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Terminological conflicts in the application of the terms “public (civic) security and order”

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Abstract

The adoption of the Law of Ukraine “On the National Police” has normalized the activities of the National Police of Ukraine regarding the respect for the rights and freedoms of citizens, ensure optimal living conditions, well-being, and order and legality in the state. In the Law, the updated terms “public security and order” were introduced to replace the fixed terms “public security” and “public order”, which caused a lively and still ongoing discussion in scientific circles, and in some places, even disagreement with the innovations. The arbitrary combination of the two terms into one word combination is still unclear, in some regulations “public” (civic) is used at the same time, with the latter taken in parentheses, thereby confirming the semantic similarity and the impracticality of simultaneous use. The purpose of this study was to analyse various scientific views, opinions of practitioners on the content and expediency of using the terms “public (civic) security and order” and their phrases. During the study, scientific methods were employed, which allowed obtaining reasonable conclusions, including system method, hermeneutics, analysis and synthesis, terminological, formal legal, and comparative legal methods. Various literature was processed, including special literature, various scientific sources, provisions of the Constitution of Ukraine, Laws, Decrees, orders, etc., on the subject under study. Based on the study results, there are discrepancies and a lack of consensus regarding the use of the terms “public (civic) security and order”, the legislators did not define these terms in the Law of Ukraine “On the Militia” and the Law of Ukraine “On the National Police”. Proceeding from the processed array of data on the use of the terms “civic security” – “public security”, “civic order” – “public order”, the authors of this paper justified the need for their unification through changes to the entire array of laws, resolutions, orders, etc., that are directly or indirectly related to organizing the work of law enforcement agencies in terms of securing law and order

Keywords:

law and order; public; scientific sources; state bodies; regulations; legislator

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Introduction

The issue of securing public, and in the days before the adoption of the new Law – civic order, the fight against offences was defined by the state as the main vector of law enforcement agencies' activities in building a welfare state. Moreover, a stable rule of law underlies the foundations of an independent, rich and prosperous country. Presently, in the situation of full-scale military operations by Russian troops on the territory of Ukraine, the latter is in an extremely inconvenient situation. The war affected all spheres of life of citizens, there is no family that would not be affected by these events. Residents of entire cities, even regions, left their homes to preserve the life and health of their children, relatives, and friends. The conduct of hostilities in some regions of Ukraine, the illegal and uncontrolled entry of weapons and ammunition deep into the territory, the activation of reconnaissance and sabotage groups, and currently cynical and ruthless attacks and bombings of civilian objects and critical infrastructure objects in Ukraine, these are the factors which, according to the statistics of crimes committed, directly affect public (civic) security and order in Ukraine. Thus, as of November 30, 2022, 345,962 criminal offences were registered by law enforcement agencies and units, which is 23,570 more than in the corresponding period of 2021¹.

The issue of securing law and order, protecting the rights and freedoms of citizens is one of the most pressing issues that the state should solve through the National Police of Ukraine. The National Police should carry out its activities together with bodies, enterprises, institutions of both the state and public sector, exclusively within the legal framework, with respect for the rights and freedoms of citizens, acting exclusively in the interests of society. According to the Law of Ukraine "On the Police"², the Cabinet of Ministers of Ukraine adopted the Resolution No. 878 "On the approval of the Regulation on the Ministry of Internal Affairs of Ukraine" dated 28.10.2015, the basis of which was the creation of a central executive body – the National Police of Ukraine, subordinate to the Ministry of Internal Affairs of Ukraine, which became the starting point of the police reform that took place in 2015³ and objectively led to changes in all spheres of law enforcement. The regulatory framework that guides the National Police of Ukraine in its activities has been radically changed. Therewith, problematic issues of using terminology in law enforcement activities have also become relevant. In turn, scientists should make every effort to develop theoretical and legal approaches to solving controversial issues that arise.

There is a fairly considerable number and variety of scientific opinions, statements, approaches, and legal

practice concerning the topics covered in this paper. Not only scientists, but also the legislators in their rule-making activities, allowed the practice of using different terms to describe the same categorical concepts.

Legislatively, the regulations did not consolidate the term "civic security", although in the system of internal affairs bodies, there was an entire unit – the civic security police, whose main task was to ensure law and order. The legislators followed the same path in the new law, did not explain the new terminology, moreover, combined them into one phrase "public security and order". Thus, now the current regulations continue the practice of applying old and updated terms. Along with the terms "civic order" and "civic security", such a concept as "public security and order" is applied.

According to the subject of the study, the goals, and objectives set by its authors, it is necessary to investigate the practice of applying such terms as "civic order", "civic security", "public order" and "public security" and their correlation. These terms have a fairly wide range of applications, both in administrative and criminal legislation, and therefore are the subject of scientific research in various branches of law. Such a spread and common use of the mentioned concepts implies the need for their theoretical research, which allows outlining law enforcement ways of their use, including by units of the National Police of Ukraine, whose activities are primarily aimed at securing law and order in the state.

Theoretical Overview

The following researchers worked on certain aspects of the concepts of ensuring public (civic) security and order: I.P. Holosnichenko (2020) explored a wide range of administrative terminology. He paid special attention to the terms "civic order" and "civic security" and noted that despite the presence of a fairly large array of interpretations of the categories of civic order and security, they still need to be investigated. With the introduction of new terminology into the legislation, he touched on the problems of its use, expressing his vision and developing approaches to solving conflicting interpretations. O.O. Panova (2016) clarified the essence and meaning of such concepts as "public order and security", their impact on peace and well-being in society, the level of crime, and the effectiveness of law enforcement and other state bodies. D.Yu. Tolstonosov (2017) considered the content and significance of the terms "civic security" and "civic order", their features, ways of improvement, clarified their understanding, established how they differ and how they are similar. O.V. Bratchenko (2014) investigated the concept and

¹On registered criminal offences and the results of their pre-trial investigation: the unified report on criminal offences in Ukraine for 2022. (2022, December). Retrieved from <https://gp.gov.ua/ua/posts/pro-zareystrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2>.

²Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

³Resolution of the Cabinet of Ministers of Ukraine No. 878 "On the approval of the Regulation on the Ministry of Internal Affairs of Ukraine". (2015, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/878-2015-п#Text>.

signs of public security and order and gave his interpretations, explained the content and features of these concepts through the lens of administrative legal security. N.S. Pih (2020) covered issues of ensuring public (civic) security in Ukraine. Based on the analysis of scientific sources, he argued that ensuring public (civic) security is an indicator of the well-being of not only one community, but the state as a whole. He noted that security is influenced by many factors, specifically those that exist directly in the state and that come from outside. D.O. Tykhomyrov (2020) analysed the normative definition of the terms “civic security” and “public security” and highlighted their correlation. A.Ye. Kryshchenko (2019) noted the need to highlight the regulatory features of the term “public security”, cover its essence and content, and formulate its meaning. In addition, to compare the terms “public security” and “public order”, it is necessary to analyse and highlight the terms “security” and “order”. I.V. Zozulia and O.I. Dovhan (2015) held positions on the conflict of laws that arises with the introduction of new terminology, which results in the incomplete performance of the tasks assigned to the National Police. V.H. Fatkhutdinov (2015) also touched on the terms “civic security and civic order” and “public order and security” and had a more principled position. Having analysed opinions on the introduction of new terminology, Fatkhutdinov argued that the police carry out their activities to secure law and order outside the legislative framework. He stressed the importance of implementing reforms and reorganizing the police, but the updated terms introduced by the legislators are not widely used in rule-making activities and rather create a scientific discussion among scientists. D.H. Mulia-vka (2017) worked out his position on terminology and provided his vision under which he considered public security as a certain environment in which all citizens, their rights and freedoms are secured. He noted public order as an opportunity for citizens, state bodies, enterprises, and local self-government bodies to voluntarily perform their duties assigned to them to keep law and order. O.F. Kobzar (2015) conducted a study of regulations that ensure law and order. He defines public order as a rule-governed system of relations within society, which aims to promote proper conditions for the activities of both state bodies and divisions and civil society.

Presently, in the field of scientific and practical activity, unfortunately, there is no consensus on the expediency of using new terminology or returning to the old classical one, as well as the identity or difference of the concepts of public (civic) security and order in ensuring law and order. All this once again confirms the relevance of the subject under study and requires a theoretical study of the problem raised.

The purpose of this study was to analyse different scientific opinions on the meaning and appropriateness of using the terms “civic security”, “civic order” and

“public security”, “public order” and phrases combining these terms.

Materials and Methods

To achieve the goals set, the research uses a set of scientific methods, namely system analysis, structural analysis, comparison, as well as other methods of scientific cognition. The main methodological component included general scientific methods, among which the key place was occupied by a systematic approach consisting of structural and functional methods: using system analysis, the terms “civic security”, “civic order”, “public security”, “public order”, their combination into phrases and practice of application were comprehensively described, hermeneutics was used to investigate regulations and other scientific sources related to the subject, with their further interpretation; analysis and synthesis were used for clearer coverage and clarification of the meaning and content of the terms considered in this study; the terminological and formal legal methods were involved to define the terms “civic security”, “civic order” and “public security”, “public order”, their correlation, similarity, and difference.

The comparative legal method, using which the authors attempted to confirm the opinion that these terms are similar in content, is quite significant.

To investigate the issues raised in this paper, consultations were held with experts – practical workers who directly carry out activities aimed at preventing the commission of offences, take measures to ensure public security and order in streets, squares, parks, stadiums, train stations, and other public places. 3 employees of the Department of Preventive Activities and 4 inspectors of the Department of the Patrol Police of Ukraine in Kyiv were interviewed (during May–September 2022). The purpose was to find out the need for legislative interpretation of terminology and unification of the legal framework, in the activities of practitioners in securing law and order. Through conversations and an anonymous survey, the opinion of the authors was confirmed regarding the presence of problematic issues and some disagreements in the application of terminology that they encounter in their daily activities as law enforcement officers. Attention was also focused on the need to conduct a scientific study, based on the results of which there should be developments and proposals for solving the issues raised by the authors in this paper. All respondents supported the offer and gave consent to highlight their opinion and use the results of the survey, which in one way or another touch on the specified issue in further research, including when authoring this paper.

The application of methods of analysis, synthesis, induction, and deduction allowed to develop a logical structure of the scientific paper, which includes the following blocks: 1) an overview of the regulatory framework of the terms under study; 2) the analysis

of regulations, in the part related to illegal encroachments on law and order, indicates the absence of the terms “public security” and “public order” in their texts, instead, the legislator adheres to “classical” and already established terminology and their word combinations; 3) the fact of the absence of normative confirmation of the mentioned terms was ascertained; 4) the position of the scientific community is also shared by the employees of practical bodies and units; 5) to introduce new terminology or amend the legislation, there is a need for their regulatory clarification by the legislators to avoid different interpretations of the same term; 6) analysis of terms and positions of scientists.

Empirical material on the following issues was analysed: public security and public order, civic security and civic order, law and order, and the public.

During the study, the authors used the regulatory framework, the results of thesis research, publications in print and electronic publications of scientists who investigated this issue, as well as special scientific literature available in the public domain.

Results and Discussion

In regulations and scientific literature, the terms acquire a synonymous understanding and are used in the same categories. A reform that resulted from objective changes in all areas of police activity and the transformation of this body from a punitive and repressive one to an entirely new, law enforcement service body – the Police, which aims to help people. The balance between immediate and sometimes hasty actions and the quality of the results obtained was disrupted, including in terms of amending the array of legislative acts and introducing updated terms. The starting point in the emergence of terminological conflicts in the application of already established legal categories was the adoption of the Law of Ukraine “On the National Police” dated July 2, 2015 No. 580-VIII¹, and at the same time an attempt was made to abandon “old”, “irrelevant” concepts and introduce new terminology. The law offers a new phrase “public security and order”, although it is not used in modern legal science. Therewith, according to the legislative technique, the legislators had to interpret them. For the objectivity of the study, the authors state that the term “civic order”

is not legally consolidated in regulations, and therefore its definition was formed from available literary sources and the practice of applying the legislative framework.

The application of the terms investigated in this study must be started with a review of the legal framework, and first of all with the Fundamental Law – the Constitution of Ukraine² where the term “civic order” is used. Having studied the Constitution of Ukraine³, it does not contain such terms as “public security” or “public order”, this fact should be considered, since the Constitution of Ukraine is the starting point for the legislative and general activity of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine and all state bodies and institutions. Similarly, the mentioned categories are also absent in the Decree of the President of Ukraine “On the Decision of the National Security and Defence Council of Ukraine No. 392/2020 “On the National Security Strategy of Ukraine” dated September 14, 2020⁴, the terms “civic order” and “civic security” are used in the text of the document instead. In the Law of Ukraine “On National Security of Ukraine”⁵, Section 1 of Article 1, Item 3 combined the terms security and order into one phrase and defined civic security and order as the protection of vital interests, rights, and freedoms of a person and a citizen, the protection of which is a priority task of the security forces and other state bodies, local self-government bodies, their officials, and the public, who engage in coordinated measures to exercise and secure national interests from threats. Subsequently, the legislators noted that in Section IV, Part 1, Item 1 of Article 18⁶, the Ministry of Internal Affairs of Ukraine is defined as the central body of executive power that ensures the formation and implementation of national policy, including in the field of keeping civic security and law and order, while Clause 1, Part 4 of the same Article⁷ entrusts the National Police of Ukraine with the function of ensuring civic security and order⁸.

The Law of Ukraine “On the Legal Regime of Martial Law”⁹ never mentions the terms “public security” or “public order”, instead the phrase “civic security and order” is used. And the text of Paragraph 2 of Part 30 of Article 15 of the Law¹⁰, which reads “...listening to the information of prosecutors and heads of the National Police bodies about the state of law, fighting crime,

¹Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

²Law of Ukraine No. 254k/96-VR “Constitution of Ukraine”. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254k/96-bp#Text>.

³Law of Ukraine No. 254k/96-VR “Constitution of Ukraine”. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254k/96-bp#Text>.

⁴Decree of the President of Ukraine No. 392/2020 “On the National Security Strategy of Ukraine”. (2020, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/392/2020#Text>.

⁵Law of Ukraine No. 2469-VIII “On National Security of Ukraine”. (2018, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2469-19#Text>.

⁶Ibidem, 2018.

⁷Ibidem, 2018.

⁸Ibidem, 2018.

⁹Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law”. (2015, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

¹⁰Ibidem, 2015.

protection of civic security and order and the results of activities in the corresponding territory...” it follows that the bodies of the prosecutor’s office and the National Police guard civic security and order, not public security and order¹. Having analysed the Law of Ukraine “On the Foundations of National Resistance”², the authors once again state with confidence that, as in previous regulations, this law does not use the terms “public security” and “public order” and the “classic” and already established terminology. In Clause 1 of Article 21-1³, the legislator defines the Judicial Protection Service as a state body in the justice system to ensure protection and maintenance of civic order in courts, bodies, and institutions of the justice system⁴. That is, the body of the justice system ensures the protection and maintenance of civic order, and not public order.

Analysis of the aforementioned regulations, as well as the Code of Ukraine on Administrative Offences⁵, the Criminal Code of Ukraine⁶, etc., in the part that concerns illegal encroachments on law and order, suggests that the terms “public security” and “public order” are not in their texts, instead, the legislator adheres to the “classical” and already established terminology and their word combinations. The terms “civic security” and “civic order” have the same meaning as “public security” and “public order”, i.e., they are synonymous. Many scientists and practitioners of the Ministry of Internal Affairs of Ukraine and the National Police of Ukraine hold the same opinion.

Thus, D. Tikhomirov (2020) notes the fact that there is no regulatory consolidation of the mentioned terms. He notes that legal literary sources indicate directions for solving the specified issue, by introducing changes and amendments and making appropriate changes to the already adopted Law of Ukraine “On the National Police”⁷ and replacing the term “public security”, which is not used in legal terminology to define national policy in the field of civic security, with the term “civic security”. Secondly, by introducing changes and amendments to the existing array of regulations, as well as defining the concept of public security by supplementing the Law of Ukraine “On the National Police”⁸ with a corresponding article on the definition of terms.

O. Panov (2016) takes a similar position, in his study he concludes that the terminology for describing “public order and security” is not defined by law, but the analysis of regulations and different opinions of

scientists suggest the homogeneity of the terms “civic order and security” and “public order and security”.

The position of the scientific community is also shared by employees of practical bodies and divisions. The author’s survey of practical workers of the Department of Preventive Activities and inspectors of the Department of the Patrol Police of Ukraine in Kyiv during May-September 2022 confirms this. As a result of the discussion, certain issues were confirmed that occurred in the everyday activities of patrol police officers to ensure law and order, in terms of the applicable practice of regulations and the drafting of procedural documents regarding individuals who have committed offences. Attention is focused on the existence of conflicts in the application of established terms and the inexpediency of introducing new terminology by the legislator. Offenders in relation to whom procedural documents were drawn up appealed to the police about the alleged illegal drafting of protocols, pointing out the presence of terminological discrepancies in some regulations. Thus, when the police draft a report on the offender concerning the commission of an administrative offence, the latter indicates the alleged illegality of their actions to draft a procedural document and the illegitimacy of their activities in general. The Code of Ukraine on Administrative Offences⁹ defines an administrative offence (misdemeanour) as an illegal, culpable (intentional or negligent) act or inaction that encroaches on civic order, property, rights, and freedoms of citizens, on the established management procedure and for which the law prescribes administrative liability. The offender emphasizes the phrase “civic order”, at the same time pointing out that according to the Law “On the National Police”¹⁰, the National Police of Ukraine is a central body of executive power that serves society by ensuring the protection of human rights and freedoms, combating crime, maintaining public security and order, and one of the main tasks of police officers is to ensure public security and order, emphasizing the phrase “public security and order”. Disputes also arise in the activities of members of public formations to protect civic order and the state border while ensuring public security and order. When detecting offences and trying to indicate this to a person who violates law and order, the latter, as in the situation with police officers, appeal to the illegality of the activities of members of public formations. They explain

¹Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law”. (2015, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

²Law of Ukraine No. 1702-IX “On the Fundamentals of National Resistance”. (2021, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1702-20#Text>.

³Ibidem, 2021.

⁴Ibidem, 2021.

⁵Law of Ukraine No. 8073-X “Code of Ukraine on Administrative Offences”. (1984, December). Retrieved from https://zakon.rada.gov.ua/laws/show/80731_10#Text.

⁶Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

⁷Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

⁸Ibidem, 2015.

⁹Law of Ukraine No. 8073-X “Code of Ukraine on Administrative Offences”. (1984, December). Retrieved from https://zakon.rada.gov.ua/laws/show/80731_10#Text.

¹⁰Law of Ukraine No. 580-VIII “On the National Police”. (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

this, again, by the fact that their duties include providing assistance to the National Police in ensuring civic order and public security, and they are accused of violating public order and security. Admittedly, the authors understand that the activities of the National Police and public formations for the protection of civic order and the state border are absolutely legitimate and are carried out within a clear legal framework in compliance with national legislation. All these attempts by offenders to avoid responsibility are worthless but can and do lead to verbal conflicts and disputes between offenders and law enforcement officers. We can assume the occurrence of situations when even lawyers, defending in courts individuals against whom protocols for violations of law and order were drafted, may appeal on the mentioned issues. Considering the conducted surveys and during personal conversations with practical workers, they expressed their opinion on the need for legislative interpretation of terminology and unification of the legal base to avoid conflict situations and different interpretations and to make it impossible to level the results of their professional activities in ensuring law and order.

Thus, according to the authors, to introduce updated terms or replace them in the legislation, there is a need for their regulatory clarification by the legislators to avoid different interpretations of the same term. The change of this terminology in some regulations was hasty, and this is the reason for the emergence of legal conflict in the interpretation and enforcement of regulations during the maintenance of law and order.

It is worth paying attention to those regulations that use the new terminology. Thus, in the "Regulation on the Ministry of Internal Affairs of Ukraine" approved by the Resolution of the Cabinet of Ministers of Ukraine No. 878 dated 28.10.2015¹, the legislators use the phrase "public security and order", although the text does not define and interpret this term². A.V. Dolyunnyi (2017) also emphasizes that in the above-mentioned regulation, the terms "public security" and "public order" are used without legislative interpretation and simultaneously with the already established terms "civic security" and "civic order".

Thus, the Order of the Ministry of Internal Affairs of Ukraine No. 773 dated August 10, 2016 approved the Procedure for the organization of interaction between the National Guard of Ukraine and the National Police of Ukraine when ensuring (protecting) public (civic) security and order. In this document, one can see the use of the term "public" not only in the text, but also in the title; the peculiarity is that the term "civic" is taken in

parentheses, which, according to the authors, is evidence of an interchangeable use and interpretation of the categories of public and civic security and order. In the same way, the legislators use the term "civic" in parentheses next to "public" in the Instructions on the Organization of Response to Statements and Reports of Criminal, Administrative Offences or Events and Operational Information in Bodies (Units) of the National Police of Ukraine, approved by the Order of the Ministry of Internal Affairs of Ukraine No. 357 dated 27.04.2020³, which once again confirms the opinion on the interchangeable use and interpretation of the specified terms and the legislator's attempt to follow the path of not amending the already adopted regulations, but their "masking", which is not acceptable in the opinion of the authors of this paper.

A valid position in confirmation of the opinion regarding the conflicting terminology that arose after the introduction of new concepts was noted by I.V. Zozulia & O.I. Dovhan (2015). They noted that the law enforcement agency – the police – cannot fully perform its tasks to ensure law and order and respect the rights and freedoms of citizens. Although in their daily activities, despite the use of different terminology and different interpretations of terms, the police provide police services, ensure law and order, protect human rights and freedoms, protect the interests of society and the state, and fight crime. On this occasion, V.H. Fathutdinov (2015) was more categorical, he stated that proceeding from the statements made in this regard, it is possible to see the activities of the police in the field of public security outside the law. As a result, this may lead to the establishment of such a fact as the illegality of the National Police. Fathutdinov stated that, considering the importance of the reorganization of law enforcement agencies in general and the National Police of Ukraine directly, the term "public security" was not widely used in the development of new regulations. This terminology has become the subject of research and discussion in the scientific community.

For objectivity and a comprehensive consideration of scientific research issues, the authors of this paper consider it expedient to refer to the international practices of using the mentioned terms. Thus, the Law of the Republic of Latvia "On the Police" (Article 12, Item 14_1) grants the right to observe public places and persons located there, including with the use of technical means, for timely warning and identification of possible threats to public order. Article 13 of the Law gives police officers the right to use physical force, special means, vehicles, etc., including to ensure public order and security⁴.

¹Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.

²Order of the Ministry of Internal Affairs of Ukraine No. 773 "On the Approval of the Procedure for the organization of interaction between the National Guard of Ukraine and the National Police of Ukraine when ensuring (protecting) public (civic) security and order". (2016, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/z1223-16#Text>.

³Order of the Ministry of Internal Affairs of Ukraine No. 357 "On the Approval of the Instructions on the organization of response to statements and reports on criminal, administrative offences or events and operational information in the bodies (units) of the National Police of Ukraine". (2020, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0443-20#n7>.

⁴Law of the Republic of Latvia. (1991, June). Retrieved from <http://likumi.lv/doc.php?id=67957>.

Evidently, the legislators use such phrases as public order and public order and security. Article 2 of the Law of the Republic of Lithuania "On the Police" defines the police and states that it is a set of police institutions and officials that ensure public security and public order. Article 5 defines the tasks of the police, among the principal ones – ensuring civic security and civic order. The Law uses the terms "ensuring public security and public order"¹.

The Police and Border Guard Act of Estonia uses analogous phrases public order and internal security².

Article 1 of the Law of Georgia "On the Police" defines the goals, which are to ensure public security and law and order. The legislator goes further and defines the terms, one of which is public security, which means the inviolability of human rights, state sovereignty, territorial integrity, and the constitutional system, laws, and other acts of Georgia. And again, we can see that the phrase "public security and law and order" is used³.

Another country where similar terms are used in the Law "On the Police" is Moldova. Here, even one of the structural divisions is the Public Order Police, one of the main tasks of which is to support, ensure public order and security. Once again, the authors of this paper note the use of similar phrases – "public order and security"⁴.

Thus, one can discuss the legislators' use of the phrases "public order", "public order and security", "public security and law and order" in regulations, which are similar in their content and scope of application.

In his study, A.Ye. Kryshchenko (2019) noted that it is logical to clarify the regulatory framework of the term "public security", to investigate its content and to formulate its definition. It is also appropriate to consider the term "public order".

O.V. Batrachenko (2014) defined public security as a high and reliable state of protection of the interests, rights, and freedoms of a person and citizen vital to the state, society, and every individual, which is the priority task of the activities of every state body, local self-government body, and their officials. Under the public order, he considered the state of order of public legal relations and the entire public legal system, according to which each individual, state body, local self-government body, their officials voluntarily comply with legal and moral and ethical norms, cultural and other social rules, comply with relevant regulations to achieve public security and general welfare.

According to D.H. Muliavka (2017), the term "public security" should be understood as the state of protection of society and each individual, interests,

rights, freedoms of human and citizen. It defined public order as a state in which every individual, state body, local self-government body, and their officials voluntarily adhere to legal and moral and ethical standards to achieve public security and welfare.

Analysing the content of the Declaration on the Police, adopted by the Resolution of the Parliamentary Assembly of the Council of Europe No. 690 (1979)⁵, O.F. Kobzar (2015) concludes that public order in this document is defined as a regulated state of public social relations that ensure the proper functioning of the state, its structures, public formations and citizens.

The International Police Encyclopaedia offered its own definition of public security. Public security is defined as a system of social relations governed by legal norms aimed at ensuring personal security, public peace, favourable conditions for work and recreation of citizens, normal functioning of state bodies, public associations, enterprises, institutions, and organizations from threats originating from criminal and other illegal encroachments, violation of the procedure for using a source of increased danger, objects, and substances removed from free turnover, adverse anthropogenic and natural phenomena, as well as special circumstances (International Police Encyclopaedia..., 2011).

According to A. Ye. Kryshchenko (2019), to compare the terms "public security" and "public order", there is an objective need to conduct a separate analysis of the terms "security" and "order". Turning to explanatory dictionaries, one can refer to the different semantic meanings that these phrases have.

From ancient times to today, the concept of security was directly related to the life of a person and society. The dictionary of the Ukrainian language interprets "order" as an established way of life; everyday life; the state when everything is being done, it is done as it should be, according to certain requirements, rules; compliance with rules, norms of behaviour somewhere; discipline (Dictionary of the Ukrainian language..., 1977).

Justifying his opinion, H.P. Sytnyk (2007) defines security as the ability of citizens living in the country to live safely, to have rights and freedoms, to fulfil themselves, to prevent encroachments, to protect and inviolability of their property from any harm. Sytnyk's position (2007) is correct, although the emphasis should be placed on preserving living conditions and human life itself, and then on all other aspects.

D. Tolstonosov (2017) also interpreted security as protection from any encroachments on basic human needs and the right to exist, self-fulfilment. By order,

¹Law of the Republic of Lithuania "On Police Activity". (2020, October). Retrieved from <https://www.e-tar.lt/portal/lt/legalAct/TAR.CA89372D00AA/asr>.

²Law of Estonia. "Police and Border Guard Act". (2009, May). Retrieved from <https://www.riigiteataja.ee/en/eli/512112013003/consolide>.

³Law of Georgia. "On the police". (2013, October). Retrieved from <https://matsne.gov.ge/ru/document/view/30346?publication=36>.

⁴Law of Moldova No. 320 "On the activities of the police and the status of a police officer". (2012, December). Retrieved from https://www.legis.md/cautare/getResults?doc_id=110355&lang=ru.

⁵Declaration on the Police No. 690. (1979, May). Retrieved from <https://ips.ligazakon.net/document/view/mu79314>.

he meant a system of relationships in society based on generally accepted norms.

According to V.V. Tretiak (2010), the term “security” consists of protecting generally accepted things in society in certain situations that directly concern an individual.

At the same time, according to the convincing opinion of I.E. Andriievskiy (1874), “security” is a state in which there are no dangerous factors that pose a threat and can lead to harm. In his opinion, public security should be characterized by the absence of danger for all residents of the community.

T. Podorozhnia (2017) investigated such a term as “legal order”, which the author interpreted as the situation in society when the observance of rights, the exercise of benefits by citizens, as well as the performance of their duties is ensured and controlled by the state through certain legal mechanisms.

For decades, scientists have been trying to define public order. One can safely discuss the position of authors who differ in their opinions and those who are united. One part of scientists understands public order in a broad sense, while the other understands it in a narrow sense. Moreover, the vast majority belongs to the former.

For instance, the broadest definition of public order was formulated back in the 1970s by M.I. Yeropkin & O.P. Klyushnichenko (1979), who interpreted public order as the full set of relationships that exist in society. This definition looks generalized and too broad, it does not reveal all the features of public order, but is more aimed at social norms that are regulated by customary law, traditions, etc. More detailed is the definition of I.P. Holosnichenko & Ya.Yu. Kondratiev, who considered public order as a state of social regulation, in which life, health of citizens, their rights and freedoms, public peace, morality and human dignity are ensured (Administrative activity..., 1995, p. 14-16).

Public security, according to Ye.B. Olhovskiy (2003), should be based on principles that are formed with mutual respect and are aimed at preventing factors that can lead to negative factors in the life of citizens, institutions, enterprises, organizations, which concerns both the right to work and to take part in mass events etc.

S.V. Kivalov & L.R. Biel (2002) interpreted public order as the orderliness of social relations and the order between citizens, which is formed considering the interests of citizens and the state. According to M.V. Bilokon (2003), the regulated stay of people and things in public places, the legal status of which is fixed by moral, ethical and legal norms, can be considered a public order.

According to the authors, the definition of public order by V.V. Malikov (2014) deserves attention. He noted that public order is a system of social relations in which citizens live and is aimed at upholding the rights and freedoms of citizens, peace, life, ensuring health, honour and dignity, as well as the formation of favourable factors for the existence of public and state organizations, implementation of norms existing in society.

At the same time, M. I. Yeropkin (1965) successfully noted that the value of defining the concept of public order lies in its analysis as a coherent structural system of legal social relations, which are manifested in the behaviour of people, their deeds, actions mainly in public places and outside them. Therewith, I. P. Holosnichenko (1995) noted that the variety of interpretations and explanations of concepts that hold components of public order is insufficient and does not fully cover its content. The use of such methods of investigating the concept of public order does not allow distinguishing it from other social categories that are normalized by legal and social norms and are aimed at performing the same functions.

In the legal literature, the problem of correlation between the terms “public order” and “public security” under study is debatable. The concepts considered in this paper are closely related. In theory, there are many opinions on this issue. A supporter of one of them, M. I. Yeropkin (1965), defined public security as an integral part of public order.

There is no consensus among scientists regarding the unified definition of the concept and components of which public order is formed. The position of those scientists who interpret public order in a broad sense, meaning social relations that are formed and accepted by society, through the implementation of legal norms, norms of morality, religion, corporate, family, aesthetic, ethical, as well as customs and traditions, etc. Factors that directly contribute to the formation of people’s consciousness and behaviour for comfortable coexistence and the development of all spheres of social life in the state are important. The “golden mean” in definitions is important. Since some scientists in their research made an excessively generalized definition, and other authors try to be too specific, resorting to enumeration of unnecessary details. With an excessive content load on the definition of terms, concretization is impractical, since they lose their meaning and universality, there is a danger of different interpretation, and therefore application in practice.

Conclusions

The authors of this study can state the existence of conflicts in the practice of applying the terms “public (civic) security and order”. Despite the attempts of scientists to cover the problems and implement developments in solving the issues raised in this paper, the problem stays unresolved.

There are contradictions and there is no unified opinion regarding the use of the terms “public (civic) security and order”, since the legislator did not interpret the mentioned terms either in the Law of Ukraine “On the Militia” or in the Law of Ukraine “On the National Police”.

In some regulations, in the part concerning illegal encroachments on the rule of law, the terms “public security” and “public order” are not included in the texts,

but the legislators adhere to the position of using “classical” and already established terminology. Along with the terms “civic order” and “civic security”, such a concept as “public security and order” is applied.

Conducting a scientific study allowed confirming the opinion that the terms “public security” and “public order” and “civic order” are similar in terms of content, in regulations and scientific literature they acquire a synonymous meaning and are used to describe the same categories. Thus, the legislators do not introduce changes to the already adopted regulations, but “mask” them.

Most scientists and practitioners agree on the hasty and inappropriate introduction of new

terminology, and this is the reason for the emergence of a legal conflict in the interpretation and enforcement of regulations in ensuring law and order. Practitioners also confirmed this fact. Problematic issues arose during the performance of their professional duties to ensure law and order and in the practice of applying regulations and drafting procedural documents. The authors of this study can talk about appealing offenders to patrol police officers in terms of applying certain terms.

Terminology requires legislative interpretation and unification of the entire array of laws, resolutions, orders, etc., that are directly or indirectly related to the organization of the work of law enforcement agencies in terms of ensuring law and order.

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Термінологічні колізії в застосуванні терміна «публічна (громадська) безпека й порядок»

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Анотація

Прийняття Закону України «Про Національну поліцію» унормувало діяльність Національної поліції України щодо дотримання прав і свобод громадян, забезпечення оптимальних умов проживання, добробуту, порядку й законності в державі. У Законі на зміну усталеним поняттям «громадська безпека» та «громадський порядок» було запроваджено новий термін – «публічна безпека й порядок», що викликало в наукових колах досить жваве обговорення, а подекуди й незгоду з нововведеннями. Незрозумілим залишається доволіне поєднання термінів у словосполучення: у деяких нормативно-правових актах використовують «публічний» та «громадський» одночасно, причому останній подають у дужках, підтверджуючи рівнозначність змістового наповнення та недоцільність одночасного вживання. Метою статті є здійснення аналізу різних наукових поглядів, думок практичних працівників стосовно змісту й доцільності використання терміна «публічна (громадська) безпека і порядок» та варіацій сполучення його складових. Під час проведення дослідження в статті застосовано комплекс наукових методів, серед яких системний, герменевтики, аналізу й синтезу, термінологічний і формально-юридичний, порівняльно-правовий, що сприяло отриманню обґрунтованих висновків. На підставі результатів опрацювання літератури, зокрема спеціальної, різноманітних наукових джерел, положень Основного Закону України, законів, указів, розпоряджень, наказів тощо за тематикою дослідження, констатовано існування суперечностей і відсутність єдиної думки щодо застосування термінів «публічна (громадська) безпека та порядок». Так, у Законі України «Про міліцію» та в Законі України «Про Національну поліцію» законодавець не дав визначення зазначених термінів. Спираючись на опрацювання масиву даних застосування термінів «громадська безпека» – «публічна безпека», «громадський порядок» – «публічний порядок», обґрунтовано необхідність їх уніфікації через зміни всього масиву законів, постанов, наказів, розпоряджень тощо, які безпосередньо або опосередковано стосуються організації роботи правоохоронних органів у частині забезпечення правопорядку

Ключові слова:

правопорядок; громадськість; наукові джерела; державні органи; нормативно-правові акти; законодавець