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## ГРОМАДСЬКИЙ КОНТРОЛЬ ЗА ДІЯЛЬНІСТЮ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ В УКРАЇНІ

**Анотація.** У сучасних умовах формування громадянського суспільства в Україні виникає дедалі більше можливостей для появи нових форм, методів та інших інструментів проведення громадського контролю за діяльністю органів публічної адміністрації, зокрема й поліції. Нині поліція відіграє надзвичайно важливу роль у державному та суспільному житті країни, адже вона є тією структурою, що має можливість легально застосовувати примус, а відтак може оперативно реагувати на порушення прав і свобод людини, порівняно з іншими органами.

Розкрито особливості громадського контролю за діяльністю Національної поліції в Україні. Проаналізовано публічно-владний характер адміністративної діяльності органів Національної поліції, який постійно перебуває під цілеспрямованим наглядом громадськості та полягає у виконанні покладених на Національну поліцію адміністративно-правових повноважень в інтересах суспільства. Розглянуто звернення громадян як інструмент громадського контролю за діяльністю поліції, а також як один із ключових інструментів, за допомогою якого громадськість реагує на діяльність поліції.

**Ключові поняття:** громадський контроль, Національна поліція, громадянське суспільство, звернення громадян, діяльність поліції.

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## PUBLIC CONTROL OVER THE ACTIVITY OF THE NATIONAL POLICE IN UKRAINE

**Abstract.** In modern conditions of formation of civil society in Ukraine, more and more opportunities are created for the emergence of new forms, methods and other tools for public control over the activities of public

administration bodies, including the police. Today, the police play an extremely important role in the state and public life of the country. After all, the police are the structure that has the ability to legally use coercion, and therefore can respond quickly to violations of human rights and freedoms, compared to other bodies.

The article reveals the features of public control over the functioning of the National Police in Ukraine. The public and authoritative nature of the administrative activity of the National Police bodies, which is always under the purposeful public supervision and consists in the implementation of the administrative and legal powers assigned to the National Police in the interests of society, is analyzed. Citizens' appeals are considered as a tool of public control over police activities and also one of the key tools by which the public responds to police activities.

**Key concepts:** public control, National Police, civil society, citizens' appeals, police activity.

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## Introduction

Today, the police play an extremely important role in the state and public life of the country. After all, the police are the structure that has the ability to legally use coercion, and therefore can respond quickly to violations of human rights and freedoms, compared to other bodies. The main task of the police at the present stage is to meet the demands of civil society, reorientation to provide qualified legal services in the sphere of protection of rights, freedoms and legal interests of individuals and legal entities. Moreover, it is important to provide legally defined mechanisms for the effective construction of a system of public control in the field of activities of the National Police.

Such scientists as L. Akopov, V. Beschastnyi, S. Vitvytskyi, A. Havrylenko, V. Harashchuk, A. Zabalova, A. Kolodiy, S. Kushnir, A. Makarenko, L. Nalyvayko, T. Nalyvayko, A. Oliynyk, V. Shapoval, N. Onyshchenko, L. Rohatyna, A. Selivanova, I. Skvyrskyi, D. Slyn'ko, A. Sushynskyi, V. Tatsiy, A. Frytskyi, Yu. Shemshuchenko and other scholars addressed the issues of public control over the activity of law enforcement agencies, in particular the police.

*The purpose of the article research is to examine public control over the activity of the National Police in Ukraine.*

## 1. The concept and features of public control over the activity of the National Police in Ukraine

Among the variety of tasks that the police is aimed at solving, the priority is the administrative function, which determines the compliance of administrative activities of the police with European standards of public service, which determine the state of law and order in our country. Namely, the service and legal orientation determines the content of the administrative activity of the National Police and provides for regulation by means of legal norms of service and legal activity of units and officials of the National Police, which should be aimed at ensuring personal safety of citizens and protection of freedoms and rights of individuals and legal

entities, public order and security, prevention and counteraction to offenses [1, p. 18].

For the first time in the history of independent Ukraine, the issue of public control over the activity of the National Police has been defined at the legislative level. After all, the fundamental principle of police work is the principle of «Serve and protect» and not «control and punish», as it was obvious before. The main criterion for assessing the effectiveness of the bodies and employees of the police was the level of public confidence in the police [2].

In modern conditions of state formation and development of civil society in Ukraine, public control, which is a concentrated expression of the common interests and common social will of organized society, is a factor in the consolidation of public and state life. After all, law enforcement reform is based on public relations and on the basis of the best traditions of Europe.

The public-authoritative essence of the administrative activity of the National Police bodies is always under the purposeful public supervision and consists in the fulfillment of administrative and legal powers assigned to the National Police in the interests of society, on behalf of the state, and in the manner and within the limits established by law. The units of the National Police, performing administrative functions, act as subjects of public administration (government officials), which are authorized to issue binding instructions, statements, as well as to apply measures of administrative coercion.

Among the measures of administrative coercion that police officers can use in their work, there are, as we know, four groups. Administrative precautionary measures (preventive measures) can be used in cases where the offense has not yet been committed, but there are sufficient grounds to believe that it may be committed in the future, i.e. aimed at preventing the commission of misdemeanors or crimes. Measures of administrative termination are implemented directly at the time of the offense, when the police officer is obliged to take measures to stop it. Measures of adminis-

trative-procedural support that ensure the proceedings in cases of administrative offenses are administrative detention, delivery, personal inspection, inspection of items, seizure of items and documents. The application of one of these measures necessarily requires a protocol, which is the procedural design of these measures [3, p. 42].

The most common measure of administrative coercion, of course, is an administrative penalty that may be applied to a person who is accused of committing an administrative offense aimed at his/her upbringing. In essence, this measure is to ensure compliance with the laws of Ukraine, respect for the rules of cohabitation, and its main purpose is to prevent committing new offenses by a person again. Police officers may use physical force and weapons in urgent cases and in a lawful manner on the basis of Articles 42–46 of the Law of Ukraine «On the National Police» [2]. It is worth mentioning that all these measures are used by the National Police to ensure legality. If necessary, administrative coercive measures may be subject to public scrutiny, thus becoming the object of public scrutiny of the administrative activity of the National Police.

For a social-democratic state, strict observance of the rule of law is especially important for the activities of the National Police. After all, the various legal relations in which its activities develop are directly related to the implementation and protection of human rights, which is the legal basis of these legal relations. When reflecting the content of the rule of law, it is very important to consider two substantive aspects of this issue. First, the National Police is obliged to ensure the rule of law by all citizens, institutions, public organizations, officials, etc., in the area within their competence. Secondly, employees of the National Police within their powers enter into various legal relations with citizens, organizations in the performance of their duties, and therefore – each employee of these bodies must comply with the law and act in accordance with regulations [4, p. 172].

One of the most important means of ensuring legality is control. Public control, as a kind of general control in the state is an independent socio-legal institution and requires a study of its legal nature, basic functions and tools, determining its place and role in the field of public administration. In modern conditions, this process is not very simple, due to the lack of legislation and that generally complicates and slows down the process of democratization of society. Public figures emphasize that public control over the administrative activities of the National Police should include three main components: a) collection of necessary information; b) analysis and evaluation of the received information; c) appropriate response to the actions

(inactivity) of the police in case of violation of the law in order to ensure the rights and freedoms of a man and a citizen.

All the above elements of public control activities must be strictly regulated by regulations and applied on their basis and in a certain manner. Public control definitely has the ultimate goal of its implementation, which is to prevent and stop violations of current legislation in the field of observance and protection of human and civil rights and freedoms by law enforcement agencies [5, p. 28–29].

Public control over the activity of the National Police is exercised by citizens of Ukraine, public associations, mass media, etc. The object is the administrative activity of the National Police, which is aimed at protecting the freedoms and rights of citizens, legal entities and their legitimate interests.

The administrative activity of the units of the National Police, which is the object of public control, consists in its implementation on legal grounds. Public scrutiny is a guarantee, and its consequences are of a recommendatory nature. However, the content of the activity itself serves as a feedback mechanism based on the interaction between the National Police and civil society. Improving the effectiveness of civil control over the activity of the National Police requires the introduction of a set of measures of organizational and legal and other nature, in particular: further creation and improvement of the legal framework for administrative activities as an object of public control; creating preconditions for public access to public control; protection of citizens from harassment by bodies and officials of the National Police through their public control; improving the forms and methods of public control, etc. These priority measures will ensure the optimization of public control activities in the modern rule of law [6, p. 139].

It should be noted that civil control over the activities of the National Police is a kind of public control over the activity of public authorities in general and is a set of organizational and legal measures to verify, gather and evaluate information on the legality of National Police officials, reaction to the violations of the rights and lawful interests of legal entities, individuals or society as a whole, by the specified subjects of the law-enforcement system.

## **2. Citizens' appeals as a tool of public control over police activities**

Citizens' appeals are one of the basic tools through which the public responds to policing.

Article 40 of the Constitution of Ukraine stipulates that everyone has the right to send individual or collective written appeals or personally apply to public authorities, local governments and officials

of these bodies, which are obliged to consider the appeal and give a reasoned response within the statutory period [7].

Thus, at the highest legislative level, the right of citizens to appeal and the obligation of public authorities, which include public authorities and local governments to examine this appeal and give a grounded response within the statutory period is enshrined.

Following the Constitution of Ukraine, laws are entitled with the legal force of regulations. Law of Ukraine «On the National Police» in Art. 18 regulates the basic duties of a police officer. In particular, a police officer throughout Ukraine, regardless of the position he/she holds, location and time of day in case of contact with any person with a statement or notification of events that threaten personal or public safety, or in case of direct detection of such events is obliged to take the necessary measures to save people, provide assistance to those who need it, and report it to the nearest police authority [2].

When addressing a person, or in case of a person's appeal to a police officer, the police officer is obliged to state his / her surname, position, special rank and present an official ID card upon his / her request, providing an opportunity to get acquainted with the information contained therein.

The police ensure the permanent and round-the-clock execution of their tasks. Every person has the right to seek the help of the police or a police officer at any time. The police have no right to refuse to consider or postpone the consideration of appeals to ensure human rights and freedoms, legal entities, interests of society and the state from unlawful encroachments with reference to a day off, holiday or non-working day or end of working day [8, p. 74].

Due to Art. 23 of the Law of Ukraine «On the National Police», the police in accordance with the tasks assigned, carry out timely response to statements and reports of criminal, administrative offenses or other events [2]. These activities carried out by the National Police are one of the means of ensuring the rights and freedoms of citizens. This activity occupies a central place in the work of the National Police, is the most extensive and meaningful type of work, as the effectiveness of the police in ensuring the rights and freedoms of citizens depends on the quality and organization of this activity [9, p. 29].

Law of Ukraine «On citizens' appeals» in Part 1 of Art. 1 determines that citizens of Ukraine have the right to apply to public authorities, local governments, associations of citizens, enterprises, institutions, organizations, regardless of ownership, media, officials in accordance with their functional responsibilities with comments, com-

plaints and suggestions concerning their statutory activities, a statement or petition for the realization of their socio-economic, political and personal rights and legitimate interests and a complaint about their violation [10].

The words «according to their functional responsibilities» mean that the appeal should be addressed to the body in whose competence the consideration and decision-making on this issue is. But even if the consideration of this issue does not belong to the competence of the body or official, and the appeal is duly executed, in compliance with the requirements of the law, the body, the official must still accept the appeal and give a reasoned response or send a request to the competent authority, and notify the applicant.

In accordance with Part 3 of Art. 1 of the Law of Ukraine «On Citizens' Appeals», persons who are not citizens of Ukraine and are legally on its territory, have the same right to file an appeal as citizens of Ukraine, unless otherwise provided by international treaties [10].

Citizens' appeals can be addressed to:

- public authorities and local governments;
- institutions, organizations, enterprises, regardless of ownership;
- associations of citizens or the officials whose responsibilities include resolving issues stated in appeals.

The appeal may be:

- oral – set out by a citizen and recorded by an official at a personal appointment);
- in a written form – sent by mail or transferred by a citizen to the relevant body or establishment in person or through a person who is authorized by him.

The appeal must indicate the surname, name, patronymic, place of residence of the citizen, the nature of the issue, statements or complaints, suggestions, comments, requests or demands. If the issues raised in the appeal received by the body of state power, local self-government, enterprises, institutions, organizations, regardless of ownership, associations of citizens or officials, are not within their powers, it should be forwarded by them within 5 days to the authorized body or official, and the citizen who filed the application must be notified.

If the appeal does not contain the data necessary for the adoption of a reasoned decision by the body or official, it is returned to the citizen within the same period (5 days) with the relevant explanations. An application that does not comply with the requirements shall be returned to the applicant with the relevant explanations in the period of than 10 days starting with the date of its receipt. It is prohibited to send citizens' complaints for consideration to the officials or bodies whose decisions or actions are being appealed.



A written application without indication of the place of residence, that is not signed by the author (authors), as well as one from which it is impossible to state the authorship, is recognized as anonymous and is not subject to consideration. Repeated appeals by the same unit from the same person on the same nature, if the first is solved on the merits, as well as appeals of persons declared incompetent by the court are not considered.

Citizens' appeals should be considered as written or oral suggestions (remarks), complaints and statements (petitions).

Complaint – a request to restore the rights and protect the lawful interests of citizens violated by actions (inaction), decisions of state organs, institutions, local governments, organizations, enterprises, associations of citizens, officials.

Proposal (remarks) – citizens' appeals expressing advice, recommendations on the activities of local governments and public authorities, deputies in different levels, officials, as well as opinions on the establishing of public relations and conditions of citizens' lives, improvement of the legal standards of state and public life, social, cultural and other spheres of functioning of the state and society.

Statement (petition) – an appeal of citizens with a demand to promote the implementation of their interests and rights stated in the Constitution and current legislation or notification of violations of modern legislation or shortcomings in the activity of enterprises, institutions, organizations regardless of ownership, deputies of Ukraine, local councils, official persons, as well as presenting opinions on the improvement of their activities [10].

Another form of citizens' appeals to public

authorities is the electronic petition. Citizens can apply to the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, local self-government bodies with electronic petitions with the help of the official website of the institution to which it is addressed, or the website of a public association that gathers signatures in support of e-petitions.

In general, all appeals to the police are divided into:

1) those containing signs of a criminal offense – are considered according to the provisions of the Code of Criminal Procedure;

2) those that do not contain signs of criminal offenses – are considered in accordance with the Law of Ukraine «On Citizens' Appeals», the order of the Ministry of Internal Affairs of Ukraine dated 10.10.2004 № 1177, Code of Administrative Offenses, CPC, etc. [10].

## Conclusions

In the current conditions of modeling of civil society in Ukraine, more and more opportunities are created for the emergence of new forms, methods and other tools for public control over the activities of public administration bodies, including the police. Such control is constantly in conflict with the legal system. Forms and methods of influencing the controlled bodies are changing, new controlling structures are appearing. In view of this, public scrutiny should not be spontaneous, impulsive or unregulated. In exercising control, members of the public enter into legal relations with the authorities, which act on the basis of the law and its implementation.

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