

Possibilities of using international experience in the research of public order issues



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Abstract. The article deals with the search of optimal models of international experience usage in researching the issues of ensuring public order. The key factors became the conditions for the effectiveness of legal norms.

As a result of the analysis of the legislation of foreign countries, we can conclude that «public order» – a widely used legal term, its application is related to both state policy, the basis of which is laid down in constitutional acts, and to the standards of morality and social behavior in society, which are reflected in the internal legal norms.

Key words: *public order, legal order, legislation, responsibility.*

Problem statement

In the course of its existence, the civilized international community has developed a number of norms and standards, the conformity of which is a pass to the relations on parity in such a society, to the authority and recognition of the state. «For this purpose, in the society itself, commonly accepted rules and standards of cohabitation are formed, the fulfillment of which guarantees the achievement of the common goal for all members of the community – public order. Well-being and order are the foundation of a civilized (civil) society. » [1, p.14] In solving the problem of developing a model of public order provision, the state a priori faces the need for its legal support and reform of the current legal system. [2, p.100; 3, p.44]

The purpose of the article is to find the best models for using international experience in the research of issues of ensuring public order. The key factors here are the conditions for the effectiveness of legal regulations.

The degree of development of the topic. In existing legal literature, there are currently a number of studies on the effectiveness of law enforcement in the state. Works of O.M. Bandurka, S.V. Petkov, M.V. Loshitskyi, O.G. Komisarov is the foundation

of search works in this sphere. However, today we are talking about the purity of terminology, the search for algorithms for the application of legal phenomena in the new conditions of state establishment. And so, we are dealing with a number of related terms and phenomena – social order, civil order and public order. What is behind each term? How do they relate and how can we effectively apply them?

Main results. The protection of the population, the state of guaranteeing the

rights and freedoms of citizens is a key indicator of the existence of a law-governed state and civil society. We emphasize that at present we are forced to serve legislation based on the post-Soviet approach. The norms that served the relations of Soviet society sketchily adapted to the modern requirements of democracy. Finally, the built-in system of legislation does not correspond to the theory of law and does not satisfy law-enforcement practice. As an example of such inconsistency in the literature is precisely mentioned the administrative rules: «normative acts regulate relations that within the legal system belong to one branch of law, and responsibility for their violation is regulated by a normative act from another branch of law. At the same time, the spheres in which this interpenetration takes place are so different in their legal nature that such interaction contradicts the very essence of modern development of society.» [3, c. 49] We can observe something similar about the current legislation in the field of public order.

The results of a sociological survey conducted by the Institute of Sociology of the National Academy of Sciences of Ukraine are interesting in this regard. So, to the question: «Do you have enough order in society?» 73,5% of the respondents gave a negative answer, for 18% – it is difficult to answer, 2,3% – this question is not interesting and only 6,2% enough order in society. In turn, the question: «Do you have enough laws to comply to in the country?» Resulted in a negative answer from 72,1% of the respondents, for 19,1% it is difficult to give an answer, 2,6% – this question is not interesting, only 6,1% of the respondents gave a positive answer. These indicators quite clearly reflect the attitude of society to the issues of ensuring public order in the state. [4]

Considering the issue of improving the legal framework of the administrative and legal provision of public order, it is relevant to pay attention to the legal concepts of public order in the legislation of foreign countries that already have a positive experience in guaranteeing it.

For example, in France, the term «public order» is one of the key concepts of public safety that has been formed over a long period of time. Actually, this resulted in the

presence of a number of specific characteristics in the phenomenon of public order in this country. This term appeared in the French Constitution of 1789, followed with the continuation of next constitutions and the Civil Code of Napoleon. Although France's legislation does not currently contain a precise definition of the term «public order», according to P. Mazeaud, member of the French Constitutional Council, the court responsible for interpreting the Constitution, the basis of public order can be found in principle of security, guaranteed by the Declaration of 1789: freedom is not possible if individuals fear their own security [5]. Consequently, in accordance with the normative understanding of French law rules, public order is a state of peace in society. It must prevent and eliminate the inappropriate factors beyond the limits of acceptable or permissible inconveniences in society (for example, excessive noise, obstacles in moving, the threat of attack by drunkards, threats of injury, etc.). [6, p.3] On the other hand, the French legal dictionary defines the term «public order» in the broad sense as a concept of social life in the political and administrative spheres. Civil law considers public order as rules that, from the point of view of morality and security, are necessary for the existence of social relations. [7]

In Germany, legal category «public order» has an important place in law and in most cases is used in connection with the term «public security» or «security» [8]. Public security (security) determines the inviolability of the supremacy of law, subjective rights and legal positions of the individual, as well as the existence of institutions and bodies of the state, as well as other repositories of sovereign power [9], while the public order is a collection of unwritten rules of conduct of a person in the public sphere, which in the light of general ideas within a certain period of time are considered necessary to ensure the orderly life of people in society [10, p. 316]. Taking into account the above definitions, we can conclude that these terms are mutually exclusive: if the basis of «public security» is established exclusively by law, then the forms of public order are not contained in the legislation. In practice, the same public order in Germany as the unwritten rules of conduct

is constantly narrowed to the benefit of public security, because almost all the rules that must be respected in society are regulated by law [11].

In Switzerland, the legal category «public order» is set in both federal and cantonal legislation levels. The Constitution of the Swiss Confederation refers to public order and internal and external security, along with this the existence and concept of «constitutional normality» is provided [12].

Consequently, the notion of public order is distinguished by scholars and legislators in all the investigated countries, but it has certain differences in the title and meaning that fits into these concepts. Very often, the term «public order» is used in connection with the notion of «security» («public order and security») as an integrated legal term, the exact definition of which is not included in the current legislation. However, this term is used as a generalization in connection with the legal protection provided by administrative law. In this context, the concept of «public order» covers the whole legal order, as well as a set of unwritten rules that are considered necessary for the formation of essential conditions of life in society [13].

Along with the experience of the above-mentioned countries of «stable democracy», attention should also be paid to the European states of «young democracy», where in the current legislation the legal category «public order» applies, in particular, in connection with the notion of «peace» («public order and peace»).

In particular, in the Republic of Slovenia, in accordance with the Law on the Protection of Public Order and Peace (2006) [14], public order and peace are recognized as a state in which is ensured free exercise of

rights and fulfillment of the obligations provided by the Constitution and legislative acts.

In turn, in the context of the Law of the Republic of Montenegro on public order and peace (2011) [15], public order and the world are understood as the state of relations between citizens in public places and operating institutions, organizations and state bodies, in which there are equal conditions of realization for constitutionally guaranteed rights and freedoms.

Instead, the legislation of the Republic of Bulgaria does not contain the definition of the term «public order». However, in accordance with the point of view of the Constitutional Court of Bulgaria, set forth in the decision No. 7 of 04.06.1996 on the constitutional case No. 1 of 1996, the public order means an order regulated by normative legal acts that provide peace and normal ability to realize civil rights [16].

Along with the above, study the experience of the countries of the former Soviet Union wouldn't go amiss. Thus, in the Constitution of the Russian Federation the notion of «public order» is used in the context of the powers of the Government of the Russian Federation (Article 114) and the powers of local self-government (Article 132) [17]. At the same time, the term «public order» has no legitimate definition, its use in codified acts, federal laws, usually is associated with public events and public places, that is, in fact, public order is understood in a strictly narrow sense.

Conclusion

As a result of the analysis of the legislation of foreign countries, we can conclude that «public order» – a widely used legal term, its application is related to both state policy, the basis of which is laid down in constitutional acts, and with the standards of morality and social behavior in society, which are reflected in the internal legal norms.

By studying international experience, in order to ensure public order, we can gradually, step by step approach its essence, as the basis of the existence of society, find inaccuracies or innovative ideas in domestic approaches. In this sense, the public order is an ideal which the community seeks to achieve and, for this purpose, it delegates its powers to the government, which creates certain

mechanisms in the form of legal norms designed to become constructions, based on which authorities will regulate relations in the field of rights and freedoms of an individual and a citizen.

Law and order, or the order in legal regulation or provision, is the basis for the proper formation, activity, use of legal norms and postulates. That is, the public order is a multi-faceted phenomenon that includes aspects of morality, psychology, law, economics, and so on. The law and order are the basis, the social standard of relations in society. These are general theoretical foundations that should be applied in the analysis of parts, institutions, laws of the development of society and relations between citizens and the state. In this case, we can correctly understand and characterize, and accordingly, make adjustments not only in the conceptual apparatus, but also in the algorithms of the use of the rules of law, which are intended to ensure public order.

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