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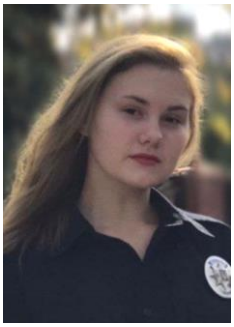

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PROBLEMS OF THE USE OF SPECIAL MEASURES DURING ADMINISTRATIVE DETENTION

Abstract. The administrative and legal support for the use of special means during administrative detention is considered, the existing problems are singled out and the ways of their solution are outlined. On the other hand, a large number of countries resort to administrative detention of illegal migrants due to violations of immigration laws and regulations, including stay after the expiration of the permit, lack of identity card, documents, use of other people's travel documents, not leaving the country after expiration of the established term, etc. The purpose of administrative detention is to guarantee the possibility of another measure, such as deportation or expulsion. Sometimes administrative detention is also allowed for reasons of public safety and public order, in particular.

The purpose of this article is to examine in detail the legal framework with which the imprisonment of migrants must comply, in particular with regard to the fundamental principle of international law that no one shall be subjected to arbitrary detention. International human rights norms, principles and standards define the content of this principle. Such norms, principles and standards apply to all persons, including migrants and asylum seekers, as well as to criminal and administrative proceedings.

Keywords: *administrative detention, special means, means of restriction of mobility, protocol on administrative detention.*

Relevance of the study. The use of administrative detention is associated with the restriction of the individual's right to liberty, which requires that the police officers diligently comply with the legal provisions governing the use of this measure of restraint. Moreover, the use of administrative detention is often associated with the need to use special means, which requires police officers to have the appropriate level of legal and tactical and special training in order to respect, firstly, human rights and freedoms and, secondly, personal security measures. Unfortunately, today there are frequent cases of violations of the right to liberty by police officers during administrative detention and the use of special equipment. Therefore, the appropriate level of administrative and legal training of police officers depends on their respect for human rights and freedoms during the use of special means of administrative detention.

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Recent publications review. Problems of the use of special measures during administrative detention were investigated by such scientists, as: .Bandurka O., Skakun O., Rubinstein S., Lopaeva O., Bohatyrova O., Bohatyrov A. and others [1-9].

It should be noted that the basic principles of the use of restraints by the police, as well as procedural aspects and limitations on the intensity of use of restraints by the police, are set out in several international instruments, including:

– UN General Assembly Resolution 34/169 Code of Conduct for Law Enforcement Officials;

– Resolution No. 690 (1979) of the Parliamentary Assembly of the Council of Europe "Declaration on Policing";

– Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990).

In accordance with international standards and the practice of the European Court of Human Rights, Article 29 of the Law of Ukraine "On the National Police" establishes that the reverse police action must be [1, 2]:

1. Lawful, i.e. specified in the laws.

2. Necessary, i.e.: 1) if another method cannot be used for executing the duties of the police; 2) if using another method would be ineffective; 3) if the method would cause the least possible harm to the recipient of the method as well as to other persons.

3. proportionate, that is, that the harm done to the rights and freedoms of persons or to the interests of the public or the state, preserved by law, does not outweigh the benefit for the protection of which it was applied, or the created threat of schooling.

4. Effective, i.e. as long as the application of the police action ensures the fulfillment of the police duties.

These core provisions of international documents are also reflected in national legislation.

According to Article 260 of the Code of Ukraine on Administrative Offences (hereinafter referred to as CAO), administrative detention is imposed in the cases directly stipulated by the laws of Ukraine for the purpose of:

– Suspension of administrative offences when other enforcement measures have been exhausted;

– Identification of a person;

– Drawing up a protocol on administrative offences if it is impossible to draw it up at the place where the offence was committed, if the drawing up of a protocol is compulsory;

– Ensuring an expeditious and correct examination of cases and execution of decisions on administrative offences.

The article's objective is to investigate problems of the use of special measures during administrative detention.

Discussion. Administrative detention shall be carried out by the National Police when a specific list of administrative offences defined in Article 262 of the Code of Administrative Offences has been committed. It should be noted that this list includes old names of offences (e.g. "domestic violence", although as of June 7, 2018 this offence is called "domestic violence"), as well as acts that are not offences today (e.g. "liquidated speculation"). In addition, this list includes the "image" of police officers, the essence of which is not defined in any legal act and therefore there is no liability for such actions, although the relevant drafts have been developed. Such legislative deficiencies may lead to incomprehension when administrative detention by the police is applied and should be urgently eliminated.

In addition, there are other problematic issues related to the use of administrative detention by police officers. Article 261 of the Code of Administrative Offences is not always complied with; it requires that every administrative detention of an individual be reported to a free secondary legal aid centre, except in cases where the individual defends himself or requests a protection officer. There are various reasons for this situation, starting with a lack of appropriate knowledge of the existence of such a requirement, procedure and numbers, The lack of proper procedural formalization of administrative detention, i.e. the failure to compile a protocol on administrative detention, ended in the absence of such a protocol. It is worth mentioning another problematic issue -

The terms of administrative detention as set out in Article 263 of the CAP, namely: administrative detention of a person who has committed an administrative offence may last for

not more than three years, except for the cases of drug trafficking or violation of the cordoned-off procedure - for up to three days, provided that the prosecutor is informed in writing within twenty-eight hours of the detention. The three-year time limit, taking into account that it starts from the moment of actual restriction of liberty of the detained person.

As noted above, during administrative detention it may be necessary to use police means of restraint, in particular special devices.

It is important that any use of police force, including the use of special devices, is used exclusively for the performance of police duties and must be suspended if:

1) the purpose of its use has been achieved;

2) it is obvious that the purpose of the action cannot be achieved;

3) there is no need for further implementation of such an approach.

Thus, the Law of Ukraine "On the National Police" stipulates that a police officer must immediately stop applying a certain type of coercive measure when the expected result is achieved.

The procedure for applying police restraining measures is specified in Article 43 of the Law of Ukraine 'On the National Police'. Thus, the police officer is obliged to notify a person in advance about the use of special measures and give him enough time to comply with the lawful request of the police officer, except in the case of when the call might result in an endangerment to the life or health of the person or the police officer or other serious consequences, or in a situation where such an interruption is unreasonable or impracticable. The question arises about the criteria for "sufficiency of time", which are currently unspecified and therefore have the element of a subjective assessment, that is, an assessment concept, the use of which in legislation, in our view, is unacceptable, because it may lead to a significant violation of human rights and freedoms. The interruption can be made by voice, but from a considerable distance or by appealing to a large group of people - through sound equipment, amplifiers. Again, the criteria for "significant distance" are not legally defined, which should be regarded as a legal gap.

The type and intensity of coercive measures shall be determined taking into account the specific situation, the nature of the offence and the individual characteristics of the person who committed the offence. Such a fragmented formulation of the order of application of police measures of restraint in the legislation is understandable on the one hand, as it is not possible to provide for all possible situations in a legislative act, On the other hand, it needs to be detailed at the level of secondary legislation and to be properly developed in terms of the know-how to use the use of force during the training of police officers. It would be desirable for such training to take place during comprehensive practical exercises involving experts both in legal support for the use of special means during administrative detention and experts in tactical and specialized training [4-7].

Police officers should always remember their duty to provide emergency medical assistance to persons who have suffered as a result of the use of coercive measures. The procedure for the use of police restraint measures includes the identification of the list of persons to whom the use of force materiel is forbidden, except when they commit an armed or group attack, the use of riot police, which threatens the life and health of other persons or police officers, if it is not possible to repulse such an attack or attack by other means and equipment. This list includes: women with obvious signs of pregnancy; minors; and people with obvious signs of disability or old age. It should be noted that it is not always possible in practical conditions to clearly identify clear signs of maternity, old age, presence of disability, and even more the age of the person. Thus, it is difficult to visually distinguish between a 13-year-old person who is under 14 years old and a 15-year-old person who is not such already. It is important to develop the appropriate skills of police officers during the training. And we must also pay attention to the incorrect title "person with obvious signs of disability", which contradicts the Law of Ukraine "On the principles of social protection of persons with disabilities in Ukraine" from 21. 03.03.1991, which replaces the term 'person with disability' with the previously introduced term 'invalid', 'person with limited capabilities' and so on [7-9].

Conclusions. Police officers may use exclusively the special devices referred to in Article 42 of the Ukrainian Law to fulfill their duties: 1) paper and plastic cribs; 2) contact and contact-distance electric shock devices; 3) arm restraints (handcuffs, communication nets, etc.); 4) devices containing reagents of lacrimal and draining action; 5) devices for baiting means of transport; 6) special marking and flanking devices; 7) service dogs and service horses; 8) devices, grenades and ammunition of light and sound power; 9) Acoustic and micro-

village devices; 10) Devices, grenades, ammunition and small air-driven devices for the removal of obstacles and forced entry into premises; 11) devices for the discharging of cartridges, which are filled with humic or comparable in their properties munitions; 12) devices filled with non-fatal disabling agents; 13) water cannons, armored vehicles and other special transport vehicles. The use of personal protective equipment (helmets, flak jackets and other special equipment) by police officers shall not be considered an option.

It is important that a policeman is obliged to notify his superior in writing about the use of a special device. In the event that a policeman injures or injures a person as a result of using a special device, the commanding officer of such a policeman is obliged to notify the prosecutor concerned without delay. It is noteworthy that there is no definition of a specific time limit for the implementation of this requirement, as the term "ineffectively" is often used as an evaluation term, although it is interpreted in court decisions as "the moment at which there is a real possibility of the implementation of the given obligation".

General rules for the use of each of the special means are laid down in Article 43 of the Law of Ukraine "On the National Police". It should be noted that most often of all special means of restraint are used for administrative detention, as well as humus and plastic cages.

It is noteworthy that there is no specific list of barriers. In particular, in par. 3 part. Article 42 (4) of the Law of Ukraine 'On National Police' stipulates that the means of restraint include handcuffs, communication nets, etc., i.e. the list is not exhaustive This leads to the use by police officers of such devices as hand-held tools, such as belts and ties. This situation requires a thorough analysis, research of foreign experience on this subject, international and European standards. We strongly believe that it is absolutely necessary to establish an exclusive list of vehicles that can be used at the level of handcuffs at the regulatory level.

Furthermore, it should be noted that if there are certain restrictions on the use of handcuffs, e.g. a policeman is not allowed to use handcuffs for more than 2 years without interruption or without easing their pressure, other means of restraint are not subject to such rules. In this context, the regulation and fixation of the fact of the relaxation of the handcuffs' pressure is also noteworthy. This issue also lacks clear legal regulation, which may lead to harassment of police officers and as a consequence cause harm to the health of detained persons.

Par. Under Part 8 of Article. Article 45 of the Law of Ukraine On National Police stipulates that the rules of storage, carrying and use of special equipment available in the uniformed services of the police shall be determined by regulations of the Ministry of Internal Affairs of Ukraine, However, at present there is no official act detailing the provisions of the Law of Ukraine "On the National Police" on the procedure and rules for the use of special equipment. However, this need is urgent and requires a valued approach to the development and implementation of a separate regulation of the Ministry of Internal Affairs of Ukraine on the specified issues.

As we can see, there is a set of problematic issues in the use of administrative detention by police officers in general and special equipment during its implementation in particular. Therefore, it is necessary to combine the efforts of researchers and practitioners to solve them, Continue searching for effective forms of training police officers on the use of special equipment during administrative detention, taking into account international experience and European standards.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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Віталій ПОКАЙЧУК, Євген ГІДЕНКО, Кіра ЩЕРБИНА
ПРОБЛЕМИ ВИКОРИСТАННЯ СПЕЦЗАХОДІВ ПІД ЧАС АДМІНІСТРАТИВНОГО АРЕШТУ

Анотація. Розглянуто адміністративно-правове забезпечення застосування спеціальних засобів при адміністративному затриманні, виокремлено наявні проблеми та окреслено шляхи їх вирішення. З іншого боку, велика кількість країн вдається до адміністративного затримання нелегальних мігрантів у зв'язку з порушеннями імміграційного законодавства та правил, у тому числі перебування після закінчення терміну дії дозволу, відсутність посвідчення особи, документи, використання чужих проїзних документів, невиїзд за межі країни після закінчення встановленого терміну тощо. Метою адміністративного затримання є гарантувати можливість застосування іншого заходу, такого як депортація чи видворення. Іноді адміністративне затримання допускається також з мотивів громадської безпеки та громадського порядку, зокрема.

Метою цієї статті є детально розглянути правову базу, з якою має відповідати позбавлення волі мігрантів, зокрема, що стосується фундаментального принципу міжнародного права, що ніхто не повинен бути підданий свавільному затриманню. Міжнародні норми, принципи та стандарти прав людини визначають зміст цього принципу. Такі норми, принципи та стандарти застосовуються до всіх осіб, включаючи мігрантів та шукачів притулку, а також до кримінальних та адміністративних процесів.

Ключові слова: *адміністративне затримання, спеціальні засоби, засоби обмеження рухомості, протокол про адміністративне затримання.*

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SOME ISSUES OF IMPROVING THE METHODS OF TEACHING SPECIAL PHYSICAL TRAINING IN THE ASPECT OF REFORMING THE LAW ENFORCEMENT SYSTEM IN UKRAINE

Abstract. The article attempts to discuss the problems of reforming the law enforcement system of Ukraine as a prerequisite for professional training of future police officers. The relevance of interactive methods of teaching the discipline "Special Physical Training". Updating knowledge about practical policing in the training process. In the context of reforming the system of the Ministry of Internal Affairs of Ukraine, great importance is attached to various aspects of training future police officers. As an

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