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### **SOME LEGAL ASPECTS RELATED TO FIREARMS IN THE NATIONAL POLICE OF UKRAINE**

**Артем Плахотний. ДЕЯКІ ПРАВОВІ АСПЕКТИ, ПОВ'ЯЗАНІ ІЗ ВОГНЕПАЛЬНОЮ ЗБРОЄЮ В НАЦІОНАЛЬНІЙ ПОЛІЦІЇ УКРАЇНИ.** У статті акцентовано увагу на правових аспектах, пов'язаних із вогнепальною зброєю в Національній поліції України. В статті аналізуються чинні нормативно-правові акти, які визначають різницю між термінами «застосування» та «активне застосування» вогнепальної зброї, описані ключові наукові погляди на цю проблематику. Автором встановлено основні відмінності між поняттями «застосування» та «активне застосування» вогнепальної зброї.

Стаття спрямована на аналіз правових аспектів щодо розрізнення термінів «застосування» та «активне застосування» вогнепальної зброї поліцейськими Національної поліції України. Автор проводить аналіз юридичної бази стосовно використання зброї поліцейськими, включаючи міжнародні стандарти прав людини, національні закони та нормативно-правові акти.

В статті розглядаються різні ситуації, в яких поліцейські можуть застосовувати вогнепальну зброю, такі як самозахист, захист інших осіб та запобігання серйозним злочинам. Автори підкреслюють важливість чіткого розрізнення термінів «застосування» та «активне застосування» вогнепальної зброї, оскільки між ними існує суттєва різниця.

Крім того, стаття розглядає можливі юридичні наслідки «активного застосування» зброї, зокрема вимогу для поліцейських обґрунтувати свої дії та можливість кримінальної відповідальності у випадку, якщо використання сили було надмірним або незаконним.

**Ключові слова:** зброя, вогнепальна зброя, застосування, активне застосування, правові аспекти, закон.

**Relevance of the study.** According to Art. 3 of the Constitution of Ukraine, a person, his life and health, honor and dignity, inviolability and safety are recognized as the highest social value in Ukraine, in connection with which the state must ensure the realization of the rights and freedoms of citizens. The National Police of Ukraine is one of the central bodies of the executive power that serves society by ensuring the protection of human rights and freedoms, countering crime, and maintaining public safety and order.

It is worth paying attention to the fact that a police officer throughout the territory of Ukraine, regardless of the position he holds, location and time of day, in the event that any person addresses him with a statement or notification of events that threaten personal or public safety, or in the event upon direct detection of such events is obliged to take the necessary measures for the purpose of rescuing people, providing assistance to persons who need it, and to notify the nearest police authority [1].

The above indicates that a police officer must be constantly ready for professional intervention in any situation that arises both during the performance of his official duties and outside of them. This is especially true for patrol officers, who are the first to respond to reports of crime, and given their 24-hour duty.

**Recent publications review.** The issue of distinguishing between the concepts of "use" and "active use" of firearms was and remains relevant [1-8]. This issue was investigated in the scientific works of V. Osadchiy, T. Minka, V. Timofeev and others [2, 3, 4]. However, a

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unified and clear approach to distinguishing the concepts of "application" and "active application" at the scientific level has not yet been developed.

**The article's objective** is to characterize and analyze some legal aspects related to firearms in the National Police of Ukraine.

**Discussion.** The most severe measure of coercion is the use of firearms, in connection with which it is extremely important for the police to comply with the requirements of the law to prevent excesses of authority and harm. The actualizes the research of regulatory and legal regulation of relations in the sphere of the application of police coercive measures, including the use of firearms during the performance by police officers of their tasks and powers.

In the context of our research, it is worth paying attention to the terminological characteristics of the concepts of "use" and "active use" of firearms.

Let's start with the fact that in Ukraine the issue of the use of firearms is enshrined in Art. 46 of the Law of Ukraine "On the National Police" [1].

The very fact of enshrining the strictest coercive measure at the legislative level is positive and corresponds to international legal acts regarding the use of firearms. At the same time, questions arise regarding the terminology used in the article, which regulates the use of firearms.

According to Art. 46 of the Law, a police officer is authorized to store and carry firearms, as well as their use and use only on the condition that he has undergone appropriate special training.

Part 10 of the commented article states that the police officer is obliged to notify his supervisor in writing about the use of firearms, as well as to immediately notify his supervisor of the active use of firearms, who, in turn, is obliged to inform the central management body of the police and the relevant prosecutor. Having introduced the concept of "active application", the legislator does not disclose it and does not explain the difference between it and the term "application".

The legislator delineates that when using a weapon, a police officer must notify the supervisor, and when actively using a weapon, the immediate supervisor is immediately notified, who is obliged to transfer this information to the central police management body and the relevant prosecutor.

As we can see, Article 46 of the Law contains debatable provisions in almost every part, both in the context of defining the content itself and in the matter of ignoring language laws when constructing sentences. Part 10 of Art. 46 is not an exception. 46 because, firstly, the issue of informing the manager when using and actively using firearms is unclear, and secondly, it is not clear how to distinguish the concept of "active use of firearms" from "use of firearms"?

We consider it expedient to focus attention on the comparison of terms of use and active use of firearms.

This is the opinion of the team of authors of the Dnipropetrovsk State University of Internal Affairs in the scientific and practical commentary of the Law of Ukraine "On the National Police of Ukraine", who defined the active use of weapons as the use of firearms without warning. Cases of such application are:

- 1) when a person detained by a police officer with a firearm in his hands tries to approach him, shortening the distance determined by him, or touch the weapon;
- 2) in the case of an armed attack, as well as in the case of a sudden attack using military equipment, vehicles or other means that threaten the life or health of people;
- 3) if a person detained or arrested for committing a particularly serious or serious crime escapes using a vehicle;
- 4) if the person offers armed resistance;
- 5) to stop an attempt to take possession of a firearm [2, p. 220].

In the mentioned work, V. Osadchii conducted an etymological analysis of the term "apply" and determined that it is use, the use of something with benefit, the use of something that is expressed in active behavior. Taking this into account, we can conclude that V. Osadchii equates the content of the terms of use and active use of firearms [3, p. 156].

At the same time, this team concluded that this is not appropriate and erroneous, because according to part 13 of Art. 46 of the Law of Ukraine "On the National Police" outlines an exhaustive list of reasons for the use of firearms by police officers, namely: "a police officer may use a firearm to signal an alarm or call for auxiliary forces, or to neutralize an animal that threatens the life or health of a police officer and other persons" [1].

The commentary also emphasizes that the difference between the two terms is that a police officer can use a firearm only against a person and use it to provide auxiliary functions:

calling for reinforcements and giving an alarm signal [4, p. 238].

At the same time, in the work mentioned above, the DDUVS team equates the meaning of the term's "use" and "active use" of firearms, which, in our opinion, is not quite appropriate. The team of authors defined the use of a weapon as the use of a firearm without warning.

However, we can only agree that a police officer can only actively use a firearm against a person.

We believe that the process of using a firearm includes the following stages: taking a firearm into one's hands (baring the weapon), bringing it to readiness, directing it in the direction of the offender (object), firing a shot if there are grounds provided for in Article 46 of the Law of Ukraine "On National police" without harming the life and health of the offender.

When analyzing the current legal norms that regulate the process of use and active use of firearms, we singled out a rather significant difference and difference between these processes, which is that a police officer must notify his supervisor in writing about the use of firearms, and regarding the fact of active application, the law enforcement officer is obliged to inform the manager, who, in turn, has the duty to inform the relevant prosecutor and the central police management body, which is specified in Part 10 of Art. 46 of the Law "On the National Police" [1] and in paragraph 54 of Section II "Criminal offenses, other offenses, emergency situations and other events related to police officers, employees and cadets (students) of educational institutions (educational centers) with specific conditions trainings that train police officers and the facilities where they are located" "List of offenses and events, information about which is submitted to the central police management body, the main departments of the National Police in the Autonomous Republic of Crimea and the city of Sevastopol, the regions and the city of Kyiv", approved by the order of the NPU dated July 4, 2018 No. 645 [5].

In the "List of offenses and events, information about which is submitted to the central authority of the police, the main departments of the National Police in the Autonomous Republic of Crimea and the city of Sevastopol, the regions and the city of Kyiv", approved by the Order of the NPU dated 04.07.2018 No. 645, it is determined that in case of application, use of a weapon by a police officer or careless handling of a weapon by a police officer, which led to the death or injury of a person, the law enforcement officer through his supervisor must notify the central police management body of this fact within 30 minutes. An exception is the facts of the use of firearms, which are not reported to the central police management body, but the facts of active use are always reported [5].

And as a conclusion, analyzing and combining the current provisions of the Law "On the National Police" "List of offenses and events, information about which is submitted to the central police management body, the main departments of the National Police in the Autonomous Republic of Crimea and the city of Sevastopol, regions and cities. Kyiv", approved by the order of the NPU dated 04.07.2018 No. 645 and "Procedure for drawing up reporting forms No. 1-NP o/s "Report on the state of law enforcement by police officers and emergency events involving them", approved by the order of the NPU dated 07.21.2016 No. 626, we can state that the use of weapons can be considered active only in the case when a person was killed, maimed or injured as a result of the shot. What the police officer reports to the manager, who is obliged to inform the prosecutor and the central police management body about it.

**Conclusions.** So, summarizing all of the above, it is worth summarizing that the use of firearms by a policeman consists in taking a weapon in his hands (baring it), bringing it to the ready and firing a shot if there are grounds provided for in Article 46 of the Law on the National Police, without causing harm to life and health of the person (person, offender). After such use, the police officer must report this fact to his immediate supervisor for further official investigation and write-off of used cartridges [6, 7].

The active use of firearms, in turn, consists in taking (baring) a firearm in one's hands, bringing it to the ready, directing it in the direction of the offender and firing a shot with the obligatory infliction of bodily harm to the person (mutilation, injury, injury, death).

After the active use of firearms, the police officer is obliged to immediately notify his supervisor, who must inform the relevant prosecutor and the central governing body of the National Police in order to appoint an official investigation, write off the bullets and enter information in the ERDR and start a pre-trial investigation into the fact of causing harm to health or death persons as a result of the actions of a police officer [6, 7, 8].

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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#### ABSTRACT

The article focuses on legal aspects related to firearms in the National Police of Ukraine. The article analyzes the current legal acts that define the difference between the term's "use" and "active use" of firearms, describes the key scientific views on this issue. The author established the main differences between the concepts of "use" and "active use" of firearms.

The article is aimed at analyzing legal aspects regarding the distinction between the term's "use" and "active use" of firearms by police officers of the National Police of Ukraine. The author conducts an analysis of the legal framework regarding the use of weapons by the police, including international human rights standards, national laws and regulations.

The article examines the various situations in which police officers may use firearms, such as self-defense, the protection of others, and the prevention of serious crimes. The authors emphasize the importance of clearly distinguishing between the term's "use" and "active use" of a firearm, as there is a significant difference between the two.

In addition, the article examines the possible legal consequences of the "active use" of weapons, including the requirement for police officers to justify their actions and the possibility of criminal liability if the use of force was excessive or unlawful.

**Keywords:** *weapons, firearm, application, active use, legal aspects, law.*