

UDK: 351.74

DOI <https://doi.org/10.24144/2788-6018.2022.04.42>

PREVENTION OF ADMINISTRATIVE OFFENSES AFFECTING PUBLIC ORDER AND PUBLIC SECURITY AS A METHOD OF PROTECTING HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

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Шевяков М.О. Профілактика адміністративних правопорушень, що посягають на громадський порядок та громадську безпеку, як спосіб захисту прав та основних свобод людини.

Якість та безпека життя - це одна з багатьох цілей людства всієї течії. З часом, значення безпеки, її місце в суспільстві невпинно зростає. Гарантована безпека – пріоритет сучасності. Досягнення стану громадської безпеки можливе за умов проведення єдиної державної політики, спрямованої на протидію та профілактику деліктів. У статті встановлено зв'язок між профілактикою адміністративних правопорушень, що посягають на громадський порядок і громадську безпеку, із захистом прав і свобод людини і громадянина. Також у проведеному науковому дослідженні з'ясовано зміст поняття «профілактика» у різних сферах життєдіяльності людини, запропоновано власне трактування поняття профілактики (адміністративних) правопорушень, оскільки офіційного підтвердження на законодавчому рівні немає. Наголошується на важливості збереження громадського порядку та відчуття безпеки для кожної людини. Виявлено зв'язок між попередженням правопорушень і задоволенням потреб людини, які, згідно з психологічною теорією, розташовані в піраміді Маслоу. Об'єктом наукового дослідження обрано центральні поняття громадського порядку та громадської безпеки в аспекті самостійних складових в адміністративно-деліктному законодавстві, а предметом – превентивний комплекс дій у сфері підтримання належного рівня громадського порядку та безпеки в країні. Мета – здійснити комплексний аналіз та систематизацію провідних напрямів профілактики правопорушень, що посягають на громадський порядок та громадську безпеку в Україні.

Громадський порядок розглядається як системний комплекс дій із забезпечення правопорядку в аспекті забезпечення функціонування як спектру прав і обов'язків громадян, так і

правового регулювання суспільних відносин на постійній основі в цілому, громадському безпеку трактується як безперечно необхідний соціальний стан, за якого всі найважливіші та життєво важливі суспільні інтереси захищені як від природних, так і від штучних джерел небезпеки.

Ключові слова: профілактика, права і свободи, правопорушення, потреби, інтереси, розвиток.

Sheviakov M.O. Prevention of administrative offenses affecting public order and public security as a method of protecting human rights and fundamental freedoms.

The quality and safety of life is one of the many goals of mankind throughout the world. Over time, the importance of security and its place in society is constantly growing. Guaranteed safety is a modern priority. Achieving a state of public safety is possible under the conditions of implementing a unified state policy aimed at combating and preventing torts. The article finds a connection between the prevention of administrative offenses that encroach on public order and public safety and the protection of human and citizen rights and freedoms. Also, the conducted scientific research clarified the meaning of the concept of "prevention" in various spheres of human life, proposed the own interpretation of the prevention of (administrative) offenses, since there is no official confirmation at the legislative level. The importance of maintaining public order and a sense of security for each individual is emphasized. The connection between the prevention of offenses and the satisfaction of human needs, which are located according to psychological theory in Maslow's pyramid, was found. The central concepts of public order and public safety in the aspect of independent components in administrative- delict legislation were chosen as the object of scientific research, and the subject was the preventive range of actions in the field of maintaining an appropriate level of public order and security in the country. The goal is to carry out a comprehen-

sive analysis and systematization of the leading trends in the prevention of offenses that encroach on public order and public safety in Ukraine.

Public order is considered as a systematic complex of actions to ensure law and order in the aspect of maintaining the functioning of both the spectrum of rights and responsibilities of citizens, as well as the legal regulation of social relations on a permanent basis in general, public safety is interpreted as an indisputably necessary social state for which all the most important and vitally relevant public interests are protected from both natural and artificial sources of danger.

Key words: prevention, rights and freedoms, offenses, needs, interests, development.

Formulation of the problem. Analyzing statistical data on crimes in the territory of Ukraine, we understand that the mechanism for protecting the rights and freedoms of people and citizens needs improvement, the development of new methods and approaches to combating and preventing illegal behavior. Administrative offenses against public order and public safety occupy a special place among the cases of recorded offenses, as they are committed daily in large numbers. Offensive clinging, obscene swearing, domestic violence, drinking alcohol or smoking in public places - all this encroaches on the established order, creates a risk for the happy future of civilized persons. Such manifestations of antisocial behavior violate generally accepted rules, create discomfort in the exercise of rights, satisfaction of legitimate needs and interests, sometimes limiting constitutional rights.

The research vector is establishing the connection between the prevention of offenses and the mechanism of protection of rights and freedoms, the role of prevention in meeting human needs of various levels, as well as the need to carry out (apply this form of state coercion) to maintain order on the territory of the state.

Presenting main material. Every person strives for personal development, self-improvement, improvement of living conditions, increase of own values and achievements, social recognition. In order to achieve such a result, the work process takes place every day: directly at the workplace, where a person acquires funds to meet his own needs; in his free time, when he acquires new knowledge and skills to increase the horizon of views, raise the level of goals and set new priorities; also in the struggle with one's own fears or doubts - work on motivation and desire. However, even considering the psychological theory reflected in Maslow's pyramid, we pay attention to the 1st level - the basis of further processes, needs and interests. At the 1st level, there are all the components that support human life at the physiological level, without which the full existence of

an individual as a living organism is impossible. No less important is the 2nd level in the pyramid of needs, as it characterizes the need for security. An individual cannot strive for recognition if he does not feel safe and does not receive all the necessary conditions for a full existence. Security includes a sense of security in terms of property gains, health and life protection, comfort and stability.

It is the safety that is so necessary for every individual, which is ensured by the prescriptions of the current legislation. The needs and interests of a person, from the lowest level to the highest, are guaranteed by the state and are contained in the rights of a person and a citizen. The Basic Law of Ukraine is the basis not only for sufficient conditions for the existence of an individual as a living organism, but also the basis for cultural and spiritual development, a comfortable, interesting and fulfilling life, as well as a condition for the formation of high moral qualities, respect for each other.

Without the stable maintenance of established law and order in the state, it is impossible to ensure and guarantee any human right (regardless of the level of need). Administrative offenses that encroach on public order and public safety have much greater consequences than it seems at first glance, because they not only encroach on the peace of citizens, temporarily disrupting it or limiting the realization of some interest - they disrupt the normal rhythm of life, comfortable conditions for existence and cultural and spiritual development of a person, cause stereotypes of anomie in society, and also have some psychological consequences, which can later create a threat to the life and health of people, order and order in the state. Limiting to a certain extent the effects of this manifestation, characteristic of the human behavior and reducing them to a certain degree of endurance, has always represented a major preoccupation of the state, regardless of its nature. Naturally, prevention is part of the forms of reaction of society towards criminality and definitely constitutes the final, yet optimal, means of answer society must give to this species of human behavior [4, art. 134].

Can the prevention of administrative offenses have a positive effect on the protection and implementation of human and citizen rights, as well as fundamental freedoms? Unequivocally yes, because prevention is classified as a mechanism of state coercion and a method of public management, which is the basis for the implementation and satisfaction of the needs and interests of society.

A democratic state has a people-centered approach in the process of management, when choosing methods of its implementation, as well as preventive and restorative mechanisms for the established order. That is, it means that in the first

place, among the highest values, there are not the interests of the state, but human rights (regardless of their social or family status, property status, skin color or origin). The highest social values of the state in Ukraine are human life, health, honor and dignity [1]. Among the specified values, we find those that are at different levels of needs (according to psychological theory), and this indicates the state's interest not only in the existence of people as living beings, but also in their cultural and spiritual development, increasing self-awareness and legal awareness, respect to one and the state. The Basic Law of Ukraine also regulates mutual obligations between the state and citizens living on its territory who enjoy special rights.

According to the norms of the Constitution, Ukraine is a sovereign and independent, democratic, social, legal state. The fundamental right in the democratic government is the right to vote and to choose. Meanwhile, there is the right to express one's opinion and, doing so in a peaceful manner, to gather with others to express one's opinion [1, Art. 38].

In order to establish a connection between crime prevention, the state and the guarantee of the rights and freedoms of a person and a citizen, it is first necessary to clarify the meaning of the concepts "prevention", "state coercion" and others, which are characteristic of the research topic. State coercion has several forms that affect the provision of rights and freedoms of citizens, as well as the interests of the state, the performance of its tasks and functions.

Most often, the concept of "prevention" is associated with medicine, emphasizing that it is: measures that prevent the occurrence and spread of diseases, contribute to the protection of public health [2]. These measures are divided into stages, each of which has its own purpose and features. For example, "primary prevention" is used to identify threats and risk factors for the health of a healthy person, and "secondary prevention" already aims to prevent complications and exacerbations of existing diseases in a person [3], etc. Prevention in medicine, in general, is aimed at preserving human life and health by timely identifying negative factors that can affect well-being, cause or aggravate diseases. That is, timely detection of the problem is the basis for effective fight against the disease or its complete prevention (prevention).

Also, the concept of "prevention" is actively used in other spheres of human life, for example - technical. Prevention, in this case, will have a definition: a set of measures that prevent premature malfunctions and operation of machines, mechanisms, etc., in production, transport, and prevent accidents [4]. Analyzing this definition of the concept in the technical field, we understand that such actions that help to avoid the occurrence

of serious consequences are called prevention. As in medicine, prevention can be carried out in various ways, each of which has its own purpose and goal. It is worth paying attention to the fact that prevention is carried out with the aim of preventing the breakdown of mechanisms, accidents, aimed at - preserving the life and health of people who may suffer as a result of a malfunction of equipment or improper handling (use) of it.

Prevention, as a phenomenon, has a wide spectrum in the field of law enforcement. The official interpretation of the concept of "crime prevention" can be found in the Order of the Ministry of Internal Affairs dated 05.25.2012 No. 452 "On the approval of the Regulation on the prevention of offenses related to the performance of official activities by employees of the State Migration Service of Ukraine", which expired on 07.05.2019. According to this interpretation, crime prevention is a system of legal, organizational and educational measures aimed at preventing and eliminating the conditions and reasons that contribute to illegal actions by employees of the State Security Service of Ukraine, related to the performance of their official activities. The key words of this definition of the term can be considered: "prevention", "warning", "elimination of conditions and causes" and "illegal behavior". That is, crime prevention means comprehensive assistance in preventing misconduct by officials. We can also consider the protection of life and health of people as the ultimate goal of crime prevention, however, it is worth considering the protection of rights in a broader sense: such prevention prevents the reduction or violation of the order and order established on the territory of the state, since the officials of the DMS of Ukraine are representatives of the state (civil servants), have special powers granted by the state to perform official tasks and functions in the interests of the state and society (population, citizens).

Summarizing the mentioned variants of the interpretation of the concept of "prevention", we provide a definition of the concept in relation to administrative offenses. "Crime prevention" is a set of actions and measures aimed at the timely identification of causes and conditions that contribute to the commission of offenses, as well as the detection of the commission of offenses in the early stages, the prevention of significant damage from illegal behavior in order to protect the rights and freedoms of a person and a citizen, interests of society and the state.

How is prevention related to the state, and is any prevention of a legal nature and aimed at protecting the rights and freedoms of a person and a citizen? The methods of performing state functions include the following forms of influence: encouragement, persuasion and coercion [6, art. 65]. The

specified methods are also characteristic of public administration [7], they are less important than in the case of the implementation of state functions. According to scientists, state coercion directly refers to coercion itself, as a method of administration or performance of state functions, however, analyzing the interpretation of "state coercion", we can conclude that both encouragement and persuasion are also related (included) to state coercion due to the presence of a number of characteristic signs of such coercion.

State coercion is the material, psychological or physical influence of authorized public authorities and their officials on a person with the aim of forcing him to act according to the will of the ruling subject, in the interests of the state [6, art. 65]. Prevention should be attributed to state coercion, since a characteristic feature of this complex of actions and measures is psychological influence on the individual in the interests of the state, and the goal of crime prevention is legal education of individuals, prevention of committing crimes by increasing the level of legal awareness and self-awareness.

According to O. Skakun, prevention is a component of the mechanism of human rights protection, since the mechanism covers the specified measures to confirm the lawful behavior of a person [6, art. 103]. That is, taking into account the opinions of scientists regarding the direct involvement of crime prevention in the protection and provision of human and citizen rights and freedoms, we can establish the connection between these phenomena. Effective prevention of offenses, including administrative offenses that encroach on public safety and public order - the basis for a normal and full-fledged, safe life of society, cultural and spiritual development and evolution.

The feeling of security and freedom for a person is no less important than other physiological and spiritual and moral needs, because only they contribute to the development, formation of high moral qualities, respect for others and the state. Taking into account the fact that the state takes care of security and the observance of human rights and freedoms - in society, when the state improperly performs its law enforcement function, respect for the state is formed (from the general concept of this phenomenon, to officials of the state apparatus), and for legislation (precepts), as a result of which, everyone takes care of their safety and that of others, about maintaining order and order in the territory, preventing chaos, the appearance of the illusion of impunity, arbitrariness and illegal behavior.

In order to effectively ensure people's rights and freedoms, the state has administrative and coercive apparatuses that guarantee and, if necessary, restore violated rights and bring the culprits to justice. Officials who have been given special

powers to perform official functions and tasks in the interests of the state and its population work in the specified apparatuses. Carrying out preventive measures is assigned to the competence of officials of the state apparatus and is regulated by normative acts (order and purpose of carrying out such measures). Only such prevention is legal. The level of technology and freedom in the choice of human activity at the modern stage has reached such a level that any citizen, foreigner or other person, can hold lectures, trainings, seminars, courses, etc., with the aim of expressing their own opinion, finding and training like-minded people, but not all measures with the name "prevention" are legal, have the goal of ensuring the rights and freedoms of a person and a citizen, and positively contribute to the satisfaction of the interests of the state. Such measures can be of a private nature and contribute to the realization of the interests of a specific person or organization on the territory of the state, harm the patriotic and legal education of individuals. Therefore, it is worth remembering that prevention is legal and useful if it aims to preserve the highest social goods (life, health of a person, his honor and dignity, freedom) of the state and does not harm its interests, legal awareness, does not negatively affect behavior of persons, does not cause the commission of illegal actions.

In Ukraine, criminal offenses that pose a significant threat to society and the state are considered to be criminal offenses for which, according to current legislation, criminal liability is provided in the form of restriction or deprivation of liberty, monetary penalties, etc. Crime prevention represents a multilateral system of measures, aimed at: a) Revealing and eliminating or reducing or neutralizing the causes of crime, of some separate types of crime, as well as the conditions which facilitate it; b) Revealing the groups of persons who bear a high criminal risk and reducing it; c) Revealing and eliminating situations from certain geographic areas; d) Revealing the persons whose behavior indicates the real possibility of committing crimes, as well as the corrective influence on them [4]. Are only criminal offenses really a significant public danger? Among the types of offenses that are closely related and often overlap (administrative and civil, criminal and disciplinary, and in other combinations), it is worth paying attention to administrative ones, which cover all areas of offenses in the initial stages. Liability for administrative offenses has a preventive nature, it is used to prevent the occurrence of more serious consequences and to educate offenders in the spirit of exact and consistent observance of laws. However, administrative offenses sometimes have more serious consequences than criminal ones. Considering administrative offenses that encroach

on public order and public safety, we can notice that mostly all of them pose a danger to the life and health of a person, prevent a normal life and the realization of needs and interests.

But for such offenses liability is provided in small amounts, which does not always effectively affect the mechanism of protection of human rights and freedoms, prevents the commission of new immoral and illegal actions. In addition to liability, the current legislation provides for preventive work with the population (general) and individual work with persons who have become victims of misconduct or committed offenses. A comprehensive approach, the application of various forms of prevention (in the process of which the purpose of preventing offenses, the impact of misconduct on the life of an individual and society, the application of responsibility measures and the possible consequences of previously committed, possible actions is clarified) guarantees a more effective result than the application of only one of the varieties responsibility. A person without additional conversations, with a low level of legal awareness – is unable to realize the purpose and goals of applying any coercive measures to him (physical force to stop illegal behavior or special means [8], measures of responsibility, etc.).

Article 173-1 of the Criminal Procedure Code regulates the prosecution of persons for spreading false rumors that may cause panic among the population, violation of public order [9]. Violation of the established order can lead to a threat to the life and health of persons who are participants (from any side) of the offense, since panic harms compliance with the established norms of behavior of the population, their moral values and priorities at the moment of a special psychological state. Persons in panic easily commit other offenses due to carelessness or intentionally, taking advantage of the situation to satisfy their own needs in an illegal way. However, prevention in the form of an interview or a public speech by authorized persons with an explanation of the consequences significantly reduces the likelihood of such a manifestation of illegal behavior, because this way people are aware of the onset of responsibility and the use of other coercive measures to stop illegal behavior, restore violated rights and order. It is unlikely that someone strives to create discomfort, to apply certain restrictions, on the contrary, as already mentioned earlier – people strive to improve conditions, stability and comfort.

However, the need for recognition should also be taken into account - people with a low level of legal awareness and a negative experience of such recognition due to illegal behavior (authority among social groups that are characterized by illegal behavior to satisfy needs and interests) are prone to commit crimes in order to realize, acquire negative authority (sometimes frightening for the population).

Petty hooliganism (Article 173 of the Code of Criminal Procedure) violates a person's constitutional rights to honor, respect for dignity, in the case of offensive clinging or obscene swearing. In general, almost any offense directly violates the rights and freedoms of a person and a citizen or creates conditions for a large-scale violation, a threat to people's lives and health.

Clarification of norms and rules of behavior in society should be considered as features of the prevention of administrative offenses that encroach on public order and public safety. If, in the case of the illegal sale of goods (without a license, excise tax, out of hand, etc.), the damage to the life of the buyer and the economy of the state is clarified, then in the case of the prevention of administrative offenses that concern public safety – damage to the comfortable life and development of society, the role of education, knowledge, moral qualities and values. As already mentioned earlier, such offenses in most cases have negative psychological consequences (injuries, etc.). Domestic violence, bullying, the spread of false rumors, improper fulfillment of duties by parents - often become the basis for victims to commit suicide or show aggression based on the reproduced model of the behavior of the aggressor-offender. In this case, preventive work aimed both at preventing the commission of offenses and at minimizing the negative consequences of an already committed illegal act is of great importance.

Therefore, crime prevention is an integral component of the mechanism of protection and ensuring the realization of human and citizen rights and freedoms. The level of education and civilization of the population, the development of their cultural and spiritual values and moral qualities, the stability and comfort of life depend on the effectiveness of prevention. The prevention of administrative offenses that encroach on public order and public safety is of great importance both at the personal (individual) level for a person, when his need for a sense of security is satisfied, and at the general societal level, when order in the state, normal conditions for life and development are maintained, and not just existence and survival. Such prevention will also help to reduce the risks of illegal behavior of participants of previous offenses due to psychological consequences (of victims, offenders, etc.).

Taking into account the above, we conclude that it is worth paying more attention to the form of state coercion in the form of persuasion, which is implemented by conducting prevention. This method of law enforcement activity helps to significantly reduce damage to the state and its population, improves conditions, and increases the level of legal awareness and self-awareness. In addition, prevention should be attributed to positive factors that

help individuals realize their needs (according to psychological theory) from the lowest to the highest level in the form of general and special rights. Therefore, we conclude that the prevention of administrative offenses that encroach on public order and public safety guarantees a happy, fulfilling, interesting and rich life of society, evolution and self-improvement.

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