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ENSURING SECURITY TO PERSONS UNDER STATE PROTECTION DURING MASS GUARD VENUES

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SUMMARY

The article examines the main stages of ensuring security to persons who are subject to state protection during mass events. It should be highlighted the existence of radical political forces, whose activities seek to destabilize the society, exert pressure on the authorities to achieve their goals.

Key words: the Law, state authorities, person's security, radical political forces.

ОБЕСПЕЧЕНИЕ БЕЗОПАСНОСТИ ЛИЦ, В ОТНОШЕНИИ КОТОРЫХ ОСУЩЕСТВЛЯЕТСЯ ГОСУДАРСТВЕННАЯ ОХРАНА, ВО ВРЕМЯ ПРОВЕДЕНИЯ МЕРОПРИЯТИЙ МАССОВОГО ХАРАКТЕРА

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АННОТАЦИЯ

В статье исследуются основные этапы обеспечения безопасности лиц, в отношении которых осуществляется государственная охрана, во время проведения мероприятий массового характера. Следует отметить наличие радикальных политических сил, в деятельности которых имеет место попытка дестабилизировать общество, осуществлять давление на органы власти ради достижения своих целей.

Ключевые слова: Закон, органы государственной власти, безопасность лиц, радикальные политические силы.

Statement of the problem. According to the Constitution of Ukraine division of state power divided into legislative, executive and judicial branches.Thus the focus should be not on the field of administrative management, but on the public administration, where the latter is defined as the executive and administrative, carried out on the basis of the laws of the activities of a particular group of public bodies (officials persons) on the practical implementation of the tasks of the state in the direct management of economic, social, cultural, administrative and political construction".

Thus, it is necessary to define the definition of officials or public authorities, in this case of the Department of State Guard of Ukraine (hereinafter – Department).

The purpose of this article is the procedure for the Office of powers in the field of public health.

The main material. In Ukraine, the development of state service as a qualitatively new institution began in 1993, when the purpose of its organizational and legal support on December 16, 1993 was adopted the Law of Ukraine "On Civil Service". Ever since at the first time at the legislative level there has been established principles of public service, general principles of activity and legal status of public officials, the basic components of public service.

In this law first time was legalized the term "public service", under which the law defines the professional activities of persons who hold positions in government and it's apparatus on practical tasks

and functions of the state and receive their salary from public funds.

It should be pointed out that the definition in the law was quite difficult to understand, as it appeals to concepts such as "service", "positions in government and its apparatus", "professional activity", etc., but does not specify clearly the scope of such activities . The sphere of state service is determined as the most controversial. The fact that the category of public officials do not include all employees, but only those who are in public service.

It should be noted that the introduction of the term "public official" (in the absence of the term "official" in general) has led to some controversy in its understanding, the lack of a clear definition raises many questions about the definition of certain categories of official in the state.

Regarding the concept of "official" in the literature, the following features characterize it:

– Employees engaged imperious activity and, accordingly, have organizational and administrative and administrative-household authority may take administrative enforcement measures;

– They hold posts in different organizations;

– The nature of their work is specific management tasks;

– they shall serve on paid basis, for a fee.

Unfortunately, the Law "On State Service" contains no definition of "public official" or provisions that define the range of people – public officials. Only through analysis of laws and regulations we may determine their approximate list. Thus, public officials are:

– Employees of the Verkhovna Rada of Ukraine;

– Employees of the Cabinet of Ministers of Ukraine;

– Officials of the central executive authorities, officials of ministries, state committees, their divisions and departments and other central executive authorities and their staff. In addition, they are servants of the state created special bodies – "services";

– Employees of local authorities and their staff of local administrations and territorial ministries of others; the military;

– Judges;

– Employees of the prosecution bodies;

– Employees of the Accounting Chamber of Ukraine;

– Members of the secretariat of the Ombudsman;

– Employees of the Ministry of Interior Affairs.

As you can see, not all of them are equal, the difference in the legal status of different categories of personnel may differ.

As for the service in the Department it should be noted that the latter is inherent in the nature of law enforcement. In particular, In part I article 2 of the Law of Ukraine "On State Protection of Workers of court and law enforcement bodies", contains a list of law enforcement agencies: public prosecutors' office, internal affairs, security, public security, customs authorities, border protection, the state tax service agencies and penal institutions of the State Control and Revision Office, fisheries, forestry public health and other agencies that carry out enforcement or law enforcement functions. According to the Law of Ukraine "On state protection of the government of Ukraine and officials," the State Guard of Ukraine is a state law enforcement agency of special purpose, that is subordinated to the President of Ukraine and Parliament of Ukraine. State guard is carried out by the Department of State Guard of Ukraine. Ministry of Internal Affairs of Ukraine, specially authorized central body of executive power for the protection of the state border of Ukraine and other central executive bodies of Ukraine, Security Service of Ukraine within its jurisdiction and in collaboration with the Office of State Protection of Ukraine take part in state guard.

The legal status of military personnel of The Department is determined primarily by the presence of special, very wide powers, in the exercise of which could cause harm.

Social guarantees stipulated by the legislation of Ukraine for the Armed Forces of Ukraine are distributed for the military of The Department.

The officer of The Department is not responsible for the moral, financial and physical harm caused by him in case of the legitimate use of physical force, special means and firearms. No one except the direct superiors have no right to interfere in military service activities of The Department. By obstructing the performance of their duties, insult to the honor and dignity, committing resistance, threat or violence against military personnel of The Department and members of their families, attacks on their lives, health and property in connection with their official duties occurs responsibility in accordance with the laws of Ukraine.

During the execution of the military of The Department of their duties an administrative detention of him is not allowed, as well as personal inspection or search of things that he has, the vehicles that he uses without authorized representative of the Department of State Guard of Ukraine, except of the cases of commiting crime by this military officer.

Employees of The Department, functional duties of which are not directly related to the administration of state guard of the government of Ukraine, high officials and buildings defined by this Law, in case of their involvement in the implementation of state guard, use the rights provided to the military of The Department according to paragraphs 1, 2, 4, 5, Article 18 of this Law. In these cases, they are subjects to the rights and guarantees provided to military personnel of The Department of State Guard of Ukraine.

Officers of The Department to perform assigned duties are entitled to: 1) require public compliance of the regime established at territories that are under the state guard; 2) to detain persons who have illegally entered or are trying to get to objects that are under the state guard, check documents, make identification exercise as prescribed by law detainees personal inspection and review of their things that they have, transport vehicles on which they arrived in the area of the object of protection, and transfer them to other law enforcement agencies; 3) together with the relevant police units temporarily restrict or prohibit in the implementation of security measures the movement of vehicles and pedestrians on streets and roads during travel by road of the President of Ukraine, Head of Verkhovna Rada of Ukraine, Prime Minister of Ukraine, as well as heads of foreign states, parliaments and governments, heads of international intergovernmental organizations and foreign delegations staying in Ukraine on an official visit, to prevent citizens in some parts of the terrain and objects require them to be in specific places or leaving them, to use vehicles owned by Ukraine government, enterprises, institutions, organizations and citizens (except for vehicles belonging to diplomatic missions of foreign states and international organizations as well as special purpose entities) for the prevention of crime, harassment and detention of persons suspected of committing a crime for bringing people in need of urgent medical care in hospitals, and to travel to the event with subsequent reimbursement in the prescribed manner of damage caused to owners of these vehicles; 5) In urgent cases related to the preservation of life and property or

to the direct pursuit of persons suspected of a crime to enter the residential and other premises of the citizens in the territory and premises of public authorities, enterprises, institutions and organizations regardless of ownership with the following notification of the prosecutor within 24 hours; 6) use during the security events communication equipment belonging to public authorities, enterprises, institutions and organizations regardless of ownership with subsequent reimbursement of losses in the prescribed manner; 7) store, carry and use firearms and special equipment on the grounds and in the manner prescribed by the Law of Ukraine "On Police" (565-12), and military regulations adopted in accordance with regulations, carry weapons and special equipment in all modes of transport .

Damage may be caused not only by actions but also by the inaction of state executive bodies or their officials by failing to discharge of their duties.

Thus, saying about damages caused by officers and officials of law enforcement agencies we should note the following.

According to Art. 1174 CC of Ukraine damage caused by individual or legal person by unlawful decisions, actions or omissions of an officer or official of a public authority or a local authority in the exercise of their powers shall be reimbursed by the State or local government, regardless of the guilt of such officer or official. In addition, Art. 1176, this responsibility is set in case of injury by unlawful decisions, actions or inactions of inquiry, pretrial investigation, prosecution or trial officials.

Thus, in the Law "On the procedure for compensation for damage caused by unlawful actions of the inquiry, preliminary investigation, prosecution and trial" of 01.12.2005. it is tatted that under the provisions of this Act refundable damage caused to citizens due to:

1. wrongful conviction, bring charges of illegal, unlawful taking and detention, unlawful conduct during the investigation or trial of the criminal case search, seizure, unlawful seizure, unlawful dismissal from work (office) and other procedural actions restrict the rights of citizens;

2. Illegal use of administrative detention or correctional labor, illegal confiscation of property, unlawful imposition of a fine;

3. Unlawful conduct search operations covered by laws of Ukraine "On Operational Activities", "On the organizational and legal framework to combat organized crime" and other legislative acts.

In cases of wrongful conviction, bring charges of illegal, unlawful taking and detention, unlawful conduct during the investigation or trial of the criminal case search, seizure, unlawful seizure, unlawful dismissal from work (office) and other procedural actions restrict the rights of citizens, harm is refunded in full regardless of the fault of officials of inquiry, pretrial investigation, prosecution and trial bodies.

Looking through international principles of compensation for damage caused by unlawful actions of judicial and law enforcement agencies, in accordance with Art. 9 of the Constitution, international treaties, ratified by the Verkhovna Rada of Ukraine is part of the national legislation of Ukraine. In particular, these include the Convention for the Protection of Human Rights and Fundamental Freedoms ratified by Verkhovna Rada, as well as other international treaties applicable in courts. As for the text of the European Court, recognizing the Convention, which is complex and difficult legal mechanism, including the jurisprudence of the European Court, Ukraine thus legislatively recognized the existence of state case law. In view of the foregoing, it is clear allegation that the decision of the European Court plays particular importance and value to the Ukrainian justice.

Thus, since the ratification of the Convention, or actually after the adoption of the Law of Ukraine "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 D.3 First Protocol and protocol number 2, 4, 7 and 11 of the Convention" dated July 17, 1997, our country as a member of the Council of Europe fully recognized the compulsory and without special agreement the jurisdiction of the European Court of Human rights in all matters concerning the interpretation and application of the Convention.

In the article 1166 of Civil Code of Ukraine contains general rule (general) tort, according to which any harm caused by the unlawful actions or omissions of moral rights or property of the person or entity shall be recoverable by the person who dealt it in full scale.

The second group of norms, unlike the first, contains the rules prescribed by law for special occasions injury and redress and therefore can be called special. This group of rules is devoted to separate (special) types of obligations of the injury, namely: the obligation of the government acts that caused harm (Articles 1173-1175), the obligations of prejudice by law enforcement agencies (Article 1176), commitment of harm by minors and incapacitated persons (Articles 1178-1184), the obligation of the damage by source of high danger (Articles 1187-1188), the obligation of harm by injury, other health damage or death (§ 2 chapter 82), the obligations of damage due to defects in the goods, works (services) (§ 3 of Chapter 82).

So, along with the general tort, which defines the general conditions of non-contractual liability for damage assignment, civil law determines the individual (special) torts, which displays some features of offenses and those that are exceptions to the general rules of tort liability. They are used in cases that are expressly provided by the law, the scope of their activity is expressly imposed by law and cannot be interpret or analogized.

Singling out of a specific tort is connected with the features of a common ground, or in connection with the installation of additional, specific reason responsibility.

It should be noted that compared with the general provisions, unlawful conduct in tort liabilities of this type has the specific feature.

Illegal act, which may make damage in this tort, as already noted, has certain characteristics. In particular, there is the comprehensive list of illegal acts, as a condition of liability.

If the damage caused to persons or entities as a result of other illegal act or omission or unlawful decision of the inquiry, preliminary investigation or trial body, it shall be compensated on a common basis.

For liability listed actions should be illegal.

Specificity of harm is that the person (in this case a police officer) exercise their duties (eg delaying a criminal who is in the home of a citizen).

Under the regulatory framework governing the activities of law enforcement agencies, employees of these agencies have the right to use coercive measures to protect the state's interests, personality, rights and lawful interests of citizens from criminal attacks. For example, performing their duties, military of The Department may use weapons to defend a guarded person, object, citizens from attack that threatens their home, to repel the attack of armed criminals, to protect themselves and their families from crimes. In these cases compensation for property damage is excluded.

References:

1. Administrative Law / Ed. M. Kozlov, L. Popova. M., 1999. 728 p.
2. Administrative activities. Some special: Textbook for students / A. M. Bandurka, M. V. Kornienko; by the Society. ed. A. M. Bandurka. Kharkiv: Espada, 2000. 368 p.
3. Antonjuk O. I. Members of civil legal right to self-defense: monograph/ Donetsk: Donetskyy LDUVS Law Institute, 2006. 220 p.
4. Baulin Yu. Exemption from criminal liability: monograph. K: Atika, 2004. 296 p.
5. Brovko N. V. Administrative law / Hryho–Ryang SA, Sokolov A.; ed. SA Grigoryan. Rostov: Phoenix, 2002. 288 p.
6. Venedyktov V. S. Legal liability of policemen of Ukraine: monograph. Harkiv: Izd Nat. Univ. of internal. affairs, 2003. 269 p.
7. Gribanov V. P. Liability for violation of Civil Rights and responsibilities. Moscow: Legal. Literature, 1973.

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РОЛЬ ЮРИДИЧЕСКОЙ ТЕХНИКИ В ПРЕДУПРЕЖДЕНИИ И ИСПРАВЛЕНИИ ЮРИДИЧЕСКИХ ОШИБОК: ТЕОРЕТИКО-ПРАВОВОЙ АСПЕКТ

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АННОТАЦИЯ

Статья посвящена анализу и формулировке идеи, согласно которой юридическая техника является неотъемлемой составляющей нормотворчества и правоприменительной деятельности, а также имеет особое значение в предупреждении и исправлении юридических ошибок, которые определённым образом оказывают негативное влияние за юридическую деятельность. Определено, что проблемы совершенствования законодательной деятельности и улучшение юридической техники требуют, прежде всего, активизации соответствующих теоретических исследований. Обращено внимание на то, что с целью недопущения ошибок в правотворчестве, законодателю необходимо соблюдать правила юридической техники.

Ключевые слова: юридическая техника, нормотворческая деятельность, правоприменительная деятельность, юридическая ошибка, законодательство.

THE ROLE OF LEGAL TECHNIQUE IN PREVENTING AND CORRECTING LEGAL ERRORS: THEORETIC AND LEGAL ASPECT

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SUMMARY

The article is devoted to the analysis and formulation of the idea that legal technique is an integral part of rulemaking and law enforcement activities, and it is of particular importance in preventing and correcting legal errors that have a certain negative impact on legal activity. It is determined that the problems of improving legislative activity and improving legal techniques require, above all, the activation of relevant theoretical studies. Attention is drawn to the fact that in order to avoid errors in lawmaking, the legislator must comply with the rules of legal technology.

Key words: legal technique, norm-setting activity, law enforcement activity, legal error, legislation.

Постановка проблемы. Сегодня остро стоит проблема юридически-технического совершенства нормативно-правовых актов и возможности их практической реализации. Последнее, как известно, достигается через последовательное, логическое и соответствующее использование юридических приёмов, средств, способов и соблюдения определённых правил разработки, составления и оформления нормативно-правовых документов. Указанное в общетеоретической юриспруденции получило название юридическая техника, которая в свою очередь также имеет существенное значение в предупреждении и исправлении юридических ошибок.

Юридическая техника в правотворчестве охватывает нормативные акты, то есть технико-юридические приёмы и правила при выработке законов и подзаконных нормативно-правовых актов, а в правоприменительной деятельности – индивидуальные акты, то есть технико-юридические приёмы и правила при выработке судебных актов, договоров и т.д. От юридической техники в значительной степени зависят эффективность законодательства в целом,