

## CURRENT ISSUES OF LAW ENFORCEMENT AND ITS HUMAN RESOURCES

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### PECULIARITIES OF APPLICATION BY POLICE OF MEASURES OF ADMINISTRATIVE RESPONSIBILITY FOR COMMITTING AN OFFENSE AND THE PROCEDURE FOR APPEALING AGAINST THEIR APPLICATION: FOREIGN EXPERIENCE AND ITS IMPLEMENTATION IN UKRAINE

**Abstract.** The article examines the peculiarities of the application of measures of administrative responsibility by police for committing an offense, as well as the procedure for appealing against their use in foreign countries and its implementation in Ukraine.

The certain guideline for improving the activities of the Ukrainian police can be the activities of the Austrian police to give a fairly broad power to impose significant fines on persons who have committed administrative offenses, which are inherently close to criminal offenses.

**Keywords:** *measures of administrative responsibility, the order of their application by police officers, features of appeal of the decision of police officers, foreign experience, directions of implementation.*

**Relevance of the study.** Among the bodies of administrative-tort jurisdiction that consider cases of administrative offenses and make decisions in these cases, the bodies of the National Police have the greatest powers. The need for a comparative study of the application of police measures of administrative liability for offenses, as well as the procedure for appealing their use in Ukraine and abroad is due to the desire to adapt national legislation to EU standards and the need to implement in the Ukrainian police best practices in policing.

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**Recent publications review.** It should be noted that the comparative analysis of the peculiarities of the use of administrative measures by police for committing offenses in Ukraine and some foreign countries was a partial subject of study within the broader legal issues of administrative liability and their effectiveness in the scientific works of many scientists: O. Bandurka, V. Bass, S. Bratelya, S. Bratkova, O. Bezpalova, O. Jafarova, T. Kolomojets, V. Kolpakova, S. Konstantinova, O. Kuzmenko, M. Loshitsky, T. Minka, R. Myronyuk, V. Olefir, I. Pastukh, M. Plugatyr, V. Sokurenko, O. Yunin and others [1-13].

At the same time, insufficient attention was paid to a separate systematic analysis of the peculiarities of police measures of administrative responsibility for committing offenses and the procedure for appealing them in Ukraine and some foreign countries, which determines the relevance of research on this topic within the scientific article.

**The article's objective.** To fulfill the purpose of the study below, we will try to set and solve a number of scientific problems, namely: to determine the state of legislative support for the application of administrative liability for offenses and the procedure for appealing in Ukraine and in leading foreign countries, which Ukraine focuses on in its European destinations development; to determine the powers of police officers to apply these measures to influence violators in these countries, to assess their effectiveness, to identify best European police practices in this area and to identify some proposals to improve the efficiency of the police of Ukraine.

**Discussion.** The analysis of normative sources regulating the powers of police officers in Ukraine to apply measures of administrative responsibility indicates that the main ones are as follows: [1]; 2) the Law of Ukraine "On the National Police" defines the powers of police officers to draw up case files on administrative offenses, which are detected by them and for which police officers apply measures of administrative responsibility [2]; 3) features of the procedure for registration of materials on administrative offenses by police, their consideration and adoption and implementation of decisions are regulated by departmental NPA, in particular: order of the Ministry of Internal Affairs of Ukraine of November 7, 2015 № 1395 "On approval traffic, recorded not in automatic mode" [3]; Order of the Ministry of Internal Affairs of November 6, 2015 № 1376 "On approval of the Instruction on registration of materials on administrative offenses in the police" [4], Order of the Ministry of Internal Affairs of January 13, 2020 № 113/34396 "On approval of the Instruction on registration of materials on administrative offenses in areas of road safety, recorded in automatic mode" [5].

It should be noted that the breadth of public relations, which are under the protection of the police, has led to a much larger, compared to other sectoral bodies, the scope of its jurisdiction. According to the current legislation (Article 222 of the Code of Administrative Offenses), the police have the right to consider and decide cases on a wide range of administrative offenses. These include cases of: violation of public order, traffic rules, rules to ensure traffic safety, rules for the use of vehicles, rules aimed at ensuring the safety of goods on transport, as well as illegal leave and illegal purchase of gasoline or other fuels and lubricants (in terms of exceeding the standards for the content of pollutants in the exhaust gases of vehicles). Although the police resolve a significant number of cases of administrative offenses, an important feature of its administrative and jurisdictional activities is that the dominant direction of these activities is to ensure public safety and order [6, p.130].

Analysis of procedural legislation, and in particular sections 3.4 of the Code of Administrative Offenses makes it possible to establish that police officers apply measures of administrative responsibility for committing administrative offenses, the jurisdiction of which is established by Article 222 of the Code of Administrative Offenses in two procedures: general and simplified.

The general procedure involves the following actions of the police officer:

- detection of the offense (establishment of the legal composition of the offense), in accordance with its qualifications for the general part of the Code of Administrative Offenses;
- identification of the offender (based on the presentation of documents confirming his identity) or identification of information databases to which police officers have access;
- fixation of the fact of an administrative offense in a procedural document - a protocol on an administrative offense;
- collection of evidence of the offense committed by the person: on the basis of identification and questioning of witnesses of the offense, the victim in case of its presence and the offender; inspection and seizure of things and documents from a person; drawing up a scheme of a traffic accident; sending materials for examination (for example, for drugs);

- registration of case materials on administrative offense (generalization of collected procedural documents);

- sending materials for consideration under the jurisdiction: to the head of the police body, if the official police officer who identified, recorded the offense and drew up the case file is not endowed with the authority to consider it; to the court (through the head of the police), if this category of case is under the jurisdiction of the court on the basis of Art. 221 CUoAO;

- consideration of the case by an official police officer or police chief within the time and in the manner prescribed by the Code of Administrative Offenses, usually within 15 days with the summons of the person suspected of the offense;

- decision-making by an official police officer or police chief as a result of consideration of the case (usually on the application of an administrative penalty in the form of a fine);

- accompanying the consideration of the case of an administrative offense in court (providing additional materials, ensuring the appearance and appearance of the participants in the trial);

- ensuring the execution of a court decision on the application of an administrative penalty in the form of administrative arrest (escorting a person to the place of administrative arrest).

In addition to the general procedure for bringing a person to administrative responsibility by a police officer, the legislation defines the grounds and the procedure for simplified proceedings, which is regulated by Article 279-1 of the Code of Administrative Offenses.

Simplified proceedings for registration of case materials on an administrative offense by the police are carried out on the following grounds and according to the following procedure:

- the basis for the application of simplified proceedings is the detection of administrative offenses in the field of road safety recorded automatically or if violations of the rules of stopping, parking, parking of vehicles recorded in the mode of photography (video), i.e. only in case of violations in road safety;

- in case of detection of this violation according to the photo of video recording in case of violation the policeman immediately makes a decision in the case of an administrative offense and hands a copy to the person who committed the offense for execution;

- in case of violation of traffic rules by means of automatic photo-video recording, in case of absence of the violator but presence of the car by which this violation was committed, the policeman is obliged to place on the windshield of the vehicle a copy of the decision on bringing to administrative responsibility. responsible person, at the scene of the offense) or notification of bringing to administrative responsibility (if technical capabilities do not allow to identify the responsible person at the scene of the offense);

- in case of violation of traffic rules by means of automatic photo-video recording, in case of absence of the violator and the car by which this violation was committed, the policeman is obliged according to the Unified State Register of Vehicles and, if necessary - according to the Unified State Register of Legal persons, natural persons - entrepreneurs and public formations to establish the responsible person, owner or owner of the vehicle. This person is sent a notice of bringing him to administrative responsibility. The notice of administrative prosecution must also contain information on the procedure for execution of the administrative penalty, including details for payment of 50 percent of the fine within 10 banking days from the date of the offense, which will be considered the execution of the administrative penalty in full. At the same time, the authorized police officer who deals with traffic violations recorded by technical means shall issue a decision to impose an administrative penalty for an offense in the field of road safety, recorded automatically, or for violation of the rules of stopping, parking, parking vehicles, recorded in the mode of photography (video recording), which is made without the participation of the person who is brought to administrative responsibility. Information on this offense and the decision to impose an administrative penalty no later than the next working day from the date of establishment of the responsible person, shall be entered in the Register of administrative offenses in the field of road safety;

- voluntary early execution of the police decision on imposition of an administrative penalty within 10 days from the date of issuance provides for the possibility of preferential payment of a fine - in the amount of 50 percent of the fine. In case of non-payment of the fine within 10 days, the decision to impose it is sent to the responsible person at his place of residence (registration) and must be executed within 5 days.

Separately, Chapter 24 of the Code of Administrative Offenses provides for the procedure for appealing against decisions in cases of administrative offenses issued by the police, it has the following features:

- usually the decision in cases of administrative offenses made by the police is appealed

by the person against whom it is made;

– a complaint against a decision of a police officer in a case of an administrative offense may be filed within ten days from the date of the decision, and for decisions in a case of administrative offenses in the field of road safety, recorded automatically – within ten days from the date of entry into force.

– the subject of the complaint is either a higher body (higher official, usually the head of the police department) or a district, district in the city, city or city district court, which considers the complaint in the administrative appeal defined by the Code of Administrative Procedure of Ukraine (hereinafter – CASU);

– the complaint is submitted to the body (official) that issued the decision on the case of an administrative offense and within three days is sent together with the case to the body (official) authorized to consider it accordingly;

– a person who has appealed the decision in the case of an administrative offense is exempt from paying state duty;

– a complaint against a decision of a police officer in a case of an administrative offense is considered within ten days from the date of its receipt;

– as a result of consideration of the complaint against the decision of the police officer in the case of an administrative offense, one of the following decisions may be made: leaving the decision unchanged, and the complaint without satisfaction; cancellation of the decision and sending the case for a new trial; cancellation of the decision and closing of the case; change of the measure of recovery in the direction of its mitigation;

– a copy of the decision on the complaint against the decision of the police officer in the case of an administrative offense within three days is sent to the person against whom it was issued.

In order to perform the research tasks within the framework of this scientific article, it is expedient to analyze the peculiarities of the application of police measures of administrative responsibility for committing an offense in some foreign countries and to find out the possibilities of its implementation in Ukraine.

In Germany, such an approach has been formed in the application of administrative sanctions by the German police. According to Art. 53 "Police Tasks" of the Federal Law on Administrative Offenses The German police are obliged to be based on the principles of internal conviction, to investigate all the circumstances of an administrative offense and to take all necessary measures to establish the truth [7]. According to this article, the police are endowed with the same rights and responsibilities when investigating administrative offenses as when prosecuting crimes, unless the law provides otherwise. The main normative act, which enshrines the general principles of administrative liability, key concepts, procedural rules for the consideration of cases of administrative offenses, their jurisdiction, the procedure for implementing decisions in cases of administrative offenses, is the Federal Law on Administrative Offenses. A more detailed analysis of this law allows us to state that it provides for three types of negative legal consequences of an administrative offense: 1) an administrative fine; 2) warnings and warnings with the recovery of a sum of money; 3) additional penalties. The administrative tort law of Germany, as well as many other developed European countries, imposes the principles of criminal procedure on the procedures of bringing a person to administrative responsibility, but differentiates them. In particular, in Germany there are three types of proceedings with the application of fines: the imposition of a fine at the scene of the offense; general proceedings in administrative-tort proceedings; court proceedings. The first type is the most simplified, as it is used for minor administrative offenses, if the sanction does not exceed 35 euros. It can be used by many administrative jurisdictions, but most of them are police officers in the performance of their duties related to the detection of administrative offenses at the place of their commission, but only with the consent and admission of guilt by a person who brought to administrative responsibility, which deprives the latter of the right to appeal the decision. The moment of the violator's consent is obligatory, because if it is available, a procedural document (act, protocol) on fixing the administrative offense is drawn up, a copy of which is handed to the violator, or a copy of the certificate of payment (if the fine is paid on the spot), strict reporting. If a person who is brought to administrative responsibility does not admit the fact of committing an administrative offense, or committing an administrative offense for which a fine of more than 35 euros, the police officer carries out a general procedure, which involves summoning and hearing the offender, witnesses, evaluation of evidence, examinations, etc., which ends with the adoption of a procedural document – a decision to impose a fine, which can be appealed in court [8, p. 34].

The consideration of cases of administrative offenses by police bodies and units in the Republic of Austria is quite similar. In this country there is a law "On Administrative Penalties" [9], which provides, as in Germany, three types of administrative proceedings. It is necessary to emphasize the differences and peculiarities of the Austrian model of exercising administrative-tort jurisdiction by the police. Despite the fact that the Austrian administrative law provides for rather severe sanctions for committing administrative offenses, in contrast to the model of our country (for example, a fine of two thousand euros, or imprisonment for up to six months), administrative offenses are not considered by courts but by administrative authorities, including the police. Even appeals in these cases are considered by administrative senates. That is, it can be concluded that in Austria the courts are excluded from the system of administrative jurisdiction. This indicates a high level of trust of citizens in the police and other entities that are authorized to consider cases of administrative offenses by the police [8, p. 5.].

In Switzerland, the procedure for applying administrative measures to violators is regulated by the Swiss Law on Administrative Procedure of 20 December, 1968, which provides for the possibility of considering cases of administrative offenses by the federal and cantonal police [10]. The procedure for dealing with administrative offenses in Switzerland, as in other European countries, is carried out in a simplified and general manner. The latter ends with a ruling in the case, which can be challenged by an objection, which is sent within 30 days to the body or police department that issued the ruling, which in turn send them to court. The simplified version of the proceedings on administrative offenses by the Swiss police is similar to the ones discussed above and does not differ significantly.

In the United Kingdom, police officers are not empowered to hear cases of administrative offenses. They only draw up the relevant documents, send them to the magistrate's court, which decides on the imposition of a penalty. Moreover, the punishment for similar offenses in the UK is much more severe than in Ukraine. For example, for petty hooliganism you can get up to six months in prison [11, p. 26].

If we talk about the consideration of cases of administrative offenses in France, it should be noted that the French administrative tort law is unsystematic and is based on a significant number of sectoral legislation, in contrast to the domestic model. Police officers are mostly involved in detecting and registering offenses, and direct consideration is carried out by a special body – the police tribunal, as a special court set up to deal with petty offenses. Police and gendarmes do not have the right to prosecute those who have committed offenses, they only deal with their registration [12, p. 256; 13].

**Conclusions.** Having analyzed the peculiarities of the application of measures of administrative responsibility by police for committing offenses in Ukraine and abroad, we came to this conclusion. The powers of the police of Ukraine to register and consider cases of administrative offenses and to apply measures of responsibility for their commission are much broader, compared to some similar police units of other countries, which we discussed above, as domestic law has given the police a wide range of administrative and tort powers. Drawing up a report on an administrative offense, gathering evidence, the use of detention, inspection and seizure of items and documents, temporary detention of vehicles before the application of administrative penalties – mostly fines. In contrast, the police of most European countries have the power to prevent offenses, detect them and record the fact of their commission in the relevant protocol (act), i.e. the actual suspicion of their commission, the final decision on the guilt of a person and the imposition of a penalty. At the same time, a certain guideline for improving the activities of the Ukrainian police can be the activities of the Austrian police to give a fairly broad power to impose significant fines on persons who have committed administrative offenses, which are inherently close to criminal offenses.

Since the broadest administrative and tort powers are vested in the police to detect, record traffic violations and bring individuals to administrative responsibility below, taking into account foreign experience, we make some suggestions to improve the legal and organizational mechanisms to ensure the implementation of their powers in this area. In particular, in order to respect the rights of citizens in the police and taking into account foreign experience within the national legal doctrine and practice of administrative liability for violations of traffic rules recorded automatically, it is advisable to establish the following:

First, for committing an offense in the field of road safety, recorded in automatic mode to prosecute not the owner of the vehicle, and the driver – the person who actually drove the vehicle at the time of fixing the offense with a technical device operating in automatic mode. Once the offense has been recorded, the vehicle is to be stopped, and if this is not possible, the

obligation to identify the offender rests with the relevant National Police unit. In this case, the identification of the person driving the vehicle at the time of fixing the offense by a technical vehicle operating in automatic mode can be done by using a driver's license with a chip, which would contain the relevant information about the driver. To do this, it is necessary at the legislative level to establish the driver's obligation to fix the driver's license at the top of the windshield of the vehicle.

Second, to establish the administrative responsibility of the owner of the vehicle for improper transfer of the vehicle for driving to another person or evasion of entering information about the proper user of the vehicle in the Unified State Register of Vehicles.

Third, to regulate the procedure for releasing the owner of the vehicle from liability in case of: illegal disposal of the vehicle or its license plates from the owner's possession; being behind the wheel of a vehicle on the legal grounds of another person. In this case, the obligation to provide evidence of his non-involvement in the offense rests with the owner of the vehicle.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**Роман МИРОНЮК, Данієль СВАТОН, Микола РЕПАН  
ОСОБЛИВОСТІ ЗАСТОСУВАННЯ ПОЛІЦЕЙСЬКИМИ ЗАХОДІВ  
АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ ЗА ВЧИНЕННЯ ПРАВОПОРУШЕННЯ  
ТА ПОРЯДОК ОСКАРЖЕННЯ ЇХ ЗАСТОСУВАННЯ: ЗАРУБІЖНИЙ  
ДОСВІД ТА ВПРОВАДЖЕННЯ ЙОГО В УКРАЇНІ**

**Аноація.** Метою статті є дослідження особливостей застосування поліцейськими заходів адміністративної відповідальності за вчинення правопорушення, а також порядку оскарження їх застосування в зарубіжних країнах та впровадження його в Україні.

На виконання мети дослідження в статті було поставлено та вирішено ряд наукових задач, а саме: з'ясовано стан законодавчого забезпечення застосування заходів адміністративної

відповідальності за вчинення правопорушення та порядку їх оскарження в Україні та в провідних зарубіжних країнах, на які Україна орієнтується в своїх європейських напрямках розвитку; визначено повноваження поліцейських по застосуванню даних заходів впливу на порушників в цих країнах, оцінено їх ефективність, виокремлено передові європейські практики діяльності поліції в цьому напрямку та виокремлено окремі пропозиції для підвищення ефективності діяльності поліції України.

Здійснивши аналіз особливостей застосування поліцейськими заходів адміністративної відповідальності за вчинення правопорушення в Україні та зарубіжних країнах ми прийшли до такого висновку. Повноваження поліції України щодо оформлення та розгляду справ про адміністративні правопорушення та щодо застосування заходів відповідальності за їх вчинення є значно ширшими, порівняно з деякими аналогічними поліцейськими підрозділами інших країн. В той же час як певний орієнтир для удосконалення діяльності поліції України може слугувати діяльність поліції Австрії щодо наділення досить широкими повноваженнями щодо застосування суттєвих штрафних стягнень до осіб, які вчинили адміністративні правопорушення, які за своєю сутністю наближені до кримінальних проступків.

**Ключові слова:** заходи адміністративної відповідальності, порядок їх застосування поліцейськими, особливості оскарження рішення поліцейських, зарубіжний досвід, напрямки впровадження.

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### **ROLE OF PUDUCHERRY POLICE SPECIAL TASK FORCE IN CRIME CONTROL**

**Abstract.** The article is devoted to the study of the effectiveness of special police units on the example of STF. Some crimes require the police to change their usual process and accept something out of the ordinary so that they can effectively reach the real culprits or solve a complex case that has a wide network. This led to the creation of a new police unit. In Puducherry, India, the Special Task Force (STF) is a unit of the state police that deals with tasks beyond the control of the ordinary criminal police. They are a specialized unit with jurisdiction across the state and often use the means they want to solve crimes. Thus, the most heinous crimes, which often involve sophisticated gangs, are considered by the STF. In this way, the STF has become the type of unit needed to investigate crimes and solve impossible cases with maximum devotion and perseverance.

**Keywords:** crime control, Special Task Force, concept of STF, Puducherry Police, STF officers, efficiency.

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