

UDC 340
DOI 10.31733/2078-3566-2023-5-118-122



Kateryna SHENDAKOVA[©]
Lecturer
(Dnipropetrovsk State University of Internal Affairs, Dnipro, Ukraine)



Vitalina SHEBELA[©]
Cadet
(Dnipropetrovsk State University of Internal Affairs, Dnipro, Ukraine)

DISCIPLINARY PROCEEDINGS IN NATIONAL POLICE UNITS AS A TYPE OF ADMINISTRATIVE-JURISDICTION ACTIVITY

Катерина Шендакова, Віталіна Шебела. ДИСЦИПЛІНАРНЕ ПРОВАДЖЕННЯ В ПІДРОЗДІЛАХ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ ЯК ВИД АДМІНІСТРАТИВНО-ЮРИСДИКЦІЙНОЇ ДІЯЛЬНОСТІ. Стаття присвячена дослідженню дисциплінарного провадження в підрозділах Національної поліції як важливого елементу здійснення адміністративно-юрисдикційної діяльності поліції. У контексті статті визначено, що дисциплінарне провадження в органах Національної поліції слугує важливим структурним елементом адміністративно-юрисдикційного процесу та формою притягнення працівників поліції до дисциплінарної відповідальності за порушення службової дисципліни.

Установлено, що на сьогодні чинне законодавство не визнає таке поняття як «дисциплінарне провадження в підрозділах Національної поліції». Визначено що однією з ключових проблем є необхідність у забезпеченні ефективної та високої якості несення служби поліцейських в умовах зростаючої складності суспільних викликів, що ставить під сумнів здатність існуючих процесів дисциплінарного провадження відповідати сучасним вимогам. Визначено, що правова основа дисциплінарного провадження в органах Національної поліції характеризується багаторівневим галузевим регулюванням, як по горизонталі, так і по вертикалі. З'ясовано, що дисциплінарні провадження регулюються не тільки нормами адміністративного права та процесу, хоча воно і відноситься до адміністративно-юрисдикційної діяльності поліції.

В статті також проаналізовано різні погляди науковців щодо визначення поняття «дисциплінарне провадження в підрозділах Національної поліції», а також сформоване авторське визначення поняття «дисциплінарне провадження в підрозділах Національної поліції» як урегульовану різними за юридичною силою нормативними правовими актами діяльність уповноважених на те посадових осіб органів Національної поліції та Міністерства внутрішніх справ України, спрямовану на встановлення підстав та вирішення питання щодо застосування передбачених законодавством заходів дисциплінарного впливу до поліцейських, з метою забезпечення законності та дисципліни.

Ключові слова: дисциплінарне провадження, адміністративно-юрисдикційна діяльність, статут, дисциплінарна відповідальність.

Relevance of the study. Disciplinary proceedings in the bodies of the National Police serve as an important structural element of the administrative jurisdictional process and a form of bringing police officers to disciplinary responsibility for violation of official discipline. The urgency of addressing the specifics of disciplinary proceedings in the National Police bodies is due to the specific conditions of service by police officers who exercise their powers during the legal regime of martial law [1, p.163]. One of the key problems is the need to ensure the efficiency and high quality of law enforcement services in the context of the growing complexity of social challenges, which calls into question the ability of existing processes of disciplinary proceedings to meet modern requirements.

© Shendakova K., 2023
k_app@dduvs.in.ua

© Shebela V., 2023
nnipfnp@dduvs.in.ua

Another important problem is to ensure objectivity and justice in the process of disciplinary investigation, since not only the reputation of law enforcement officers depends on it, but also the level of trust of citizens in the police as a whole. Differences in the interpretation and application of norms and standards can lead to human rights violations and create a basis for social tension, which emphasizes the need for deep analysis and improvement of this aspect of disciplinary activity. An important challenge is also the adaptation of the processes of disciplinary proceedings to the rapid development of technologies and social transformations. The modern information space requires law enforcement officers to actively use technical tools and electronic systems to collect, analyze and process information that requires updating and improving disciplinary mechanisms. Adequate solutions to these problems require in-depth research and the development of strategic approaches to improve disciplinary proceedings in the units of the National Police, thereby ensuring efficiency, fairness and public trust.

Therefore, the actual task of scientific research in the field of administrative-jurisdictional activity is the scientific problem of distinguishing the features of disciplinary proceedings in the National Police in the conditions of martial law.

Recent publications review. The latest research and publications in the field of disciplinary proceedings in the units of the National Police identify several key areas that are reflected in the coverage of this topic. Thus, the following scientists and researchers dealt with the topics of the study of disciplinary proceedings through the prism of the relationship between disciplinary decisions and human rights, the peculiarities of the protection of police officers during an official investigation, as well as issues of official discipline and the means of ensuring it by authorized subjects: V. Averyanov, Yu. Bityak, L. Bila-Tiunova, V. Harashchuk, E. Dodin, Yu. Danylenko-Negara, I. Zadoya, S. Kivalov, L. Kornuta, L. Mozolyuk-Bodnar, Yu. Nazar, G. Chanysheva, V. Shcherbyna, O. Yaroshenko, O. Bandurka, V. Kikinchuk, S. Kovalev, O. Kuzmenko, N. Medvedenko, V. Mykhaylov, O. Novak, I. Sukhovetruk, M. Tyshchenko, O. Shevchenko and some other specialists in police law.

The analysis of the latest researches and publications shows the urgency of the problem, because currently there remain unresolved issues related to the peculiarities of the administrative and legal provision of the mechanisms of disciplinary proceedings in the National Police in the conditions of martial law.

The article's objective is to highlight and characterize the peculiarities of the regulation of disciplinary proceedings, its legal support in the National Police, in particular, in the conditions of martial law.

Discussion. Theoreticians include the following types of administrative proceedings as administrative-jurisdictional activities: proceedings in cases of administrative offenses, disciplinary proceedings and proceedings regarding citizen complaints [11, p. 17; 12, p. 194].

In the units of the National Police, the procedure for considering disciplinary proceedings is regulated by the Law of Ukraine "On the Disciplinary Statute of the National Police of Ukraine" dated 15.03.2018, which defines the essence of official discipline in the National Police of Ukraine, the powers of police officers and their leaders to comply with it, types of incentives and disciplinary penalties, and as well as the procedure for their application and appeal.

The Order of the Ministry of Internal Affairs of Ukraine dated 07.11.2018 No. 893 "On the Implementation of Certain Provisions of the Disciplinary Statute of the National Police of Ukraine", which defines the procedure for conducting official investigations in the National Police of Ukraine and the procedure for formation in bodies (units) of the police, as well as institutions of higher education with specific training conditions, which train police officers, disciplinary commissions and their powers.

However, the above-mentioned documents do not define such concepts as "disciplinary proceedings", so we will try to analyze it through the prism of the views of scientists and scientists who conducted research in this field.

Thus, in the textbook on "Police Activity" edited by S. Vitvitskyi, disciplinary proceedings are defined as the activity of authorized subjects regulated by the norms of administrative law, which is aimed at considering and solving individual-specific cases that arise in connection with the existence of grounds for the application of disciplinary measures against certain persons [2, p. 186].

A. Sakhno defines disciplinary proceedings as a set of successive interrelated actions of

participants in disciplinary proceedings, regulated by the norms of administrative procedural law, aimed at considering and resolving disciplinary cases regarding bringing police officers to disciplinary responsibility for committing a disciplinary offense [4, p. 252].

However, we partially disagree with the authors' views on the definition. After all, disciplinary proceedings are regulated not only by the norms of administrative law and process, although it also refers to the administrative and jurisdictional activities of the police.

Thus, the procedure for disciplinary proceedings in the bodies of the National Police of Ukraine is regulated by normative legal acts of different legal force. The legal basis of disciplinary proceedings in the bodies of the National Police is characterized by multi-level industry regulation, both horizontally and vertically [10, p. 102].

The concept of disciplinary proceedings is more successfully interpreted by N. Medvedenko, who understands by disciplinary proceedings in the bodies of the National Police of Ukraine the activity regulated by legal norms of the officials of the police bodies, aimed at establishing the grounds and resolving the issue of applying the measures of disciplinary influence provided for by the law to police officers, civil servants and other employees of the National Police of Ukraine [4, p. 211].

However, the author concludes in the definition that disciplinary proceedings are also possible in relation to civil servants and other employees of the National Police of Ukraine.

At the same time, the preamble to the Disciplinary Statute of the NPU stipulates that its effect applies exclusively to police officers, persons who have special titles of the Bureau of Economic Security of Ukraine, employees of the Judicial Security Service, and members of the rank and file and senior staff of the State Bureau of Investigation, who must strictly comply with its requirements. That is, civil servants and other employees of the National Police of Ukraine are not specified in the Law. In addition, the disciplinary responsibility of civil servants is regulated by the provisions of Articles 64-79 of the Law of Ukraine "On Civil Service".

The author also notes in the definition that disciplinary proceedings are activities of police officials authorized to do so.

However, according to p.8 of Article 15 of the Disciplinary Statute of the NPU, in the event of an official investigation of deputy heads of the National Police of Ukraine or heads of territorial bodies of the National Police of Ukraine, the disciplinary commission may include employees of the Ministry of Internal Affairs of Ukraine.

The definition formulated by V. Kryzhanovska and A. Kryzhanovsky, who understand disciplinary proceedings in the bodies of the National Police as a type of administrative-jurisdictional activity carried out in accordance with the procedure established by legislation for the resolution of a disciplinary case and the application of disciplinary measures to the guilty person, is quite justified. in order to strengthen and ensure official discipline [10].

Another scientific position of the scientist is interpreted as disciplinary proceedings in the bodies of the National Police as an administrative-jurisdictional activity of authorized subjects to resolve the issue of disciplinary responsibility of employees of the National Police bodies for a committed disciplinary offense, as well as the application of incentive measures for the successful performance of duties by a police officer, as well as for other services to the state and society [5, p. 310].

However, in the definition, the author does not clarify the relationship between disciplinary proceedings and incentives, because their application mechanisms are completely different.

Conclusions. So, we can formulate our own vision of the concept of "disciplinary proceedings in the units of the National Police" as the activity of authorized officials of the National Police and the Ministry of Internal Affairs of Ukraine regulated by different legal acts, aimed at establishing the grounds and resolving the issue of applying the provisions of the law measures of disciplinary influence on police officers, in order to ensure lawfulness and discipline.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

References

1. Шевченко О. О. Дисциплінарний проступок, учинений поліцейським, як фактична підстава дисциплінарного провадження в органах Національної поліції. *Актуальні проблеми сучасної науки в дослідженнях молодих учених : тези доп. учасників наук.-практ. конф. з нагоди святкування Дня науки* (м. Харків, 14 трав. 2021 р.) Харків: ХНУВС, 2021. С. 159-163.
2. Поліцейська діяльність: підручник / С. С. Вітвіцький, В. С. Тулінов, О. М. Мердова та ін.; за заг. ред. проф. С. С. Вітвіцького. Київ : ВД Дакор, 2021. 372 с.
3. Про Національну поліцію: Закон України від 02.07.2015 № 580-VIII. *Відомості Верховної Ради*. 2015. № 40-41. Ст. 379.
4. Медведенко Н. В. Правові та організаційні засади дисциплінарного провадження в органах Національної поліції України: дис. ... канд. юрид. наук: 12.00.07. Одеса, 2018. 256 с.
5. Шевченко О.О. Щодо розуміння дисциплінарного провадження в органах Національної поліції. *Актуальні проблеми сучасної науки в дослідженнях молодих учених: тези доп. учасників наук.-практ. конф. з нагоди святкування Дня науки* (м. Харків, 15 трав. 2020 р.) Харків: ХНУВС, 2020. С. 310–315.
6. Сахно А. П.. Деякі особливості дисциплінарного провадження в Національній поліції в умовах дії воєнного стану. *Аналітично-порівняльне правознавство*. 2023. № 2. С. 251-253.
7. Про Дисциплінарний статут Національної поліції України: Закон України від 15.03.2018 № 2337-VIII. *Відомості Верховної Ради*. 2018. № 29. Ст. 233.
8. Про реалізацію окремих положень Дисциплінарного статуту Національної поліції України: наказ МВС України від 07.11.2018 № 893. URL : <https://zakon.rada.gov.ua/go/z1355-18>.
9. Михайлов В.О. Забезпечення законності та дисципліни в діяльності патрульної поліції: дис... доктора філософії за спеціальністю 081 – Право. Дніпро, 2021. 298 с.
10. Крижановська В. А. Правові засади дисциплінарного провадження в органах Національної поліції України. *Вісник Національного університету «Львівська політехніка»*. Серія: Юридичні науки : збірник наукових праць. 2016. № 845. С. 99-106. URL : <https://ena.lpnu.ua/handle/ntb/34604>.
11. Бандурка А. М., Тищенко Н. М.. Административный процес: Учебник. Х., 2001. 352 с.
12. Васильев А. С. Административное право Украины (общая часть). Учебное пособие. Х., 2001. 288 с.

Submitted 14.11.2023

1. Shevchenko, O. O. (2021). Dystsyplinarnyi prostupok, uchynenyi politseiskym, yak faktychna pidstava dystsyplinarnoho provadzhennia v orhanakh Natsionalnoi politsii. Aktualni problemy suchasnoi nauky v doslidzhenniakh molodykh uchenykh : tezy dop. uchasnykiv nauk.-prakt. konf. z nahody sviatkuvannia Dnia nauky [Disciplinary offense committed by a police officer as a factual basis for disciplinary proceedings in the bodies of the National Police. Actual problems of modern science in the research of young scientists: theses add. participants of science and practice conf. on the occasion of the Science Day celebration] (m. Kharkiv, 14 trav. 2021 r.) Kharkiv: KhNUVS. Pp. 159-163. [in Ukr.].
2. Politseiska diialnist: pidruchnyk [Police activity: a textbook] / S. S. Vitvitskyi, V. S. Tulinov, O. M. Merdova ta in.; za zah. red. prof. S. S. Vitvitskoho. Kyiv : VD Dakor, 2021. 372 p. [in Ukr.].
3. Pro Natsionalnu politsiiu: Zakon Ukrainy [On the National Police: Law of Ukraine] vid 02.07.2015 № 580-VIII. Vidomosti Verkhovnoi Rady. 2015. № 40-41. St. 379. [in Ukr.].
4. Medvedenko, N. V. (2018). Pravovi ta orhanizatsii-ni zasady dystsyplinarnoho provadzhennia v orhanakh Natsionalnoi politsii Ukrainy [Legal and organizational principles of disciplinary proceedings in the bodies of the National Police of Ukraine]: dys. ... kand. yuryd. nauk: 12.00.07. Odesa. 256 p. [in Ukr.].
5. Shevchenko, O. O. (2020). Shchodo rozuminnia dystsyplinarnoho provadzhennia v orhanakh Natsionalnoi politsii. Aktualni problemy suchasnoi nauky v doslidzhenniakh molodykh uchenykh: tezy dop. uchasnykiv nauk.-prakt. konf. z nahody sviatkuvannia Dnia nauky [Regarding the understanding of disciplinary proceedings in the bodies of the National Police. Actual problems of modern science in the research of young scientists: theses add. participants of science and practice conf. on the occasion of the Science Day celebration] (m. Kharkiv, 15 trav. 2020 r.) Kharkiv: KhNUVS. Pp. 310–315. [in Ukr.].
6. Sakhno, A. P. (2023). Deiaki osoblyvosti dystsyplinarnoho provadzhennia v Natsionalni politsii v umovakh dii voiennoho stanu [Some features of disciplinary proceedings in the National Police under martial law]. *Analitychno-porivniálne pravознавство*. № 2. Pp. 251-253. [in Ukr.].
7. Pro Dystsyplinarnyi statut Natsionalnoi politsii Ukrainy: Zakon Ukrainy [On the Disciplinary Statute of the National Police of Ukraine: Law of Ukraine] vid 15.03.2018 № 2337-VIII. *Vidomosti Verkhovnoi Rady*. 2018. No. 29. St. 233. [in Ukr.].
8. Pro realizatsiiu okremykh polozhen Dystsyplinarnoho statutu Natsionalnoi politsii Ukrainy [On the implementation of certain provisions of the Disciplinary Statute of the National Police of Ukraine]:

nakaz MVS Ukrainy vid 07.11.2018 № 893. URL : <https://zakon.rada.gov.ua/go/z1355-18>. [in Ukr.].

9. Mykhailov, V. O. (2021). Zabezpechennia zakonnosti ta dystsypliny v diialnosti patrolnoi politsii [Ensuring legality and discipline in the activities of the patrol police]: dys... doktora filosofii za spetsialnistiu 081 – Pravo. Dnipro. 298 p. [in Ukr.].

10. Kryzhanovska, V. A. (2016). Pravovi zasady dystsyplinarnoho provadzhennia v orhanakh Natsionalnoi politsii Ukrainy [Legal foundations of disciplinary proceedings in the bodies of the National Police of Ukraine]. *Visnyk Natsionalnoho universytetu «Lvivska politekhnika»*. Serii: Yurydychni nauky :zbirnyk naukovykh prats. No. 845. Pp. 99-106. URL : <https://ena.lpnu.ua/handle/ntb/34604>. [in Ukr.].

11. Bandurka A. M. & Tyshchenko N. M. (2001). Admynystratyvnyi protses: Uchebnyk [Administrative process: Textbook]. Kh., 352 p. [in Ukr.].

12. Vasylev, A. S. (2001). Admynystratyvnoe pravo Ukrainy (obshchaia chast) [Administrative law of Ukraine (general part)]: Uchebnoe posobye. Kh. 288 p. [in Ukr.].

ABSTRACT

The article deals with study of disciplinary proceedings in the units of the National Police as an important element of the administrative and legal activities of the police. In the context of the article, it is determined that disciplinary proceedings in the bodies of the National Police serve as an important structural element of the administrative-jurisdictional process and a form of bringing police officers to disciplinary responsibility for violation of official discipline.

It has been established that the current legislation does not recognize such a concept as "disciplinary proceedings in units of the National Police". It was determined that one of the key problems is the need to ensure effective and high quality of police service in the conditions of increasing complexity of social challenges, which calls into question the ability of existing processes of disciplinary proceedings to meet modern requirements.

It was determined that the legal basis of disciplinary proceedings in the bodies of the National Police is characterized by multi-level sectoral regulation, both horizontally and vertically. It was found that disciplinary proceedings are regulated not only by the norms of administrative law and process, although it also refers to the administrative and jurisdictional activities of the police. The article also analyzes the different views of scientists regarding the definition of the concept of "disciplinary proceedings in the units of the National Police", as well as the author's definition of the concept of "disciplinary proceedings in the units of the National Police" as regulated by various normative legal acts, the activities of authorized officials of the National Police of the police and the Ministry of Internal Affairs of Ukraine, aimed at establishing the grounds and resolving the issue of the application of disciplinary measures to police officers provided for by law, in order to ensure legality and discipline.

Keywords: *disciplinary proceedings, administrative-jurisdictional activity, statute, disciplinary responsibility.*