

Comparison of administrative and legal activities of the police in Ukraine and the Republic of Lithuania

Порівняльний аспект адміністративно-правової діяльності поліції в Україні та Литовській Республіці

Khrystyna Solntseva

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Relevance of the chosen topic of this article primarily lies in convergence of forms of organization of public administration in the sphere of the executive power in Ukraine and Lithuania. Also, the similarity of building regional structures of the bodies of internal affairs should be noted in terms of vertical management. Both in Lithuania and Ukraine policing is based on the principles of the American model, but in Lithuania it is being perfected, while in Ukraine it is only being formed. Therefore, Lithuania's experience will greatly help solve the current problems of administrative regulation of the enforcement activities in Ukraine in order to improve the existing legislation of Ukraine.

During the reform of law enforcement bodies in Ukraine, active decentralization and improvement of current legislation of the country it is very important to focus on the proper model of the police, the relevant standards, principles and rules made by the world community.

The problems of the police and policing research at different times and with different theoretical focuses have been worked by many Ukrainian and foreign researchers. The following scientists analyse separate aspects of the question in their researches: H. Abadynskiy, Y. Avrutin, K. Belskiy, J. Vedel, I. Golosnichenko, S. Goncharuk, I. Gorshenyova, A. Gubanova, R. Drago, O. Pronevych, V. Shadrin and others.

The police are the most visible manifestation of the state power responsible for public security. According to Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), cl. 1 p. A European Declaration on the Police (1979), Articles 1 and 2 of the Code of Conduct for Law Enforcement Officials adopted by General Assembly resolution 34/169 of 17 December 1979 and cl. 2 Charter of Paris for a New Europe (1990) the main duties of the police (law enforcement officials) is to maintain public peace and order; to protect of fundamental rights and freedoms of the person; to prevent crimes and conduct their investigation; to reduce fear and provide assistance and services to the public. Progress towards democratic policing takes place at a time when there is a shift from the approach "based on management" to "service-oriented" approach, and the main task of law enforcement bodies is focusing on preventive crime measures¹.

But for the National Police of Ukraine such experience is new. Nowadays the general principles of policing in Ukraine are fixed in the Constitution of Ukraine, the Code of Ukraine on Administrative Offences (Article 1 – 212-21), the Civil Code of Ukraine, the Penal Code of Ukraine, the Criminal Procedure Code of Ukraine, the Law of Ukraine "On the National Guard of Ukraine" dated 13.03.2014 number 876-VII, the Law of Ukraine "On the National Police" (hereinafter – the Law on Police) dated 02.07.2015 number 580-VIII, the Order of the Ministry of Internal Affairs of Ukraine "On the implementation of powers of the National Police of Ukraine of issuing and cancelling of permits" dated 29.12.2015 number 1644, the Order of the Ministry of Internal Affairs of Ukraine "On organization of selection (competition) and career prospects of policemen" dated 25.12.2015 number 1631, the Order of the Ministry of Internal Affairs of Ukraine "On Amendments to the Regulations on the procedure of attestation of policemen" dated 15.12.2015 number 1577, the Order of the Ministry of Internal Affairs of Ukraine "On approval of taking the Oath by the National Police staff" dated 09.11.2015 number 1453 and some other

¹ OSCE, The Role of Community Policing in Building Confidence in Minority Communities. Final Report (Vienna 2002), p. 4. [Electronic resource]. – Access mode : https://www.ecoi.net/file_upload/nz258_00956ihf.pdf.

legal acts, but all these documents unfortunately do not still allow to form a clear system of policing and fix the functionality of the police in a full measure, which would be helpful in organizing a systematic and effective law enforcement work.

There are many models of the police and policing in the world, and their working experience can be used in Ukraine, especially at the stage of formation. The experience of the Republic of Lithuania in this sphere turns out to be really considerable, as a former Soviet country, which has reformed its police system using the best techniques of the USA, and taking into account the cooperation between Ukraine and Lithuania, as some agreements were signed by both countries and can serve as a basis for the exchange of experience, namely, on May 30, 1992 the Agreement on Cooperation between the Ministry of Internal Affairs of Ukraine and Ministry of the Interior of the Republic of Lithuania was signed and came into force, the Treaty between Ukraine and the Republic of Lithuania on legal assistance and legal relations in civil, family and criminal matters dated 07.07.1993, etc.

The policing in the Republic of Lithuania is regulated by the Constitution of the Republic of Lithuania, the Law on Police Activity (2000/No. VIII – 2048), the Law “On Police” (1990 – some norms are in force), the Administrative and Administrative Procedure Code of the Republic of Lithuania, European Union Law and international legal agreements of Lithuania. Thus, in accordance with Article 12 of the Law of the Republic of Lithuania on Police Activity: the police system of the Republic of Lithuania has branches and departments of the National Police and the Municipal Police under the leadership of the Police Department at the Ministry of the Interior of the Republic of Lithuania (hereinafter referred to as the Police Department)².

The Police Department is a police body which assists the Police Commissioner General of Lithuania to develop policing strategy and monitor its implementation and for management of territorial police units. The Police Department provides the fulfilment of police functions within the competence, supervises and coordinates activities of subordinated police units, giving them recommendations and instructions, develops and implements a common police activity and personnel policy of the subordinated police units, ensures the implementation of state programs in the police units, organizes the implementation of decisions Police Commissioner General of Lithuania, as well as monitoring their realization³. Article 11 of the Law points that the police system consists of: the Police Department at the Ministry of the Interior of the Republic of Lithuania (hereinafter referred to as the Police Department); territorial police bodies; police professional training institutions; specialized police bodies.

The Territorial Police Units carry out the functions ascribed them by the legal acts in the established territory. The Territorial Police Units consist of 10 County Police Headquarters (Vilnius, Kaunas, Klaipeda, Siauliai, Panevezys, Alytus, Marijampole, Utena, Taurage, Telsiai County Police Headquarters) and their subunits – 49 Local Police Units.

The County Police Headquarters are established in the county centres and ensure the implementation of the police tasks in the whole county territory. Their functions are to co-ordinate and, in the manner prescribed by the establishment and other legal documents, control activities of lower level local police units within their territory; to submit to the Police Commissioner General of Lithuania the draft budgets for all police units within their territory; to implement other tasks and functions provided for in the establishment and other legal documents, and report on their implementation to the Police Commissioner General of Lithuania.

The Local Police Units are established in the administrative centres of municipalities to serve within the territory of appropriate municipalities. The Local Police Units ensure the public safety and order; taking into account the needs of the local population and together with the local authorities, public organizations and residents, draw up and implement the programs for crime prevention; protection of lives, health and property of the population; as well as public order; prevent criminal deeds and other violations of law, detect and investigate criminal deeds and other violations of law; submit the draft budgets to the Heads of Police Headquarters; implement tasks and functions assigned to their competence, set by the establishment and other legal documents etc⁴.

According to the law the Police Department is headed by the Police Commissioner General, who is also the Deputy of the Minister of the Interior of the Republic of Lithuania. The Police Commissioner General is appointed by the President of the Republic on the proposal of the Minister of the Interior and recommendations of the

² The Law of the Republic of Lithuania on the Police Activities [Electronic resource]. – Access mode : <http://www.icla.up.ac.za/images/un/use-of-force/eastern-europe/Lithuania/Law%20on%20Police%20Lithuania.pdf>.

³ Structure and Organization [Electronic resource]. – Access mode : <http://www.policija.lt/index.php?id=17439>.

⁴ Structure and Organization [Electronic resource]. – Access mode : <http://www.policija.lt/index.php?id=17439>.

Government. The term to obtain the position is 5 years. The Police Commissioner General reports directly to the Minister of the Interior and is responsible to the President of the Republic.

The post of the Commissioner of Police may be appointed by the person aged 35, who holds a master of law or a higher juridical or equivalent education and has been working as a leader or chief commissioner for not less than three years.

The City Police Commissioner must be approved by the local government and is also appointed by the Minister of the Interior, according to the joint recommendations of the Police Commissioner General and the local government councils of higher level.

The territorial police stations are headed by the officers appointed by the Police Commissioner General. Their candidates should be previously agreed with the Chairman of the governing body of the territory.

How the police activity works depends on a number of variables, including the main factor – the structure of the body. The presence of the structure is an essential attribute of all real-world systems. Lithuanian police system has been effectively working for over 15 years.

Analysing the data of the European Sourcebook of Crime and Criminal Justice Statistics, the 5th Edition, 2014, one can see that according to the standard criteria, namely, Homicide, Assault, Rape, Robbery, Theft (Motor vehicle, Burglary), Drug Offences, trends in the data (percentage change rates between 2007-2011) Police in Lithuania reduced by 10% to 50% in categories – Homicide, Robbery, Theft and Burglary. As for Assault the tendency is to decrease or increase by less than 10%. Rape and Drug Offences – increase of 10% to 100%⁵.

Comparing data from the European Sourcebook of Crime and Criminal Justice Statistics, the 4th Edition, covering the years 2003-2007, we can see that the highest Homicide factor per 100 thousand people of the population in 2007 in Europe was registered in Lithuania and it was 9.69, with the average Homicide coefficient committed in Europe during 2005-2007 per 100 thousand people of the population is 1.4, and the figure in the European capitals for the designated period of time is much higher and it is 1.9⁶.

The Law of Ukraine "On the National Police" defines the overall system of the police as following: 1) central governing body of the police; 2) territorial police bodies (p. 1, Art. 13)⁷. According to p. 2 Art. 13 the central governing body of the police includes organizationally combined structural units, which provide the activities of the head of the police and the fulfilment of police tasks. According to Art. 14 the personnel arrangements (staff list) of the police are approved by the chief of the police and the structure of the central governing body of the police and police estimate are approved by the chief of the police in agreement with the Minister of Internal Affairs of Ukraine.

It is clear that in the new structure a large role is intended to the governing bodies, headed by the Central Office of the National Police and the Main Department of the National Police in the region. The most important role in the relationship of the police with citizens is given to the territorial bodies of the police on the ground. That's why the effective structure and combat capability of these units will be the defining issue of qualitative support of law enforcement. The police structure includes: criminal police (combating crime, protection of rights and freedoms, interests of society and the state from illegal encroachments: criminal investigation, cyber police, department to combat drug offences, department of economics defence, etc.), patrol police (maintenance of public order, security control in streets and roads, etc.), pre-trial investigation (collection, evaluation, testing and using of evidence in order to prevent criminal offences and investigation of criminal proceedings, establishing objective truth, ensuring the correct application of the law), secure police (protection of objects of all forms of property and personal security of citizens), special police (public order at the sites and areas that are of particular importance or affected by natural disasters, environmental pollution, accidents), special purpose police (a division to address emergency situations which are so dangerous, difficult or unusual that might exceed the possibilities of rapid response forces or search operations units).

⁵ European Sourcebook of Crime and Criminal Justice Statistics – 2014 [Electronic resource]. – Access mode : http://www.heuni.fi/material/attachments/heuni/reports/qrMWOcVTF/HEUNI_report_80_European_Sourcebook.pdf.

⁶ Kolodyazhnyi M.H. The modern concept of crime prevention in the European Union. M.H. Kolodyazhnyi. – Law Forum. – 2013. – No. 4 – P. 168–173. – [Electronic resource]. – Access mode : file:///C:/Users/OleksandrChyzhov/Downloads/FP_index.htm_2013_4_30.pdf.

⁷ The Law of Ukraine On the National Police dated 02.07.2015 No. 580-VIII [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/580-1>.

Such Specialized Police Units in Lithuania are the police units established on non-territorial principle. They carry out the certain (special) police functions assigned to them by the legal acts and include the Lithuanian Criminal Police Bureau (tasked to prevent and detect serious and major crimes, criminal activities which arouse public interest, activities related to the functioning of criminal organizations, organized groups and their members, as well as to co-ordinate investigations), the Lithuanian Police Forensic Science Centre (provides the integrated scientific and technical assistance to the officers of pre-trial institutions during the investigation of criminal activities and also their prevention), the Lithuanian Police Antiterrorist Operations Team "ARAS" (operates in the territory of the Republic of Lithuania, conducts the special operations, which need the use of purposeful, armed, special techniques and use of force), the Lithuanian Road Police Service (supervises the traffic on the roads of the Republic of Lithuania, escorts the heads of foreign states, governments and other official delegations as well as fulfils other special functions ascribed to by the legal acts on a country-wide scale and based on the non-territorial principle)⁸.

According to the data (08.04.2016) of the temporary website of the National Police of Ukraine the National Police unit consists of: management, Department providing the head's activities, Criminal Investigation Department (as a component of the Criminal Police), Criminal Intelligence Department (as a component of the Criminal Police), Department to combat crime related to trafficking (as a component of the Criminal Police), Emergency Department (as a component of the Criminal Police), Department of operational and technical measures (as a component of the Criminal Police), Department of identifying hazardous materials and environmental crimes (as a component of the Criminal Police), Department of preventive activities (as a component of the Patrol Police), Specialized Police Unit Department, Department of "KORD" activities (as a component of Specialized Police), working apparatus of the Ukrainian Interpol Bureau (on the Rights of the Department), Main Investigation Department, the Department of Organizing and Analytical Support and Rapid Response, Department of information support and coordination of the police "102", Law Department, Staff Department, Department of Communications, Department of financial and accounting support, internal audit Department, Department of logistics, Department of Communications and Telecommunications, Department of documentary support, Department explosion and technical services, regime and technical protection of information administration, international cooperation administration, administration of human rights, a special police Department, Department of Dog Training activities, special communications department, department of lustration, sector on the pension provision. Apparently the unit is a complex system, consisting 32 separate subdivisions.

Interregional territorial bodies include: Department of the patrol police, Department combating drug offences (as part of the Criminal Police), Department of internal security (as part of the Criminal Police), Department of Cyber Police (as part of the Criminal Police), Department of Economics Protection (as part of the Criminal Police), and Department of Security Police. The territorial bodies include main administrations of the National Police in the city of Kiev, regions, the Autonomous Republic of Crimea and the city of Sevastopol⁹.

According to Article 21 of the Law on the Police the direct management of the police is provided by the head of the police who is appointed and dismissed by the Cabinet of Ministers of Ukraine on request of the Prime Minister of Ukraine according to the proposals of the Minister of Internal Affairs of Ukraine. The head of the police has the first deputy and deputies who are appointed and dismissed by the Minister of Internal Affairs of Ukraine on the proposal of the head of police.

According to the Law as the head and deputy heads of the police may be appointed a person who meets the general conditions of enlistment in the police; has full juridical higher education; has worked in the sphere of law for at least seven years; has got experience in senior positions for at least five years.

The main powers of the head of the police are described in details in Article 21 of the Law on the Police: the head of the police chairs the police and guides police activities, ensures the implementation of police tasks; within the competence organizes and monitors the implementation by the police of the Constitution and laws of Ukraine, acts of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine, orders of Ministries, and the orders and instructions of the Minister of Internal Affairs of Ukraine on matters within the scope of the police; submits for consideration of the Minister of Internal Affairs of Ukraine offers to ensure the state policy in the sphere of security and public order, security and protection of human rights and the interests of society and the state, combating crime, provision of police services; in a certain order represents the police in relations with other state authorities, authorities of the Autonomous Republic of Crimea, local authorities and other or-

⁸ Structure and Organization [Electronic resource]. – Access mode : <http://www.policija.lt/index.php?id=17439>.

⁹ Structure – National Police of Ukraine [Electronic resource]. – Access mode : <http://www.npu.gov.ua/ru/publish/article/523003>.

ganizations in Ukraine and abroad; reports to the Minister of Internal Affairs of Ukraine on the implementation of police tasks and powers; distributes duties among his deputies; signs orders to the police; cancels in whole or in part acts of local police; within the powers gives instructions, which are mandatory for implementation by the policemen, government officials and police officers; approves regulations on separate structural subdivisions of the police; accepts to and dismisses from the service, appoints and dismisses policemen under the provisions of the Law; appoints and dismisses according to the procedure established by law and other legal acts of the civil service, civil servants of the central police administration; hires and dismisses according to labour legislation employees of the central governmental police body; takes decisions in a certain order on the promotion and bringing to disciplinary liability policemen; takes decisions according to state service legislation on the promotion and bringing to disciplinary liability civil servants of the central police body; takes in certain labour legislation decision on promotion and bringing to disciplinary liability of police officers; in a certain order brings the idea of representing police officers, civil servants of the central administration of the police and police state awards of Ukraine; confers special titles under this Law; assigns ranks of civil servants under civil service legislation; makes suggestions to the Minister of Internal Affairs of Ukraine on the formation of territorial police bodies which are legal entities of public law, within the limit of the number of policemen, civil servants and police officers and resources identified for their maintenance, as well as their liquidation, reorganization by the Cabinet of Ministers of Ukraine; establishes, liquidates, reorganizes enterprises, institutions and organizations, approves their provisions (statutes) in a certain order, appoints and dismisses their heads, and exercises other powers on management of state property belonging to the police department; enforces a certain Minister of Internal Affairs of Ukraine the exchange of information between the Ministry of Internal Affairs of Ukraine and the police; takes decisions in a certain order on the distribution of budget funds, managed by the police; fulfils the powers of the head of civil service authority in accordance with the law on civil service and exercises other powers in accordance with this Law¹⁰.

Thus, the experience of Lithuania where the organization of policing is regulated in details and compactly fixed in the current legislation is appropriate to adapt to the process of structure formation of the National Police in the course of reforming the internal affairs of Ukraine. Of course, no one should forget that the police system of Lithuania has its own distinct history of the development and its specificity. Considering successful results and productivity of Lithuanian policing it is appropriate to develop joint programs of experience exchange concerning the police structure, powers of police bodies, etc. At the state level based on the experience of Lithuania, the country that has recently carried out the reform of the police, with the assistance of Lithuanian and Ukrainian leading experts – experts in police law, it would be advisable to develop the doctrine of the National Police of Ukraine for the next decade and adopt based on doctrinal views the concept of the National Police of Ukraine as a clearly structured system, which is effective at all levels.

Summary

The article analyses the mechanism of the police establishment and initial functioning in Ukraine comparing with the same processes in Lithuania. This is a complicated legal process connected with changes namely in the legislation of Ukraine in accordance with the standards adopted in the European countries, especially the Baltic States, the Soviet period of which has similar effects with Ukraine in different spheres, but where this process is successfully completed and the organ is functioning reasonably well. The aim of the research is to analyse the development of the policing, legislative framework, relationship appearing in the process of policing in Ukraine, and comparing it with Lithuanian experience to find out the most suitable ways to improve this process. Studying and using gained successful experience of the foreign countries is essential, especially in order to solve problems of administrative and legal regulation of policing in Ukraine, to improve the current Ukrainian legislation.

¹⁰ The Law of Ukraine On the National Police dated 02.07.2015 No. 580-VIII [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/580-1>.

Анотація

У статті аналізується механізм створення та первинного функціонування поліції в Україні в порівнянні з тими ж процесами в Литві. Це складний юридичний процес, пов'язаний зі змінами в законодавстві України відповідно до стандартів, прийнятих в європейських країнах, особливо в країнах Балтії, радянський період яких має аналогічні з Україною наслідки в різних сферах, але таких, де цей процес успішно завершений і орган функціонує досить добре. Метою дослідження є аналіз розвитку поліцейської діяльності, нормативно-правової бази, відносин, які з'являються в процесі правоохоронної діяльності в Україні, і порівняння його з литовським досвідом для встановлення найбільш підходящих шляхів удосконалення цього процесу. Вивчення та використання накопиченого успішного досвіду зарубіжних країн має велике значення, особливо для того, щоб вирішувати проблеми адміністративного та правового регулювання правоохоронної діяльності в Україні з метою поліпшення чинного законодавства.

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Khrystyna Solntseva,

*Candidate of Legal Sciences, Associate Professor
of the Department of Administrative Law and Administrative Activities
of Yaroslav Mudryi National Law University*