behavior in relation to abusers is carried out taking into account the age and psychological characteristics of children.

In order to prevent repeated domestic violence and ensure the implementation of the intervention program for abusive behavior, the abuser’s child may be temporarily placed with relatives, in the family of

a foster carer or in an institution for children, regardless of the form of ownership and subordination, in which appropriate conditions are created for living, upbringing, training and rehabilitation of the child in accordance with his/her needs. The implementation of intervention programs for abusive behavior is provided by specialists who have received appropriate training.

The abuser may be sent by the court to complete the intervention program for abusive behavior for a period of three months to one year in cases stipulated for by law. The abuser should be able to attend the intervention programs for abusive behavior on his/her own initiative on a voluntary basis. In case of failure of the abuser to complete the intervention program for abusive behavior or evasion from completing the program without valid reasons, the bodies responsible for the implementation of intervention programs for abusive behavior shall provide within three working days a written notification about this to the authorized unit of the National Police of Ukraine for taking action.

Bringing the abuser to justice for failure to complete the intervention program for abusive behavior does not release the abuser from the obligation to complete such a program. If an abuser, in particular a child abuser, is brought to criminal responsibility by the court, he/she may be required to complete a probation program in accordance with paragraph 4 of part 2 of Article 76 of the Criminal Code of Ukraine (Fomenko, 2018).

It should be noted that all these measures are preventive measures that enable state bodies to quickly respond to the facts of domestic violence, stop its commission, and eliminate the threat of repeated violence. However, the application of such measures does not mean that the offender will not be brought to administrative or criminal responsibility if there are grounds.

In order to respect human rights and freedoms, to comply with guarantees for the protection of the rights and interests of persons affected by domestic violence, gender-based violence, as well as to ensure an appropriate response to cases of such violence, to provide assistance to affected persons, to create conditions for each child to exercise the right to grow up in a safe family environment, taking into account the growing challenges associated with the commission of domestic violence, due to the reduction of latency of such offenses, great public response and in order to effectively implement the Decree of the President of Ukraine dated September 21, 2020, No. 398/2020 “On Urgent Measures to Prevent and Counteract Domestic and Gender-based Violence, and Protect the Rights of Persons Affected by Such Violence”, we propose to create sectors of countering domestic violence in the cluster police units created on the basis of regional centers and cities of Severodonetsk and Mariupol, in the prevention departments, which, in particular, will include police officers involved in working in mobile groups to respond to the facts of committing

such offenses, which are now successfully operating in the implementation of the relevant project.

We suggest that the staffing table of the specified sector should consist of 10 positions per mobile group (depending on the quantitative load of calls about the facts of domestic violence) at the rate of: 1 - Head of the Sector, 1 - Senior Inspector and Inspectors.

Given that not every territorial (separate) police unit according to the staffing table has the position of Juvenile Prevention Inspector or only one such position, we propose that the prevention department of district (cluster) departments with the corresponding new administrative and territorial structure of districts create juvenile prevention sectors at the expense of regular positions of juvenile prevention police units (departments) of the police serving the territory of these districts (Onishchenko, 2010).

At the same time, some of the powers of juvenile prevention at the level of these police units will be performed by district police officers, community police officers (as amended by the Order of the Ministry of Internal Affairs No. 650 dated July 28, 2017 “On Approval of the Instruction for Arrangement of the Activities of District Police Officers”) and, as an exception, inspectors of the Patrol Police Response Group, in particular:

- taking measures to establish the identity of the child, his/her place of residence, information on parents or persons who replace them, other relatives, their place of residence (stay), in case of notification of a child left without parental care (in cases that do not require the opening of a criminal investigation and the establishment of intelligence surveillance “Search”);
- taking measures to take the child away from his/her parents and temporarily accommodate the child in accordance with the current legislation in the event of an immediate threat to the child’s life or health;
- carrying out work to prevent the commission of offences.

This distribution of powers will enable to unload juvenile prevention police officers in non-critical cases, taking measures for high-quality preventive work, implementing the best international experience of the police in working with children, searching for missing children who may become victims of crimes, identifying offenses against children and documenting them. The juvenile prevention sector provides methodological assistance and coordinates the implementation of tasks between the sectors of district police officers, community police officers and Patrol Police Response Teams.

The Patrol Police Response Division organizes the work of Patrol Police Response Teams (hereinafter referred to as the PPRТ) within the district

service area. It provides them with practical and methodological assistance in improving the efficiency of work, interacts in solving these issues with the Patrol Police Response Division of other district units (departments) of the Main Directorate of the National Police in the region, other structural divisions of the National Police, local self-government bodies, enterprises, institutions, organizations of all forms of ownership, citizens. The Patrol Police Response Division should coordinate the PPRTs - teams consisting of at least two police officers who will serve in two shifts of 12 hours a day in the service area of the entire District Administration (Department).

Moreover, the territorial police units (hereinafter – the TPU) of the District Police Department (Division), which are located within more than 25 km from the district administration and which provide for service and more PPRTs in one shift, should create the Patrol Police Response Sector (hereinafter-the PPRS) consisting of the Head of the Sector, Senior Inspector and Inspectors (Police Officers) of the PPRT. The PPRS will be based on the TPU territory, where their service firearms, special equipment, service vehicles, fuel and lubricants, and service documentation are stored.

At the same time, the PPRS will be removed from the subordination of the TPU and directly report to the Patrol Police Response Division of the District Administration (Department). Control over their official activities will be directly carried out by the Head of the PPRS and authorized inspectors of the administrative practice sector (*Husariev, 2005*).

Under similar conditions, subject to the service for only 1 PPRT in one shift, direct subordination will be carried out to the Head of the PPRS of the nearest territoriality, within the service area.

In the TPUs of the District Police Department (Division), which are located within 50 km from the District Administration and which provide for the service of the PPRT in one shift, the Patrol Police Response Sector is not created. The PPRT is based on the territory of TPU, where their service firearms, special equipment, service vehicles and service documentation are stored. At the same time, the PPRT will no longer be subordinated to the TPU and will directly report to the Patrol Police Response Division of the District Administration (Department).

The territory of the police station will be serviced by the police officers of the Patrol Police Response Division and/or the Patrol Police Response Sector closest in terms of territoriality. The load on one police officer of the territorial preventive units and on one patrol police response squad is calculated from the number of people in a certain service area, the number of settlements, the length of the road network, the area of the service area and the state of the criminal situation. It is proposed to move away from the methodology of calculating 1 PPRT squad per 25 thousand population and, as an example, introduce the calculation of one squad per area in square kilometers.

It is proposed to move away from the methodology of calculating 1 PPRT squad per 25 thousand population and, as an example, to introduce the calculation of one squad per area in square kilometers.

We propose to expand the functional areas of work of the administrative practice sector, namely on the prevention of domestic violence: ensuring interaction with the duty services of territorial police department (divisions); providing methodological support for the activities of PPRT squads, district police officers, community police officers (hereinafter referred to as squads); ensuring round-the-clock monitoring and control over the official activities of squads, as well as their performance of official tasks, including those created independently; sending, in coordination with the operations duty officer of the district department, orders of electronic official tasks and monitoring their implementation; monitoring the state of administrative activities of both the District Police Department (Division) and its territorial divisions; within the scope of competence to coordinate with district courts in cases of administrative offences, in view of the fact that the judicial system in practice may not always coincide with the newly formed administrative-territorial structure, this gives grounds to believe that local courts continue to examine cases within previously defined areas (Bilous, 2019).

Conclusion

Prevention of domestic violence is one of the priority areas of preventive police station, which includes departments of district police officers, juvenile prevention units, patrol police, etc. Ensuring the effectiveness of such activities should be accompanied by a noticeable increase in the technical security of the police, increasing the efficiency of work, implementing a number of other organizational measures, improving the legal regulation of activities aimed at countering and preventing domestic violence, which determine the competence and place of preventive units as part of the National Police of Ukraine.

When considering the allocation of office space for a police station, the possibility of placing juvenile prevention inspectors, district police officers, community police officers, their assistants, police response departments in it for joint work and providing them with appropriate conditions for performing their official tasks should be taken into account.

The official activity of these structural divisions is organized in accordance with the requirements of the current legislation of Ukraine and departmental regulatory legal acts that regulate the activities of police officers, assign them to police stations and service areas of response units within the amalgamated territorial community.

Authorized units of the National Police of Ukraine exercise their powers in the field of preventing and countering domestic violence, taking into account international standards for the response of law enforcement agencies to cases of domestic violence and risk assessment. Police officers may enter a person's home without a reasoned court decision in urgent cases related to the cessation of an act of domestic violence committed, in case of an immediate danger to the life or health of the injured person.

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