

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa  
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp  
197402ZU34



# CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"  
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia  
Maracaibo, Venezuela



Vol.40

N° 72

Enero

Junio

2022

## Legal regulation of the police: international aspects

DOI: <https://doi.org/10.46398/cuestpol.4072.07>

*Maksym Pendiura* \*  
*Svitlana Pylypenko* \*\*  
*Nataliia Serbina* \*\*\*  
*Maksym Pluhatyr* \*\*\*\*  
*Lina Tovpyha* \*\*\*\*\*

### Abstract

Based on the analysis of theoretical developments, provisions of current legislation, generalizations of police practice and through the scientific method and philosophical reflection, the article reveals the essence of the legal regulation of the police at the international level. The experience of democracies developed in the field of legal regulation of police activities has been studied to improve the execution of law enforcement functions by the Ukrainian National Police. To harmonize national legislation in the field of management in police forces and units with international standards, proposals were made to improve the legal regulation of the activities of the Ukrainian National Police. The common characteristics of police structures in the countries of the Roman-Germanic legal family have been revealed. In conclusion, it is based on the desirability of adopting the Polish experience of structuring and legal regulation of the police forces, without giving them paramilitary features. It is argued about the advisability of defining in the Regulations of the National Police the main tasks related to the provision of police services.

**Keywords:** police officers; law enforcement; surveillance; legal regulation; police services.

\* Candidate of legal sciences, Associate Professor, Head of the Department of Theory of State and Law, National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-3589-0184>

\*\* Candidate of Legal Sciences, Professor, / Professor of the Department of Civil Law Disciplines, National Academy of Internal Affairs; Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-3346-3840>

\*\*\* Candidate of legal sciences, Associate Professor, Associate Professor at the Department of Theory of State and Law National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0001-7100-7267>

\*\*\*\* Candidate of legal sciences, Associate Professor, Associate Professor at the Department public management and administration National Academy of Internal Affairs, Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0001-5494-6772>

\*\*\*\*\* Postgraduate student, Teacher at the Cycle of Social Disciplines, Kyiv city medical professional college №4; Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0003-0625-1188>

## Regulación legal de la policía: aspectos internacionales

### Resumen

Basado en el análisis de desarrollos teóricos, disposiciones de la legislación vigente, generalizaciones de la práctica policial y mediante el método científico y la refelexión filosófica, el artículo revela la esencia de la regulación legal de la policía a nivel internacional. Se ha estudiado la experiencia de las democracias desarrolladas en el ámbito de la regulación jurídica de las actividades policiales a fin de mejorar la ejecución de las funciones de aplicación de la ley por parte de la Policía Nacional de Ucrania. Con el fin de armonizar la legislación nacional en el ámbito de la gestión en los cuerpos y unidades policiales con las normas internacionales, se formularon propuestas para mejorar la regulación jurídica de las actividades de la Policía Nacional de Ucrania. Se han revelado las características comunes de las estructuras policiales en los países de la familia jurídica romano-germánica. Como conclusión se fundamenta la conveniencia de adoptar la experiencia polaca de estructuración y regulación legal de los cuerpos policiales, sin darles rasgos paramilitares. Se argumenta sobre la conveniencia de definir en el Reglamento de la Policía Nacional las principales tareas relacionadas con la prestación de los servicios policiales.

**Palabras clave:** agentes policiales; aplicación de la ley; vigilancia; regulación legal; servicios policiales.

### Introduction

At the present stage of development of our society, the construction of the rule of law, the role and importance of legal regulation of policing become especially relevant, because the main feature of the rule of law is a high legal regulation of social relations.

The purpose of ensuring the realization of citizens' rights and freedoms in their relations with the police is to determine the main forms and activities of their structural units and officials that would ensure the daily democratic regime of these relations based on the inviolability of constitutional human and civil rights and freedoms. The efficiency of the investigated type of activity depends on the perfection of normative regulation of police activity, clarity of legal prescriptions, existence of the developed system of the legislation and the corresponding by-laws in this sphere (Kalayanov, 2015).

Ukraine is on the path to integration into the European Community. In this regard, our state has carried out a number of reforms in the political, social, economic, financial and law enforcement spheres, and first of all - in the internal affairs bodies. One of the main tasks of these reforms is to

improve the system of law enforcement agencies, including law enforcement agencies. After all, measures to reform the law enforcement system must be consistent with measures to improve the entire legal system of Ukraine. At the same time, the main directions of reforming the law enforcement system should not differ from other components of state and legal reform, namely parliamentary, administrative, municipal reforms, as well as certain reforms of the economic and political systems of Ukraine. An important area in this process is the analysis and implementation of best foreign experience in the legal regulation of policing.

Ensuring the proper functioning of the modern state as an association of citizens in society for the purpose of its organization, as well as defining the priority tasks of development in the initial stages requires clear and meaningful political and legislative regulations (IN EUROPE On November 7, 2015, the Law of Ukraine “On the National Police” entered into force. This was the beginning of a new historical round in the development of Ukraine as a democratic European state. However, at the same time, the state faced a number of new problems. The functioning of the newly established National Police in Ukraine involves a large number of issues related to the legislative and regulatory regulation of this process.

The urgency of these issues is further enhanced in view of the reform of the law enforcement system that is underway in Ukraine today and which cannot be successful without a proper general theoretical basis.

### **1. Methodology of the study**

The methodological basis of scientific work were general philosophical approaches, as well as general scientific, special scientific and own legal methods. The dialectical approach allowed using the principles of objectivity, comprehensiveness, development, specificity and dialectical contrast to substantiate the natural nature of the understanding of the role of police, to trace the patterns and current trends in their formation in today's conditions. Based on the anthropological approach, the essence of the functioning of the system of police bodies of a democratic state, the focus of which should be - the individual, his rights and freedoms.

Using the methods of the logical method, the existing approaches in science to the disclosure of the content of police bodies are generalized. Using a systematic method, the place of the police in the system of law enforcement agencies in particular and public authorities in general was revealed, the content of the system of bodies of the National Police of Ukraine was clarified. The formal-legal method was used during the study of international documents that determine the standards of law enforcement, as well as the national legislation of Ukraine, the judicial practice of

Ukraine on the exercise of its powers by the police. The comparative legal method allowed to carry out the comparative analysis of practical models of realization of law enforcement function of the state existing in different countries, etc.

## **2. Analysis of recent research**

Leading scientists such as A. Bilas (Bilas, 2016), D. Kalayanov (Kalayanov, 2010), O. Negodchenko (Negodchenko, 2003), and M. Pykhtin made a significant scientific contribution to the development of the topic of the law enforcement function of the state and the system of its proper provision. (Pykhtin, 2009), O. Pronevych (Pronevych, 2011), V. Sichkar (Sichkar, 2007), D. Bayley, E. Bittner (Bayley and Bittner, 1984), P. Hamula (Hamula, 2015), R. Mawby (Mawby, 1999) and others.

However, despite the significant scientific achievements on various aspects of legal regulation of law enforcement agencies, there is currently a lack of comprehensive scientific research on this issue in the context of a new paradigm of policing. Democratic transformations that take place in all spheres of public life in Ukraine necessitate the study and implementation of best European practices in the process of legal regulation of policing.

The purpose of the scientific article is to analyze the theoretical aspects of legal regulation of police activities, in particular in some European countries and the United States, which will allow to use the positive experience in the process of reforming the National Police of Ukraine.

## **3. Results and discussion**

### **3.1. The essence of policing and its legal regulation**

It is difficult to trace the names of law enforcement agencies in different countries, because such names are in many cases historical. Moreover, similar names – police, guards, gendarmerie, constables, marshals, sheriffs - in different countries may be associated with different law enforcement functions (Medvedev, 2014). Studying the international experience of the law enforcement system, it is important to establish analogues to the domestic concept of «law enforcement agency». In European countries, the criterion for selecting law enforcement agencies from the total mass of state bodies is, first of all, the range of tasks, which determines the set of state bodies called to perform these tasks. Usually, law enforcement agencies are allocated in accordance with the main functions of law enforcement (Chetverikov, 1997).

In continental Europe, the closest term to «law enforcement» is «police». It is based on the ancient Greek word «polythea», which was borrowed from Latin and later became widespread in Europe. In the original, it meant the management of the polis (ancient Greek city), ie public administration by the modern definition. This «general management» meaning of the word «police» persisted until the 19th century, when under the influence of the rapid development of the modern law enforcement system of many European countries and their colonies, it gradually «narrowed» to modern understanding (Mawby, 1999).

In general, the police in the foreign world is one of the oldest state institutions, the importance of which has always been and remains enormous for society as a whole and for all political regimes without exception (Sichkar, 2007). The concept of «police» is a polysemantic phenomenon and a basic category of modern police law theory. At different stages of the evolution of the medieval state, this category was used to denote «the state of an orderly society», «management of public affairs», «good order», etc. (Pronevych, 2011). D. Kalayanov found out that in the modern sense the term «police» began to be used relatively recently. Etymologically, the word «police» is related to the Greek «polis», ie city, and the term «politia» means the government of the city and the order that it should provide. For a long time, the term «police» was used in French to denote a set of administrative measures of the government. The transformation of the police into a body of law enforcement in the state took place in the era of absolutism (Kalayanov, 2010).

For countries with an Anglo-Saxon law enforcement system, the term «police» is also widely used to refer to certain government agencies. At the same time, law enforcement in general and law enforcement agencies as a set of institutions are defined by another term - «law enforcement». The literal translation into Ukrainian sounds like «coercion to law» or «legal coercion». The police in this system is one of the institutions that exercise legal coercion. However, it should be understood that in English the word «enforcement» has a positive sound and means not so much coercion as the use of force or authority with a certain positive purpose (Hamula, 2015).

In view of the above, the position of KS Belsky, who defined that the police and police law are mandatory elements without which the existence of the rule of law is impossible (Bayley and Bittner, 1984), is not in doubt.

We consider it expedient to dwell on the peculiarities of the legal regulation of police activity. After all, special legal knowledge about the features and manifestations of law, legal regulation, achieved by jurisprudence, allows more consciously and accurately clarify social processes that are subject to legal influence by the state and require their legal registration while filling its legal content (Selivanov, 1997).

In the scientific legal literature, legal regulation (from the Latin *reguläre* - to direct, organize) means one of the main means of state influence on public relations in order to organize them in the interests of man, society and the state. Legal regulation is a kind of social regulation, which is provided by a specially created state mechanism.

The main components of its mechanism are: a) the rules of law fixed in laws and other legal acts, which determine the model of possible and necessary behavior of the subject of public relations (rules of law - the basis of the mechanism of legal norms); b) legal facts, ie specific life circumstances associated with the implementation, change or termination of legal relations; c) the actual legal relations, ie social relations, mediated by the rule of law; d) acts of realization of the right of obligations of subjects of public relations, ie actions of their subjects within the limits of instructions of the corresponding legal norms; e) legal sanctions against violators of the law (Shemshuchenko, 2007).

The study of the problem of legal regulation of police activities involves clarifying the range of social relations that arise in it, ie determining the subject of legal regulation. It covers all social relations, which objectively, by their nature can be subject to regulatory and organizational influence and in these socio-political conditions require such influence, which is carried out through legal norms and all other legal means.

A systematic view of the role of law in regulating the police allows us to conclude that with the help of legal norms receives a legal basis: the system of powers of police officers to exercise their rights; forms, types, directions and admissible limits of police activity; system of objects and subjects of law enforcement activity of police officers; distribution of supervisory functions between units of a particular unit, etc.

Legal regulation of the activities of the National Police is provided by a significant number of regulations, which differ from each other in many respects: name, legal force, procedure for adoption, entry into force, etc. These include: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Code of Conduct for Law Enforcement Officials, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, inhuman or degrading treatment or punishment, «Code of Principles for the Protection of All Persons Arrested or Imprisoned in Any Form», «Basic Principles on the Use of Force and Firearms by Law Enforcement Officials», «Paris Charter for a new Europe», «European Convention for the Protection of Human Rights and Fundamental Freedoms», etc.

The beginning of the international or global origins of the police began with the adoption of the Code of Conduct for Law Enforcement Officials

adopted approved by UN General Assembly Resolution 34/169 of 17 December 1979, which states in Article 1: law enforcement officers must always perform their duties under the law, serving society and protecting all people from wrongdoing, in accordance with the high level of responsibility required by their profession. These provisions can be considered the first internationally established foundation for the development of the police and the cooperation of these bodies between many states.

Article 2 states that in the performance of their duties, law enforcement officials must respect and protect human dignity, uphold and protect human rights in relation to all persons. The article reveals the protection of those human rights that are defined and protected by national and international law. The Parliamentary Assembly of the Council of Europe N° 690 (1979) «On the Police Declaration» concluded that the full realization of human rights and fundamental freedoms guaranteed by the European Convention on Human Rights and other national and international instruments is a necessary basis for a peaceful a society that enjoys the benefits of order and public safety (Ilnytsky, 2016).

Recently, the countries of the European Union have significantly changed the legal basis for the operation of police services. At present, they are clearly divided into norms, rules and standards, which are obligatory for the organization of police services of all members of this community, and the national police legislation, which is specific to each country of the European Union, taking into account its specifics.

The first group includes documents regulating the establishment of the European Police Office (Council Decision of 06 April 2009 on the establishment of the European Police Office (Europol), Council Decision of 28 February 2002 on the establishment of Eurojust to strengthen the fight against serious crime, etc.). The second group includes national legislation governing the activities of the police services of each country of the European Union. Based on these and other acts, the EU police have made significant progress in protecting citizens' rights, combating crime, terrorism and other offenses, using a variety of activities, mainly administrative and legal, as EU police services are police (administrative). powers (Kalayanov, 2010).

Foreign experience in the organization of policing proves that the main elements of the system of legal regulation are, first of all, the rules of law, ie mandatory, formally defined rules of conduct that come from the state and are protected by it. Thus, reforming the system of bodies of the National Police of Ukraine requires appropriate legal support, which provides for the development and adoption of new regulations, amendments to existing legislation, as well as bringing the legal framework in line with international law on police activities.

Research of legal bases of activity, structure and functions of bodies of National police of Ukraine and foreign countries is actualized owing to need to specify directions of reforming and development of police bodies and to define possible ways of borrowing and use of positive experience of foreign countries for reform and development of bodies of National police of Ukraine. and the role in law enforcement systems.

### **3.2. Foreign experience of normative-legal regulation of police activity**

At present, Ukraine must take into account international standards of legal regulation in the field of policing and use the experience of foreign countries that have a positive development and successful reform of law enforcement agencies, including the police. Let's analyze the legal regulation of the police in some countries of the Romano-Germanic and Anglo-Saxon legal family.

As for the protection of citizens and their property, the maintenance of public order and the rule of law, in France this is the competence of the police. The French police consist of two centralized institutions, the National Police and the Gendarmerie, which have the same powers but different jurisdictions. Thus, the French National Police carries out law enforcement, patrolling, road control, identity checks; as well as under the supervision of judicial authorities carries out investigative and investigative activities. The French gendarmerie is a police force under the Ministry of Defense. The French gendarmerie is a paramilitary body created to maintain public safety and is designed to guarantee the protection of the population and their property. It is also a body of information, prevention and salvation. In addition to the above tasks, it may be assigned additional responsibilities related to the armed protection of the population. The gendarmerie performs the functions of the police in rural areas with a population of not more than 20,000 population (Law enforcement authorities of France).

According to the 1975 Constitution, power in Sweden is divided into legislative (represented by the king and parliament), executive (represented by the king through his ministers) and judicial (courts). Parliament is responsible for legislative activity and thus sets the framework for policing. In turn, the police report to the Minister of Justice, who is empowered to organize its activities. He performs these functions through the Chief Commissioner of the Swedish National Police, the Police Commissioner in Stockholm and the Chiefs of Police in the cities. In addition, the Swedish police work closely with local authorities and citizens to carry out their tasks (Pykhtin, 2009).

According to the 1998 Regulation on the National Police and the National Security Service, the police apparatus consists of: the Chief of

the National Police, the Chief of the Security Service, the Deputy Chief of the Security Service, the Chief of Police, the Superintendent of Police, the Senior Superintendent, the Police Commissioner, the Police Inspector and police constable (Behörighet som polisman).

The main tasks and functions of the police are regulated by the «Police Act» of 1997, which include: prevention and detection of criminal acts and other violations of public order or security violations; monitoring of public order and safety and intervention in case of violation; investigation and prosecution of crimes subject to public prosecution; providing public protection, information and other assistance where such assistance can be provided by the police; completion of activities received by the police station in accordance with special regulations (Polislag, 1984).

The National Police of the Czech Republic is the only service in the country that is exclusively in charge of all issues of public safety and criminal investigations. The structure of the Czech police is in full accordance with the administrative division of the country. It has 8 regional and 86 district offices. This most important service for the protection and enforcement of law and order is the President of the Police. It is directly subordinated to 4 deputies and 8 regional offices. Each department has its own operations center, forensic laboratory, and human resources, supply, and health departments. 86 district administrations mentioned above are subordinated to the regional administration. The latter, in turn, unite 620 local police units (Police in the Czech Republic).

According to the Czech Police Act of 17 July 2008, the Czech police have the following functions: police officers must observe the rules of courtesy and respect the honor and dignity of both themselves and their own; in the event of threats or breaches of internal order and security, the police officer is obliged to take action within his or her jurisdiction or take other measures that do not contradict the law; ensure that no one is injured as a result of the actions of the police; the police, in carrying out their tasks, cooperate with the armed forces, security forces and other state bodies, as well as with legal entities and individuals; ensuring the security of objects, premises and persons protected; prevention of crimes and socially pathological phenomena; educational activities in the field of internal order and security; providing support, care and assistance to victims of crime; crisis prevention and settlement; carry out work with offenders and persons with socially pathological or similar behavior with risk (ZÁKON O POLICII ČESKÉ REPUBLIKY).

In Hungary, issues concerning the structure and functions of the police are regulated by the Law on Police, adopted in 1994, which organizationally divides the Hungarian police into the following services: the main ones are the criminal police; public order police; traffic police; administrative police; police protection of persons and property; special units for combating

terrorism, airport security, explosives service; police forces, courier service; auxiliary units – economic, information technology, human resources, official services, legal, medical, secretariat (Bilas, 2016). And the functions of the Hungarian police are: crime prevention, monitoring of the criminal situation in Hungary; detection of crimes in the economic sphere and return of proceeds from crime; prevention and detection of offenses; state powers and law enforcement responsibilities; maintaining public order; fulfillment of responsibilities for the execution of sentences; provision of emergency measures, situations, threats of terrorism, etc. (Törvénya Rendőrségről, 1994).

In the context of studying the experience of law enforcement reform, given the similarity of historical development, it is advisable to refer to the experience of Poland, Latvia and Estonia.

The legal basis of the Polish police is a special law «On Police» from 06.04.1990, as well as a number of bylaws, namely: the order of the Council of Ministers «On methods of conduct in the exercise of certain powers of the police» from 26.07.2005. , the order of the Council of Ministers «About definition of cases, and also conditions and ways of application by police of means of direct coercion» from 17.09.1990, the order of the Minister of Internal Affairs and Administration «About armament of police» from 15.11.2000, the order of the Council of Ministers special conditions and methods of conduct in the use of firearms by police and the principles of use of firearms by police departments and subdivisions from 19.07.2005, order of the Minister of Internal Affairs and Administration «On police uniforms» from 20.05.2009 (Rozporządzenie rady ministrów w sprawie okeslenia przypadków oraz warunków i sposobów użycia przez policjantów środków przymusu bezpośredniego).

According to Article 2 of the Law on Police, the police consists of the following units: criminal police, investigative police, internal, preventive and auxiliary police in the organizational, logistical and technical spheres. The police include the judicial police. The detailed scope of tasks and principles of the organization of the judicial police is determined by the Minister responsible for internal affairs, in agreement with the Minister responsible for justice. The police also include: higher police, training centers and police schools; separate departments and divisions of anti-terrorist prevention; research institutes.

The functions of the police in accordance with Article 1 are: to protect the life and health of people and property from unlawful attacks that violate these goods; protection of public safety and order, including ensuring peace in public places and means of public transport and public transport, in traffic and in waters intended for public use; initiation and organization of measures aimed at preventing the commission of offenses and criminal phenomena and cooperation in this area with state bodies, local

governments and public organizations; conducting anti-terrorist activities within the meaning of the Law of June 10, 2016 on anti-terrorist activities; detection of crimes and offenses and prosecution of their perpetrators; protection of facilities that are members of the Council of Ministers, except for the premises for the Minister of National Defense and the Minister of Justice appointed by the Minister responsible for the Interior; supervision of specialized armed defense formations within the limits set by certain regulations, etc. (Ustawa o Policji).

Thus, the Polish law enforcement system is formed on the basis of international experience in the operation of law enforcement models, using its own, special approach. Given the large number of law enforcement agencies in Ukraine, it is advisable to adopt the Polish experience, including them in the police, without giving paramilitary features. We believe that such an approach would greatly simplify the understanding of their essence and optimize the constitutional and legal regulation of their activities.

The tasks of the Latvian police are to ensure individual and public safety, to prevent criminal offenses and other offenses, to detect crimes, to search for perpetrators of criminal offenses, and to provide assistance to institutions and individuals in protecting their rights. The police structure includes the state police, the security police, the municipal police and the port police. At the same time, the state police and security police within their competence perform their duties in the territory of the Republic of Latvia, the municipal police in the relevant administrative territory, and the port police in the ports (Hamula, 2015).

One of the effective reforms of the police in the post-Soviet space is the experience of police reform in the Republic of Estonia. National police bodies were formed here during the collapse of the USSR, when the Law «On Police» of September 20, 1990 (Bilas, 2016) was adopted.

The Estonian police structure consists of: police departments; police council; police prefectures; national specialized police bodies (central criminal police, security police, center of criminology and criminology) (Politseiseadus).

Analysis of the main activities of law enforcement agencies in European countries shows that the main task of almost all of them is to implement measures to combat crime. In the structure of all ministries of internal affairs there are divisions of criminal police (directorates, main departments, bureaus, departments) (Negodchenko, 2003).

In general, the analysis of regulations related to police activities in European countries allows us to identify standards and standards that have become the norm for democracies. Legitimacy, non-discrimination, compliance with the requirements of a democratic society and humanity should be considered the main principles in the activities of law enforcement

officers. The peculiarity of the implementation of these principles by European countries lies primarily in certain forms of realization of their rights and responsibilities by law enforcement agencies (Rudoy, 2004).

The experience of the Anglo-American legal family is also quite specific. Among the member states of the Anglo-American family, it is first necessary to single out England and the United States, which played a major role in shaping the legal family, as well as Canada, India, Australia, New Zealand and others.

As for the model of organization of police activities in the United States, in this country at the general federal level there is no single regulation to regulate police activities. Therefore, this issue is regulated in the relevant sections or articles of federal industry laws. The activities of the federal police are also regulated by departmental regulations - instructions, orders, guidelines for individual police functions. The regulations governing state police and local law enforcement agencies are state constitutions and laws, district law, city charters, and police ordinances of local departments.

The experience of the United Kingdom on the legal regulation of law enforcement is interesting. In this state, the status and system of state bodies are enshrined not in the Constitution (the basic law), as in most countries, but in several regulations and even in other (non-legal) sources, due to the legal system of Great Britain (Luchin *et al.*, 2012). The police, which is part of the British Home Office, play an important role in the life of English society. The organization of the police as a law enforcement agency is based on the administrative-territorial division of Great Britain. The British police are served by a number of central and regional services. Police functions are also performed by other bodies that do not belong to the Ministry of the Interior of the United Kingdom.

Thus, in the course of the study, we found that the police structures in the countries represented in our study have common features, namely the diversity of police systems and the presence of police bodies in different ministries and departments. The dominant type of police department in the law enforcement system of democratic countries is the model of «service to society», which is based on the paradigm of social partnership. The police officer should no longer play a repressive and autocratic role, but perform a positive, supportive function.

### **3.3. Analysis of the legislation governing the activities of the National Police of Ukraine**

The current legal regulation of the National Police plays an important role, as the effectiveness of legal regulation in many cases depends on the perfection of its legal framework, clarity of regulations, the presence of a developed system of legal norms. Because legal norms ensure: 1) definition

of the system of police powers; 2) the distribution of functions between units of a particular body and their employees; 3) consolidation of the system of objects and objects of police activity of employees.

It should be noted that the legal norms governing police activities are contained in different in form, nature and legal force of regulations. As a form of existence of legal norms designed to regulate relations in the field of law enforcement policing, regulations are a way of fixing and their activities determine their position in the socio-legal dimension of the national legal system. It is with the help of normative legal acts that the content of legal norms, provisions of law enforcement practice, as well as in most cases individual prescriptions, decisions of individual officials are revealed.

For example, Article 3 of the Law of Ukraine «On the National Police» states that the police are guided by the Constitution of Ukraine, international treaties of Ukraine, the binding nature of which is approved by the Verkhovna Rada of Ukraine, this Law and other laws of Ukraine, acts of the President of Ukraine. and resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine, acts of the Cabinet of Ministers of Ukraine, as well as acts issued by the Ministry of Internal Affairs of Ukraine, other regulations (About the national police). Thus, the current legal norm indicates the legislative and regulatory acts of Ukraine that regulate police activities and determine the legal status of the National Police of Ukraine. Also, the Decree of the President of Ukraine «On the Symbols of the National Police of Ukraine» of December 9, 2015 N° 692 established the emblem of the National Police of Ukraine, the flag of the National Police of Ukraine and official flags of territorial bodies, research institutions of the National Police of Ukraine (ABOUT SYMBOLS).

Today the main tasks of the National Police are defined by the current legal norms of Article 2 of the Law of Ukraine dated 02.07.2015 N° 580-USH «On the National Police» (Constitution of Ukraine), and in paragraph 1 of the current Regulation on the National Police approved by the Government of Ukraine dated 28.10.2015 N° 878 (On approval of the regulation on the ministry of internal affairs), contains other provisions that contradict the current legal norms of Article 2 of this Law.

In our opinion, it is necessary to amend paragraph 1 of the Regulation on the National Police, approved by the resolution of the Cabinet of Ministers of Ukraine of October 28, 2015 N° 878. In particular, paragraph 1 of the Regulation should be submitted as follows: «1. The main tasks of the police are to provide police services in the areas of: 1) protection of human rights and freedoms, as well as the interests of society and the state; 2) ensuring public safety and order; 3) combating crime; 4) the provision, within the limits set by law, of assistance services to persons who, for personal, economic, social reasons or as a result of emergencies, need such assistance».

It should be noted that in recent years in Ukraine the regulatory conflict continues, due to the inconsistency of scientific and legislative approaches to understanding the essence of police services. The state's position on the preservation of the term «police services» in institutional legislation is currently associated with the difficult prospect of reviewing the legislative, scientific and practical, including international, experience in the service activities of the National Police. This indirectly affects both the activities of the National Police and the attitude of society to its activities. This state of affairs is unacceptable given the existence in the world of a legally established mechanism for understanding the essence of police services and their provision in practice, which Ukraine still follows as a model.

The legal unregulation of the concept and content of police services is caused by the legislator's disregard for their basic principles and is not an obstacle to the current care of the National Police of Ukraine in their provision. In our opinion, one of the possible, albeit debatable, ways to resolve this issue would be to remove from the Law of Ukraine «On the National Police» and related legislation the term «police services», limiting the general indication that the National Police provides legislation, including services, the content, list and procedure for which are determined by law.

Changes in the regulatory framework, which should occur with changes in the structure of the Ministry of Internal Affairs of Ukraine, should be accompanied by appropriate changes to the regulations. However, recently the changes are reflected in only one legal act - the Law of Ukraine «On the National Police», which is the main normative document of the reform. This leads to a significant number of legal conflicts and gaps in the laws.

In Ukraine, the field of police law is at the stage of formation and definition of its own individual standards, and therefore there is an urgent need to harmonize the principles of law enforcement of Ukraine with world standards, which are enshrined in international regulations. The main European standards of policing are enshrined in Resolution № 690 (1979) of the Parliamentary Assembly of the Council of Europe «Police Declaration», adopted on 08.05.1979, Recommendation Rec (2001) 10 of the Committee of Ministers to member states of the Council of Europe «On the European Code of Police Ethics» of 19.09.2001; as well as in the relevant UN documents – UN General Assembly Resolution 34/169 «Code of Conduct for Law Enforcement Officials» of 17.12.1979; Basic principles of the use of force and firearms by law enforcement officials, adopted by the Eighth UN Congress on September 7, 1990.

Based on the analysis of the «Declaration on the Police» from 08.05.1979, the following standards of police activity can be distinguished: a police officer must perform his duties honestly, objectively and with a sense of self-worth; the police are a civil service; the police must fight

corruption; the police officer is obliged not to carry out the criminal order; a police officer should not assist in the prosecution of persons who have not committed any crime solely on the basis of their racial, religious or political affiliation; there must be a clear hierarchy of instructions in order to be able to track a police officer who has given an illegal order to his subordinates; the professional, psychological and material conditions in which the police officer performs his duties must protect his honor, dignity and impartiality and others (Declaration on the police: resolution N° 690).

In our opinion, these standards should become the main ones in ensuring the implementation by the National Police of Ukraine of the tasks assigned to it by the Ukrainian society and the formation of a vote of confidence in the law enforcement system. A clear marker of the real compliance of police activities in Ukraine with these standards is the public support of law enforcement, which is provided in the case of achieving publicity, apolitical, decentralized and decorrupted. The European Code of Police Ethics, adopted on September 19, 2001, states that the main objectives of the police are: to maintain public order, ensure law and order in society; protection and observance of fundamental rights and freedoms of the individual, enshrined, in particular, in the European Convention on Human Rights; crime prevention and control; detection of crimes; providing assistance and services to society.

Some of these standards are partially reflected in the Law of Ukraine «On the National Police», but the main problem of their implementation is the lack of comprehensive implementation of such standards. For example, Article 10 of the Law of Ukraine «On the National Police» defines the principle of political neutrality of law enforcement, this standard is fully consistent with European practice of organizing police work. At the same time, there are a number of legal provisions that prevent the implementation of the principle of depoliticization of the National Police.

In particular, Part 2 of Art. 21 of the Law of Ukraine «On the National Police» stipulates that the head of the National Police is appointed by the Cabinet of Ministers of Ukraine on the proposal of the Prime Minister of Ukraine in accordance with the proposals of the Minister of Internal Affairs of Ukraine (About the national police). The Ministry of Internal Affairs controls the activities of territorial bodies, institutions, establishments and enterprises belonging to the sphere of management (Of the regulation on the ministry of internal affairs); the Chief of Police reports to the Minister of Internal Affairs of Ukraine on the implementation of the tasks and powers assigned to the police (paragraph 5, part 1 of Article 22 of the Law of Ukraine «On the National Police») (About the national police); Territorial police bodies are formed, liquidated and reorganized by the Cabinet of Ministers of Ukraine on the proposal of the Minister of Internal Affairs of Ukraine on the basis of proposals of the Chief of Police. The structure of territorial

police bodies is approved by the head of the police in agreement with the Minister of Internal Affairs of Ukraine (parts 2, 3 of Article 15 of the Law of Ukraine «On the National Police») (About the national police).

All these powers of the Ministry of Internal Affairs confirm the de facto existence of the Ministry's legal powers to organize the activities of the National Police and control its implementation. At the same time, the Ministry of Internal Affairs is part of the Cabinet of Ministers of Ukraine, whose portfolios are distributed among representatives of various political forces on a quota basis, which gives grounds for concluding that it is impossible to avoid political influence on the National Police. Thus, the Law of Ukraine «On the National Police» needs to revise and amend a number of its provisions in order to harmonize them with European standards.

We come to the conclusion that it is necessary to revise and change a number of legal provisions of the Law of Ukraine «On the National Police» in order to avoid political influence on this structure. Thus, in order to accelerate the process of implementation of international standards in the Ukrainian legal field, it is necessary to carry out not superficial, but deep and meaningful reforms, which would be based on a clear legal basis. Therefore, the urgent task today is to bring all acts in line with European principles of policing and education of such a new generation of employees.

## **Conclusions**

The study of the legal status of law enforcement agencies of foreign countries gives grounds to state that the principles of organization, functions, powers of law enforcement agencies of foreign countries do not actually depend on the forms of government and territorial organization. And this is for the reasons that the unity of tasks that are constitutionally assigned to law enforcement agencies, in particular, ensuring the realization of public interests of the state and society in the field of the rule of law is inherent in the entire law enforcement system.

Given the large number of law enforcement agencies in Ukraine, it is advisable to adopt the Polish experience, including them in the police, without giving paramilitary features. This approach will greatly simplify the understanding of their essence and optimize the constitutional and legal regulation of their activities.

The common features of the police structures in the countries of the Romano-Germanic legal family were revealed, namely: the diversity of police systems and the presence of police bodies in different ministries and departments. The dominant type of police department in the law enforcement system of democratic countries is the model of «service to

society», which is based on the paradigm of social partnership. The police officer should no longer play a repressive and autocratic role, but perform a positive, supportive function.

In order to avoid legal conflicts, gaps in laws and bylaws, it is emphasized that any changes in the structure of the Ministry of Internal Affairs of Ukraine should be accompanied by appropriate changes in legal documents, not limited to the Law of Ukraine «On National Police».

The expediency of amending the Regulation on the National Police, approved by the Resolution of the Cabinet of Ministers of Ukraine of October 28, 2015 N° 878, substantiating the main tasks of providing police services in the areas of: protection of human rights and freedoms, as well as the interests of society and the state; ensuring public safety and order; crime prevention; providing, within the limits established by law, services to assist persons who, for personal, economic, social reasons or as a result of emergencies, need such assistance ”.

In order to legally regulate the concept and content of police services, arguments are given to remove the term «police services» from the Law of Ukraine «On the National Police» and related legislation, limiting the general indication that the National Police provides, within the law, including services, the content, list and procedure for which are determined by law.

### **Bibliographic References**

- ABOUTTHE NATIONAL POLICE. UNDATED. Law of Ukraine of 02.07.2015 N° 580-VIII Available online. In: <http://www.golos.com.ua/article/257729>. Consultation date: 28/09/2021.
- BAYLEY, David; BITTNER, Egon. 1984. “Learning the skills of policing” In: Law and Contemporary Problems. Vol. 47, No. 4, pp. 35–59.
- BEHÖRIGHET SOM POLISMAN. UNDATED. Available online. In: <https://lagen.nu/2014:1104#R1>. Consultation date: 28/09/2021.
- BILAS, Andrew. 2016. Law enforcement of EU countries: a comparative legal study. Kyiv, Ukraine.
- CABINET OF MINISTERS OF UKRAINE. 2015. On Approval Of The Regulation On The National Police: Resolution of the of October 28, 2015 N° 877 // Official Gazette of Ukraine. - 2015. - N° 89. - Art. 2971.
- CHETVERIKOV, Bladislav. 1997. Fundamentals of management in law-enforcement bodies. Moscow, Russia.

DECLARATION ON THE POLICE: RESOLUTION № 690. 1979. Of the Parliamentary Assembly of the Council of Europe of 08.05.1979. Verkhovna Rada of Ukraine. Available online. In: [https://zakon.rada.gov.ua/laws/show/994\\_803](https://zakon.rada.gov.ua/laws/show/994_803). Consultation date: 28/09/2021.

DISPOSITION OF THE COUNCIL OF MINISTERS ON THE MATTER OF OXIDATION OF CASES AND OF MEANS AND METHODS OF USE BY THE POLICE OF MEANS OF COERCION DIRECTLY FROM THE DAY of 17 September 1990. In: Constituent Diary. 1990. Vol. 70. P. 410.

FRENCH LAW ENFORCEMENT AGENCIES. Available online. In: [http://polis.osce.org/countries/details?item\\_id=24&lang=ru#np](http://polis.osce.org/countries/details?item_id=24&lang=ru#np) *Общая информация*. Consultation date: 28/09/2021.

HAMULA, Pavlo. 2015. Law enforcement agencies in the system of public authorities. Kharkiv, Ukraine.

ILNYTSKY, Vladimir. 2016. “European experience of legal regulation of administrative and procedural activities of the National Police” In: A young scientist. Vol. 39, No. 12, pp. 581–586.

IN EUROPE, Ukraine was advised not to play with the rules. Ukrainian Truth. Available online. In: <http://www.pravda.com.ua/news/2010/03/31/4902299/>. Consultation date: 28/09/2021.

KALAYANOV, Dmitry. 2010. EU police and the use of its experience in the administrative activities of internal affairs bodies of Ukraine: theory and practice. Kyiv, Ukraine.

KALAYANOV, Dmitry. 2015. “Legal regulation of police activities in European countries” In: South Ukrainian Law Journal. Vip. 1-2015, pp. 34-36.

LAW OF UKRAINE. 2015. “On The National Police” № 580-VIII. Database «Legislation of Ukraine» / Verkhovna Rada of Ukraine. Available online. In: <https://zakon.rada.gov.ua/laws/show/580-19>. Consultation date: 28/09/2021.

LAW ON THE POLICE OF THE CZECH REPUBLIC. 2008. Available online. In: <https://www.zakonyprolidi.cz/cs/2008-27>. Consultation date: 28/09/2021.

LUCHIN, Victor; VASILEVICH, Grigory; PRUDNIKOV, Anatoly. 2012. Constitutional law of foreign countries. Textbook for universities. Moscow, Russia.

MAWBY, Rob. 1999. Policing Across the World: Issues for the Twentyfirst Century. London. New York, USA.

- MEDVEDEV, Alexander. 2014. "Directions of reforming law enforcement agencies" In: Law and society. Vol. 1-2, pp. 140-145.
- NEGODCHENKO, Alexander. 2003. Organizational and legal bases of activity of law-enforcement bodies concerning maintenance of the rights and freedoms of the person: monograph. Dnipropetrovsk, Ukraine.
- OKUNKOV, Leonid. 1997. Constitutions of the European Union. Moscow, Russia.
- ON APPROVAL OF THE REGULATION ON THE MINISTRY OF INTERNAL AFFAIRS. 2015. Resolution of the Cabinet of Ministers of Ukraine of 28.10.2015. Database «Legislation of Ukraine» / The Verkhovna Rada of Ukraine. Available online. In: <https://zakon.rada.gov.ua/laws/show/878-2015-p>. Consultation date: 28/09/2021.
- ON THE SYMBOLS OF THE NATIONAL POLICE OF UKRAINE. 2015. Decree of the President of Ukraine of December 9, 2015 N<sup>o</sup> 692/2015. Official Gazette of Ukraine. 2015. N<sup>o</sup> 99. Art. 3389.
- POLICE CONSTITUTION. Available online. In: <https://ustawaopolicji24.pl>. Consultation date: 28/09/2021.
- POLICE IN THE CZECH REPUBLIC. UNDATED. Available Online. In: <https://www.megatour.cz/news/poleznoje/policiya-v-chexii/>. Consultation date: 28/09/2021.
- POLISLAG (1984: 387). Available online. In: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svenskforfattningssamling/polislag-1984387\\_sfs-1984-387](https://www.riksdagen.se/sv/dokument-lagar/dokument/svenskforfattningssamling/polislag-1984387_sfs-1984-387). Consultation date: 28/09/2021.
- POLITSEISEADUS. UNDATED. Available online. In: <https://www.riigiteataja.ee/akt/1027499>. Consultation date: 28/09/2021.
- PRONEVYCH, Alexey. 2011. Organizational and legal principles of the police (police) of Germany, Poland and Ukraine: a comparative legal analysis). Kharkiv, Ukraine.
- PYKHTIN, Mykola. 2009. Organizational and legal bases of Swedish police activity (comparative legal analysis). Kyiv, Ukraine.
- RECOMMENDATIONS REC. 2001. 10 of the Committee of Ministers to member states of the Council of Europe (On the European Code of Police Ethics (Approved by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' Deputies) // Center for Political and Legal Reforms: website. Available online. In: <http://pravo.org.ua/files/Criminal%20justice/rec1.pdf>. Consultation date: 28/09/2021.

- RUDOY, Katerina. 2004. Adaptation of the administrative legislation of Ukraine in the field of protection of personal rights of citizens to the norms of the European Union. Kharkiv, Ukraine.
- SELIVANOV, Vladimir. 1997. Methodological problems of introduction of constitutional principles «rule of law» and «rule of law». Law of Ukraine. Irpen, Ukraine.
- SHEMSHUCHENKO, Yuriy. 2007. Large encyclopedic legal dictionary. LLC «Legal Thought Publishing House». Kyiv, Ukraine.
- SICHKAR, Victor. 2007. Using the experience of the police of foreign countries in the activities of the police of Ukraine to ensure human rights and freedoms (organizational and legal aspect). Irpen, Ukraine.
- THE CONSTITUTION OF UKRAINE. 1996. № 254k / 96-VR. Information of the Verkhovna Rada of Ukraine. 1996. № 30.
- TÖRVÉNYA RENDŐRSÉGRŐL. 1994. évi XXXIV. Available online. In: <https://net.jogtar.hu/jogszabaly?docid=99400034>.TV. Consultation date: 28/09/2021.



UNIVERSIDAD  
DEL ZULIA

---

# CUESTIONES POLÍTICAS

Vol.40 N° 72

*Esta revista fue editada en formato digital y publicada en enero de 2022, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

[www.luz.edu.ve](http://www.luz.edu.ve)  
[www.serbi.luz.edu.ve](http://www.serbi.luz.edu.ve)  
[www.produccioncientificaluz.org](http://www.produccioncientificaluz.org)