

UDC 342.734+351.83+351.74+349.2
DOI 10.31733/2078-3566-2022-5-127-136



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U.S. POLICE UNIONS: NEW TROUBLES AND CHALLENGES

Андрій Сомотуга, Кирило Недря. ПРОФСПІЛКИ ПОЛІЦЕЙСЬКИХ США: НОВІ ПРОБЛЕМИ ТА ВИКЛИКИ. Стаття присвячена процесам та причинам трансформації поліцейського профспілкового руху у США в бік політизації на шкоду захисту трудових прав і через зловживання повноваженнями щодо захисту професійних прав поліцейських. У більшості демократичних країн працівникам правоохоронних органів гарантовано право на об'єднання у професійні спілки для захисту їхніх трудових прав та професійних інтересів, а в деяких державах – навіть право на страйк. Також це право закріплено й на рівні міжнародно-правових актів, зокрема у прийнятій 1979 р. Радою Європи Декларації про поліцію.

Авторами з'ясовано, що у США, окрім своїх традиційних функцій, поліцейські профспілки необґрунтовано розширили свої повноваження, вдаючись до таких заходів, як «убезпечення» поліцейських від кримінального переслідування, цивільних позовів та дисциплінарних проваджень за фактами неправомірної поведінки та зловживання владою, що призводило навіть до загибелі людей. Більше того, надзвичайні події із втягненням у них поліцейських завжди мають своїм наслідком значний суспільний резонанс в будь-якій країні світу, де сповідаються принципи відкритого суспільства й демократії. Особливої гостроти надають цим подіям факти судових рішень, що стосуються вини чи, навпаки, невинуватості поліцейських у протиправних, як вважає громадськість та її лідери, діях. Спостерігається своєрідний суспільний водорозділ між прибічниками та противниками жорстких поліцейських заходів, особливо коли йдеться про країни зі строкатою етнічною, расовою чи релігійною ознакою, унаочненням чого є США.

Коріння зазначеної проблеми більшість дослідників вбачають передовсім у надмірній децентралізації організації охорони правопорядку, що має наслідком відсутність єдиної системи контролю та обліку резонансних подій за участю працівників поліції, порівняно ліберальному цивільному обігу вогнепальної зброї, що тягне за собою постійні, порівняно з іншими країнами, високі показники загибелі людей як від рук поліцейських, так і самих поліцейських від рук злочинців. Нарешті, рушійною силою американських профспілок правоохоронців є величезна кількість членів та велика фінансова підтримка від обох партій, особливо під час виборів. Як наслідок, найбільш затягнутими противниками реформування поліцейської сфери у США виявилися саме профспілки, вбачаючи у подібних спробах з боку політиків та громадських активістів певні загрози стабільності системи соціально-правового захисту правоохоронців.

Ключові слова: поліція, США, профспілка, контракт, розслідування, контроль, колективні переговори, реформа, захист, критика.

Relevance of the study. Civil and political rights, which are mostly natural ones, and with the participation (or rather, non-participation) of the government to ensure them, they belong to the negative ones. But economic, social and cultural rights are no less important for the individual. This category of rights, which, on the contrary, is classified as positive, i.e. the ensuring of active participation of the government in their guarantees, is also recorded both at the level of international legal acts and in national constitutions. It is the level of security of these rights that depends on the material and financial capabilities of the country, which, in turn, are formed thanks to the contributions of its citizens through the realization of such a central right of theirs in this system –

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the right to labor, as a result of which a special type of legal relationship arises, the actors of which there are, on the one hand, hired workers, on the other – employers of various forms of ownership. Meanwhile, the structure and content of these relations are still not considered generally accepted and universal. In the Soviet-socialist countries and, unfortunately, in some transition ones, the government remains the sole employer and regulator of labor relations. On the other hand, in the countries of established democracies and market economies, the government determines only the legal limits of such relations, and the issue of resolving conflicts between the administration and employees is left to the discretion of special mediators, which are trade unions (as a rule, independent). Instead, in authoritarian states trade unions, which were united in a kind of power vertical, played the formal role of the owner of social sphere objects of enterprises, institutions and organizations that were exclusively state-owned, and their employees had to be members of primary trade union organizations dependent on the administration in order to use a minimum set of accompanying labor rights, such as rest or rehabilitation of children, etc.

Today, despite the citizens' right to freely join trade unions to protect their labor and socio-economic rights, declared by the Constitution of Ukraine, trade unions in Ukraine, as a component of civil society on the same level as political parties and mass media, have not yet become a real factor of influence and formation of the current political and socio-economic agenda in the country. For their part, the Constitution and legislation of Ukraine establish bans on membership in trade unions for such categories of employees as judges (including judges of the Constitutional Court), members of the Supreme Council of Justice, employees of the Security Service of Ukraine, National Anti-Corruption Bureau of Ukraine, State Investigation Bureau, and military personnel of the Armed Forces of Ukraine. It is important to note that the ban on membership in trade unions also applies in parallel with the ban on membership in political parties for these categories of officials. Instead, prosecutors, police officers and, of course, civil servants in Ukraine enjoy the right to join trade unions, but they are prohibited by law from participating in such a form of protection of labor rights as a strike. Moreover, they cannot be members of political parties and engage in any political activity. Although the right to strike is guaranteed by law, for example, to the police of France and Poland; and in the USA, the first waves of police strikes took place since the beginning of the 20th century, and the most massive one was in 1974 [1].

Trying to act ahead of the American legislator in this area, the Parliamentary Assembly of the Council of Europe adopted the Declaration on the Police on May 8, 1979. The Declaration, in particular, states that Police officers shall have the choice of whether to found professional organizations, join them and play an active part therein. They may also play an active part in other organizations. A police professional organization, provided it is representative shall have the right: to take part in negotiations concerning the professional status of police officers; to be consulted on the administration of police units; to initiate legal proceedings for the benefit of a group of police officers or on behalf of a particular police officer. Membership of a police professional organization and playing an active part therein shall not be detrimental to any police officer. In case of disciplinary or penal proceedings taken against him, a police officer has the right to be heard and to be defended by a lawyer. The decision shall be taken within a reasonable time. He shall also be able to avail himself of the assistance of a professional organization to which he belongs [5].

On the one hand, the police officers' activities are always accompanied by a certain risk, as a result of which there is the possibility of harming the health and life of both persons suspected of committing offenses and the policemen themselves, as well as damage or destruction of the property of individuals and legal entities. On the other hand, extraordinary events involving the police always result in significant public resonance in any country of the world where the principles of an open society and democracy are practiced. The facts of court decisions concerning the guilt or, on the contrary, the innocence of police officers in illegal actions, as the public and its leaders believe, give these events a special relevance. After all, there is a kind of social divide between supporters and opponents of tough police measures, especially when it comes to countries with a motley ethnic, racial or religious identity, of which the United States is the convincing example.

These phenomena, namely both the prohibition and the regulation of police unions activities, including strikes, raise the problem of the use of unions by various political forces to implement their programmatic goals, or the involuntary or conscious growth of unions themselves into active sources of political influence. This question becomes particularly acute in relation to the activities of trade unions in the ranks of law enforcement officers. In order to

highlight the raised issues, we consider it expedient to highlight similar processes using the example of the US police.

Recent publications review. A fairly significant number of works are devoted to the problems of the legal status of trade unions, mainly in the field of labor law (V. Korolenko, Yu. Shchotova, D. Zinkov, F. Tsesarsky, etc.) and administrative law (A. Bilous, A. Shakirova). The issue of the participation of trade unions in the socio-legal protection of law enforcement officers and control over police activities is highlighted in the dissertation studies of V. Vasylenko, O. Synegubov, and O. Cherkunov. However, the problem analyzed in a slightly different way found its coverage in the works of American researchers: C. Fisk, L. Richardson, D. DiSalvo, B. Hodges, I. Kullgren, R. Iafolla, R. Peacock, M. Levi, P. Stinson, B. Levin, T. Fegley, et al.

As we've mentioned in previous research paper, in the 1960^s, police associations became more politically active, especially since they were gaining labor rights during a period of urban unrest and public hostility to the police [16, p. 61]. In a 1977 book, Stanford University political scientist Margaret Levi described police unions as a "bureaucratic insurgency" that overcame police commissioner opposition in several major cities. In some instances, the unions even served as platforms for launching the political careers of former officers and officials [13].

The research paper's objective. Hence, the question of our research will be consideration of the processes and reasons for the transformation of the police movement in the USA towards politicization to the detriment of the protection of labor rights and due to the abuse of powers to protect the professional rights of police officers.

Discussion. As some US researchers state in the debate over police unions' response to allegations of excessive force, no issue has been more controversial than statutory and contractual protections for officers accused of misconduct, with opponents criticizing such protections and police unions defending them. Despite all the public debate about police unions, there is relatively little legal research on them. Neither the legal nor the social science literature on policing and police reform has explored the opportunities and limitations provided by labor law when considering organizational change. A lack of scientific research is affecting public policy, as groups ranging from Black Lives Matter* to the US Department of Justice propose legislative changes that require the cooperation of police agencies. Hence, scholars have proposed "soft" changes to the law governing police labor relations to promote the transparency, accountability, and constitutionality of police practices that police reformers have championed for at least a generation [9]. Some American experts see several roots of the outlined problem, among which, we believe, it is necessary to highlight the most convincing.

Every year in the United States, more than a thousand people die at the hands of the police. This is a much higher death rate than any other developed country. First of all, such statistics are related to the fact that American police officers face a higher risk during patrols, including attacks on them. In Germany or Great Britain, the number of dead law enforcement officers from attacks by civilians over the years is one. On the other hand, in the USA, the number of dead law enforcement officers is 50 times higher. The main reason is the large number of illegal firearms. According to the American Crime Prevention Research Center, the number of illegal firearms in hands has been increasing for several years in a row, numbering more than 19 million units, which is a 304 % increase compared to the period 10 years ago [3].

For his part, Robert Peacock, Associate Professor of Florida International University, who was project leader of the US Department of Justice's International Criminal Investigative Training Assistance Program (ICITAP) in Ukraine, notes that every democratic nation has problems with misconduct and non-accountability of law enforcement agencies [12]. We cannot forget that the police has become one of the last institutions to appear in the whole world. We've had armies to deal with external threats, fire departments, judges, and prisons, but people have always been hesitant to give to one group guns and the right to take away our freedoms. In the case of the US, the actions of police officers remain largely unpunished, despite efforts to hold them liable for excessive power. According to a study by Philip Stinson and John Liederbach, Bowling Green University criminal justice professors, "Police integrity lost: A study of law

* Black Lives Matter is a social movement in the USA, Great Britain and Canada, founded in 2013 in response to the acquittal of the police officer who killed Trayvon Martin, a black man. The mission of this organization is to eradicate white supremacy and build local initiatives to fight against violence, that is forced by the government and law enforcement officers against black communities. [<https://blacklivesmatter.com/about/>].

enforcement officers arrested", the U.S. averaged just 4,4 % of cases per year between 2000 and 2014 when police officers were charged [19].

Uneven and unsystematic control over the actions of law enforcement officers is due to the US federal structure. At the national level, there is a common criminal code, but each of the 50 states also has its own criminal code and independent agencies. In addition, the US police system is decentralized, rooted in the ideas of home rule and the limitation of central authority. Only a few of America's 18,000 law enforcement agencies are federal, while most are managed and therefore controlled by the state, city, and county governments. Hence, police powers are mostly discretionary [22]. Local prosecutors and officials usually also investigate police behavior. Officer training and firing is the responsibility of municipal police departments and local sheriffs. The most difficult situation is the implementation of the centralized nationwide record of the detainees' deaths in police stations, introduced by the US Department of Justice. At the same time, the FBI does not verify any data provided by local authorities, which may not match reality. In addition, participation in the FBI program is voluntary. But the federal government, according to some authors, can primarily change federal law. For example, a bill that passed the Democratic-led House of Representatives in June, 2020 would make chokeholds a civil rights violation and suspend federal grants to jurisdictions that do not ban them [7].

Another important factor that is our research subject is the police unions' power. It is about protective contracts for officers, which are concluded by such unions. Local governments allow law enforcement officers to bargain collectively over their terms of employment, so this means that unions can also agree on the scope and content of internal disciplinary procedures. So, it can be argued that unions have set the tone for police culture in America since their inception and have at times blocked police reforms on the pretext of police workers' rights. They are mentioned only when there should be some benefit from it. For example, there is almost no discussion within the unions about allowing an officer to have a second job outside the police force. According to R. Peacock, this practice should be put to an end. "Officer Chauvin worked nights as a nightclub security guard. When I see him on video looking at the camera with glassy eyes (referring to the recording of Floyd's arrest**), I see an ordinary-looking officer who is so tired that he is almost a zombie during the day on the job. This is unacceptable in modern society", he emphasizes. He said Minneapolis pays police officers very well, almost twice what teachers earn, and therefore should not be allowed to do other outside jobs with rare exceptions, such as training other police officers.

In the context of Floyd's death, Bob Kroll, head of the Minneapolis police union, is a stark symbol of police union arbitrariness. Kroll wrote a letter to his union members, who defend the actions of Chauvin and other officers involved in Floyd's arrest and death, and called the current protests a "terrorist movement". In particular, Reuters reviewed police union filings and found that unions play a critical role in using political power to advance contracts that often protect officers accused of crimes. In addition, most American police unions have managed to negotiate favorable arbitration agreements in their contracts, allowing law enforcement officers guilty of wrongdoing to be reinstated.

There are also clauses that help to "forgive" past cases of offenses by a police officer two years after the incident. Unions are powered by massive membership and generous contributions from both Democrats and Republicans. Legislative initiatives can change the situation. Democrats have introduced a bill called "The Justice in Policing Act of 2020" aimed at combating police brutality and fixing cases of abuse of force across the country.

Over the past five years, as demands for reform have grown in the wake of police violence in cities like Ferguson (Missouri), Baltimore (Maryland), and now Minneapolis, police unions have been one of the most significant obstacles on the way to change. The greater the political pressure on reforms, the more defiantly trade unions often resist them. And few city officials, including liberal leaders, are able to overcome their opposition.

They aggressively defend the rights of members accused of misconduct, often in arbitration hearings that they have tried to keep behind closed doors. In addition, they have been remarkably effective at fending off broader change, using their political influence and weight to

** On August 26, 2020, in Minneapolis Minnesota, an American police officer Derek Chauvin pressed his knee on the neck of an African-American detainee. As a result, the George Floyd's death caused perhaps the longest protest action in the USA since the 1960s and raised many questions about the alleged abuse of official powers and racial differences within the country's law enforcement agencies. Due to the wave of actions in Floyd's support, the Minneapolis city council even disbanded the police department.

thwart efforts to improve accountability. Although union membership has halved to 10 % since the early 1980^s, higher membership rates in police unions give them resources to spend on campaigns and lawsuits to block reforms. Since 2014, one New York police union spent more than \$1 million on local elections.

In St. Louis (Missouri), when Kim Gardner was elected attorney general in 2016, she set out to curb the city's high rate of police violence. But after she proposed establishing a unit in the prosecutor's office to independently investigate misconduct, she ran afoul of the powerful local police union. The union pressured lawmakers to reject the proposal, which many supported but never brought to a vote. Around the same time, a lawyer for the union waged a legal battle to limit prosecutors' ability to investigate police misconduct. The following year, a union leader said Ms Gardner should be removed "by force or election".

When Steve Fletcher, a Minneapolis city councilman and frequent critic of the police department, tried to divert money from hiring officers to a newly created violence prevention office, he said the police stopped responding as quickly to 911 calls from his constituents. "It's a little bit like a protection racket", Fletcher said of the union. A spokesman for the Minneapolis Police Department said he could not comment this.

Days after prosecutors in Minneapolis charged a police officer in the killing of George Floyd, the head of the city's police union condemned political leaders, accusing them of betraying their members and firing four officers without due process. "This is despicable behavior", union president Lt. Bob Kroll wrote in a letter to union members. He also called the protesters a "terrorist movement". Kroll, who has already received at least 29 complaints, also criticized the Obama administration for its "police crackdown" and praised President Trump for "putting handcuffs on criminals instead of us".

In other cases, trade unions did not resist the reforms, but made their implementation difficult. Federal intervention is often one of the few surefire ways to reform police departments. But in Cleveland, the union helped slow the implementation of reforms mandated by the federal settlement agreement order, said Jonathan Smith, a former Justice Department official who oversaw a government investigation into police practices there. He said union officials signaled to rank-and-file officers that changes should not be taken seriously, such as the requirement to report and investigate gun incidents [17].

Police unions have traditionally used their agreements to create barriers to disciplinary action against their officers. According to a paper by researchers at the University of Chicago, incidents of violent behavior in Florida sheriff's offices increased by about 40% after deputies gained collective bargaining rights, and unionization is associated with higher rates of violent misconduct, and therefore appears to be a channel of influence [6].

In many cities, including New York, unions are a political force, with their support and campaign donations coveted by both Republicans and Democrats. Legislation they support tends to pass and their candidates get elected. They insist on public displays of respect and can humiliate mayors they don't like. They defy reformers, including police chiefs, who try to fire even the worst officers. In an era when other unions are steadily declining in membership and influence, police unions are maintaining their numbers and their coffers are filling up. In Wisconsin, Republican Gov. Scott Walker campaigned successfully to eliminate union rights for most public servants, with the only exceptions being firefighters and police.

Police unions seem to be enjoying the current political paradox. Conservatives traditionally hate unions but support the police. The left criticizes aggressive policing, but often mutes its criticism of police unions, which are, after all, public sector unions that are often in deep trouble. Unions even resort to offering their members extraordinary protection. For example, officials accused of misconduct can be provided with legal aid at the city council expense and sufficient time to review the evidence before communicating with investigators. In many cases, suspended workers are guaranteed pay and disciplinary recommendations from civilian oversight boards are ignored; complaints submitted too late are rejected. Records of misconduct may be kept confidential and permanently deleted only after sixty days. Thus, one-way union contracts limit the ability of police management to discipline rank-and-file officers by mandating that complaints against an officer, even those that were substantiated, be deleted from the officer's record after a certain period of time. Twenty-five of the 100 largest U.S. cities have agreements that dismiss complaints if they are not filed within a certain period of time, or that prevent an officer from being disciplined if an investigation is not completed within a certain time frame, usually 90 days. For example, out of 178 contracts studied by some experts, 156 contained at least one provision that makes it difficult to legally discipline officers for

misconduct [8, p. 166-167].

Concerning the already mentioned civilian oversight boards, we should note that their accelerated creation occurred in the 1960s, when the Civil Rights Movement began to oppose police misconduct in largest cities. By 2006, more than a hundred civil control bodies were founded. Some police unions have succeeded in preventing or even abolishing civilian oversight bodies, as was the case in New York and Philadelphia in the 1960s, since although they have been reinstated there. Some union contracts expressly prohibit officers from being disciplined by civilian oversight bodies, but none of the 16 cities without collective bargaining agreements do so. However, the US currently has no civilian commissions empowered to prosecute police officers; they can only make recommendations to police management. [8, p. 174, 179].

With the rise of the Black Lives Matter movement, criticism of the police has become less muted. There are even calls to liquidate its trade unions. However, the US has several tens of thousands of non-federal police agencies in its hyper-localized system, with more than seven hundred thousand officers represented by unions. Therefore, it is not easy to release them.

Some university sociologists argue that police unions are radically different from others. They write, these organizations function as lobbies to oppose the passage of accountability legislation and cover up for officer-involved misconduct. A public sector union differs from a private sector union primarily in that its negotiations necessarily involve, at least morally, a third party – the public as the taxpayer. Yet many police unions seem to have no provision for this invisible third party in their contracts and bylaws. They protect their members from the public and punish whistleblowers with even greater zeal than the leadership does. Police unions "represent hundreds of thousands of people and, with the exception of very few states, have the ability to organize without any government opposition", as they noted. They believe that the way out of the situation lies in the liquidation of police unions. Some of them have a list of ten steps to achieve this goal, including voiding contracts, mass firings in the event of unlawful delays in investigations, and federal prosecution for persistent obstruction of justice. Other proponents of such abolitionism insist that major labor unions, such as the AFL-CIO^{***}, sever ties with police unions.

The activities of such an organization as the International Union of Police Associations (IUPA) – the North American union of police officers, which is registered as a national union and represents law enforcement officers and support personnel in the AFL-CIO – has received a mostly negative evaluation among the public and professionals. In addition to assistance with legal representation, IUPA offers financial, insurance, medical and educational services to its members. In addition to police officers, the IUPA also represents some correctional officers and first response medics. A major investigation by the nonprofit Center for Public Integrity found that the IUPA has largely become a sham fundraising organization with little to no benefit to law enforcement. For example, in 2018, IUPA transferred only 2.7 % of the collected funds to the families of law enforcement officers. Most of its operating budget goes to the unreasonably inflated salary of its director and various advertising campaigns. The organization was named to the Tampa Bay Times' list of America's Worst Charities in 2014 due to its low spending on its mission [11]. In September 2019, more than a year before the presidential election, the union officially endorsed Trump's re-election campaign, while saying that Democratic candidates had smeared the police [21].

Some American experts agree that there is an urgent need for reform, but suggest considering more procedural steps, such as: limiting collective bargaining to non-disciplinary matters; opening negotiations to the public; encouraging departments to establish multiple unions representing more diverse views. Many analysts have called for new use-of-force protocols, which are known to save lives, but unions have rejected this proposal.

All this would require such political will that until recently seemed unthinkable. Back in 1994, then-Senator Joe Biden worked closely with police unions to help write his big crime-fighting bill. He later credited the National Association of Police Organizations. Unions dropped their support for Biden during the Obama presidency when they saw him working on criminal justice reform. And one cannot forget the President D. Trump' speech in 2017, when he smilingly

^{***} The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) – is the largest federation of unions in the United States. It is made up of 59 national and international unions, together representing more than 12,5 million active and retired workers. In the 21st Century, the AFL-CIO has been criticized by campaigners against police violence for its affiliation with the International Union of Police Associations (IUPA) [2].

told a gathering of law enforcement officers on Long Island that he personally did not mind if they hit the heads of some suspects on the door frames of their cars. The officers applauded him, and he, for his part, felt his audience. During the 2016 presidential campaign, the The Fraternal Order of Police (FOP), a national union with 350,000 members, officially endorsed him. Just as in 1968, he supported George Wallace, the governor of Alabama, who was distinguished by far right, ultra-conservative and racist views, in particular by his defense of racial segregation in the era of the Civil Rights Movement [10].

Therefore, the coverage of the position of the Democrats led by J. Biden regarding the problems of the police, in general, and its unions, in particular, will be worthy of attention.

The police federation, which twice supported the Obama-Biden party and remained neutral in 2016, endorsed President Trump in July. Soon after, the president of this federation told the Republican convention that Biden and Senator (future vice president) Kamala Harris were "the most radical opponents of the police in history". Such a demarche marked the lowest point in a political relationship that lasted for most of Biden's political career. However, the 2020 election has also highlighted the difficulties Biden may face in achieving this goal. After all, he presents himself as a criminal justice reformer, a friend of decent police officers, and a critic of racism and mass riots. But Biden saw his official support from prominent law enforcement groups crumble as those organizations closed ranks against the reform legislation. They objected to Biden's rhetoric about "systemic racism" in policing and his promises to regulate police services with federal authority, even as reformers on the left pressed him for much bolder changes [4].

In his campaign program, Biden, criticizing his opponents, paid considerable attention to increasing the role of unions in general. It was that Republican governors and state legislatures across the country had developed anti-labor legislation to undermine the labor movement and collective bargaining. States have eroded the rights of public sector workers, who, unlike private sector workers, lack federal protections that guarantee their freedom to organize and bargain collectively. In the private sector, corporations use profits to buy back their own stock and raise CEO compensation, instead of investing in their workers and creating more quality jobs. The results were predictable: rising income inequality, stagnant real wages, loss of pensions, exploitation of workers. Employers steal about \$ 15 billion a year from workers simply by paying workers less than minimum wage. In addition, workers experience huge wage losses caused by other forms of theft. For example, employers who do not pay overtime, force them to work after hours and incorrectly classified workers. At the same time, such companies receive billions of dollars in profits and pay managers tens and hundreds of millions of dollars. In addition, employers repeatedly obstruct workers' efforts to organize and bargain collectively by hiring anti-union consultants. So, the Democratic contender has proposed a plan to grow a stronger, more inclusive middle class – the backbone of the American economy – by strengthening public and private sector unions. After all, public sector unions argue that workers, including educators, social workers, firefighters and police officers, need to be confident that they can serve their communities. If elected president, Biden promised to sign the Protecting the Right to Organize Act (PRO) [20].

Introduced in February, 2021, shortly after Biden took office and supported by Democrats, the bill passed the House of Representatives on party lines but was blocked by Republicans in the Senate. Although the White House made it clear back in January that Biden would soon sign an executive order (EO) on police reforms, the changes he can make are limited without the Congress support. The executive order has since been rescinded after fierce protests from police and Republican politicians. Biden's draft EO sought to establish national accreditation standards for police departments and open a national database of "bad cops" – officers who have been found to have engaged in misconduct. But without Congress, Biden cannot limit qualified immunity, which in many cases protects police officers from civil lawsuits brought by victims of their misconduct. At the same time, police circles warned that the change in qualified immunity will have far-reaching dire consequences, increasing, on the contrary, the aggressiveness of the police. So, according to some authors, after more than a year in office, President Joe Biden still hasn't implemented the long-promised police reforms in the US, disappointing black civil rights activists and community leaders [15].

Even they organized a collection of signatures for the corresponding petition, with the following statements and justifications for the demands: militarized police undermines public confidence in law enforcement agencies; police departments receive surplus military equipment through the Pentagon's opaque program called the "Program 1033", which allowed the transfer

of equipment in amount of more than \$ 7.4 billion to more than 8,000 law enforcement agencies across the country; Biden has advocated demilitarizing the police and promised to sign an executive order to do so, but now he's bowing to pressure from police unions; we must ourselves exert pressure and demand that he fulfill his promise; but this will not be enough; we must also demand that Congress pass a permanent law to demilitarize the police, ending this waste [18]. Although, in our opinion, one of the objective reasons for such a delay is the complication of the international legal order due to the full-scale war of Russia against Ukraine, which requires the American top political establishment to shift more attention to foreign policy and defense affairs.

Thus, there is much work to be done to better understand police unions, their political and legal contexts, and their place in reformist or radical projects, some researchers argue. Emphasizing the role of police unions indicates a welcome move away from court-centric and formalistic approaches to police work. The high assessment of the role of trade unions in the criminal justice system reflects an important turning point in the struggle with the political economy of criminal law. In the end, they believe, one should not agree with the widespread criticism of police unions in the literature. From a formal point of view, there is usually certain regularity here: first, police unions fought to protect their members from public scrutiny and legal liability; second, police unions have repeatedly rallied to support politicians hostile to criminal justice reform, racial equality, and labor rights. But it would be a mistake to miss this criticism, another example of the widespread tendency to view criminal law as exclusive and separate from important conversations about employment policy, workers' power, and the social and political structure of society [14, p. 1400].

Conclusions. In view of the above and supporting some experts' opinions, it is necessary to state the following. By encouraging careful and critical analysis of the subject of police unions and their shortcomings, there are important lessons to be learned for both researchers and police officers. Recognizing the shortcomings of police unions should contribute to a broader understanding of labor law and its theoretical justification. That is, an awareness of "what's wrong with police unions" should help inform what type of labor legislation would be desirable, or at least what regulatory obligations should be developed to regulate police work.

At the same time, police unions must also pose difficult questions for police researchers: to what extent is the call for reform a call for "community" or "democratic" policing, which in turn rests on a particular vision of liberal reform? If so, what kinds of illiberal policies might be acceptable to ensure that regulators can suppress the police? However, because of its radical origins, should this critique redefine the preferred tactic? That is, recognizing "what's wrong with police unions" should help to understand what kind of police oversight might be sufficient and how deep the structural critique of US policing is.

The answer to these questions is not simple. Taking police unions seriously has already paid off for scholars and activists concerned about the police's role as a driver of inequality. But taking police unions seriously requires a deeper understanding of their place not only in the criminal justice system, but also in broader discussions about workers' power and law enforcement in the political economy of postindustrial capitalism.

We consider the following to be one of the main areas of further research into the problems of the location and role of US police unions in the processes of reforming the country's law enforcement system:

- 1) implementation of the readiness expressed by union representatives to give up protection in exchange for higher monetary compensation;
- 2) prospects for implementing public demands regarding the demilitarization of the law enforcement system;
- 3) the possibility of a future political demand to expand the powers of civilian oversight boards if police departments are deemed incompetent or unwilling to properly investigate and prosecute their officers.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

References

1. 1974 Police Strike. 2020. URL : <https://baltimorepolicemuseum.com/en/our-police/1974-police-strike.html>.
2. AFL-CIO: America's Unions. URL : <https://aflcio.org/ab/>.
3. At Real Clear Politics: Faulty FBI Data Obscures Successful Defensive Gun Use. 2022. URL :

<https://crimeresearch.org/2022/11/at-real-clear-politics-faulty-fbi-data-obscures-successful-defensive-gun-use/>.

4. Burns A. Joe Biden had close ties with police leaders. Will they help him now? 2021. URL : <https://www.nytimes.com/2020/10/24/us/politics/joe-biden-police.html>.

5. Declaration on the Police : Resolution 690. 1979. URL : <https://pace.coe.int/en/files/16101/html>.

6. Dharmapala D., McAdams R., Rappaport J. Collective Bargaining Rights and Police Misconduct: Evidence from Florida. *Univ. of Chicago Public Law & Legal Theory, Research Paper Series* No. 655. 2018. URL : https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3095217#.

7. Fasman J. Reforming America's police is a necessary but painful process. 2020. URL : <https://www.economist.com/the-world-ahead/2020/11/17/reforming-americas-police-is-a-necessary-but-painful-process>.

8. Fegley T. Police Unions and Officer Privileges. *The Independent Review: A Journal of Political Economy*. 2020. Vol. 25. No.2. P. 165-186.

9. Fick C. L., Richardson S. L. Police unions. *The George Washington law review*. 2017. 85(3). P. 712-799. URL : https://www.researchgate.net/publication/320007612_Police_unions.

10. Finnegan W. How Police Unions Fight Reform. 2020. URL : <https://www.newyorker.com/magazine/2020/08/03/how-police-unions-fight-reform>.

11. Kleiner S., Zubak-Skees Ch. They promise to help families of fallen officers. But they're mostly paying telemarketers. A union-backed police charity spends just a sliver of its money on those it purports to serve. 2019. URL : <https://publicintegrity.org/politics/iupa-leorfp-police-union-charity-telemarketers/>.

12. Law Enforcement Reform Advisory Project. URL : <https://caj.fiu.edu/projects/law-enforcement-reform-advisory-project/>.

13. Levi M. *Bureaucratic insurgency : the case of police unions*. Lexington, Mass. : Lexington Books. 1977. 165 p.

14. Levin B. What's Wrong With Police Unions? *Columbia Law Review*. 2020. Vol. 120:1333. P. 1333-1401.

15. Roberts W. Joe Biden struggles to take action on US police reform. With Congress stalemated, the White House is stuck between reform advocates and police unions who are far apart on policies. 2022. URL : <https://www.aljazeera.com/news/2022/5/17/joe-biden-struggles-to-take-action-on-us-police-reform>.

16. Samotuha A. Participation of unions to ensure police officers' labor rights: European and North-American experience. *Scientific Bulletin of Dnipropetrovsk State University of Internal Affairs*. 2021. Special Issue No. 1. P. 57-62.

17. Scheiber N., Stockman F., Goodman J. D. How Police Unions Became Such Powerful Opponents to Reform Efforts. (Published June 6, 2020, Updated April 2, 2021). URL : <https://www.nytimes.com/2020/06/06/us/police-unions-minneapolis-kroll.html>.

18. Sign the petition: Demand Congress and Biden Demilitarize The Police. URL : <https://actionnetwork.org/forms/sign-the-petition-demand-congress-and-biden-demilitarize-the-police?nowrapper=true>.

19. Stinson Ph. M., Liederbach J., Lab S. P., Brewer S. L, Jr. Police integrity lost: A study of law enforcement officers arrested. Report for the US Department of Justice. 2018. URL : <https://www.ojp.gov/pdffiles1/nij/grants/249850.pdf>.

20. The Biden Plan for Strengthening Worker Organizing, Collective Bargaining, and Unions. URL : <https://joebiden.com/empowerworkers/#>.

21. The International Union of Police Associations Formally Endorses the Campaign for the Re-election of President Donald J. Trump. 2019. URL : <https://www.officer.com/command-hq/press-release/21096420/international-union-of-police-associations-the-international-union-of-police-associations-formally-endorses-the-campaign-for-the-reelection-of-president-donald-j-trump>.

22. Wells L. E., Falcone D. N. Policing in the United States: Developing a Comprehensive Empirical Model. URL : <https://www.ojp.gov/pdffiles1/nij/grants/210830.pdf>.

Submitted 21.11.2022

ABSTRACT

The article deals the processes and reasons for the transformation of the police union movement in the USA towards politicization to the detriment of the protection of labor rights and due to the abuse of powers to protect the professional rights of police officers. In most democratic countries, law enforcement officers are guaranteed the right to unionize to protect their labor rights and professional interests, and in some states even the right to strike. This right is also enshrined at the level of international legal acts, in particular in the Declaration on the Police adopted by the Council of Europe in 1979. The authors found that in the US, in addition to their traditional functions, police unions have unreasonably expanded their powers, resorting to such measures as "protecting" police officers from criminal prosecution, civil lawsuits and disciplinary proceedings for misconduct and abuse of power, which led to even to the death of people. There is a kind of social divide between supporters and opponents of strict police measures, especially when it comes to countries with a colorful ethnic, racial or religious identity, which the United States is the epitome of. The driving force behind America's law enforcement unions is their massive membership and

heavy bipartisan financial support, especially during elections. As a result, trade unions turned out to be the most ardent opponents of the reform of the police sphere in the USA, seeing in such attempts by politicians and public activists certain threats to the stability of the system of social and legal protection of law enforcement officers.

Keywords: *police, USA, unions, contract, investigation, control, collective bargaining, reform, protection, criticism.*

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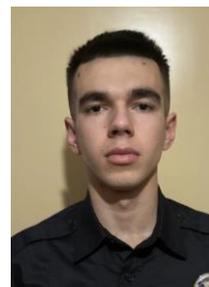
DOI 10.31733/2078-3566-2022-5-136-142



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SEPARATE ISSUES REGARDING THE DIVISION OF MOVABLE AND IMMOVABLE PROPERTY OF THE WIFE IN DIVORCE

Олена Нагорна, Карина Лагун, Микола Сятиня. ОКРЕМІ ПИТАННЯ ЩОДО ПОДІЛУ РУХОМОГО ТА НЕРУХОМОГО МАЙНА ПОДРУЖЖЯ ПРИ РОЗЛУЧЕННІ. У статті описано одну з найпоширеніших проблем сімейно-шлюбних відносин – визначення спільного майна подружжя та його розділ, що виникає при розірванні шлюбу.

В даній роботі визначено, що найпоширенішою проблемою сучасності, на жаль, є поділ майна подружжя, яке у свою чергу виникає при розірванні шлюбу. Проблем поділу майна можна уникнути завдяки своєчасному укладенню шлюбного договору, у якому поділ майна здійснюватиметься з умовами, прописаними у шлюбному договорі, тобто. ця процедура буде здійснюватися на підставі добровільної угоди. Проте, укладання шлюбного договору перестав бути поширеною практикою серед подружніх пар, які ставляться до цієї процедури як образу почуттів, цим здійснюючи грубу помилку і ускладнюючи собі процедуру поділу майна у разі припинення шлюбних відносин, так як суперечки щодо розподілу майна практично завжди супроводжують розірвання шлюбу.

Охарактеризовано, що розділ спільного майна подружжя (колишнього подружжя) означає, як правило, припинення їхньої спільної власності, у тому числі спільною, яка в деяких випадках може стати частковою неможливістю поділу майна в натурі). Розділ спільного майна тягне за собою виділення конкретного майна або його частини кожному з подружжя (колишнього подружжя), а іноді і стягнення різниці в вартості виділеного майна з одного з них на користь іншого, якщо розділ не був здійснений відповідно до долі чи не є рівноцінним. Досліджено правові норми, що регламентують порядок створення та поділу спільного майна подружжя у шлюбно-сімейному законодавстві України. Здійснено аналіз деяких прикладів з судової практики визначення часток подружжя в їх спільній власності.

Визначено, що найпоширенішою проблемою сучасності, на жаль, є поділ майна подружжя,

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