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PROBLEMS OF APPLICATION OF PHYSICAL FORCE BY THE EMPLOYEES OF INTERNAL AFFAIRS BODIES (POLICE)

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The article presents a comparative-legal analysis of the norms of administrative and criminal legislation on the issues of legal regulation of application by police officers of physical force, special means and firearms, notes unrecoverable contradictions.

The author argues that normative-legal regulation of the legality of application of physical force by police officers is of a systematic nature and includes interrelated legal prescriptions of the norms of administrative and criminal law.

It is postulated that special administrative-legal norms, which enshrine grounds and procedures for application of physical force, are assigned to an auxiliary function.

Keywords: police, application of physical force, preventive and prophylactic measures against crime, suppression of crime, justifiable defense.

There is an opportunity to acquit yourself,
But nobody will ask – it's a pity!
Caution, caution!
Be careful Sirs!
N. A. Nekrasov ("Caution")

Article 1 of the Federal Law No. 3-FL from February 07, 2011 "On the Police" [5] (hereinafter the Law No. 3-FL) defines the purpose of the police, which is designed "to protect the life, health, rights and freedoms of citizens of the Russian Federation, foreign citizens, persons without citizenship, to combat crime, protect public order, property, and to ensure public safety. Police immediately comes to help to anyone who is in need of its protection from criminal and other unlawful infringements". To achieve these goals, the law No. 3-FL gives to police officers the right to apply measures of government coercion. The toughest of them is the right to apply physical force.

According to article 18 No. 3-FL: "1. Police officer is entitled to use physical force, special means and firearms in person or as members of a unit (group) in the cases and in the procedure envisaged by federal constitutional laws, the current Federal Law and other federal laws. 2. A list of the special means, firearms and rounds for them and ammunition the police has in service shall be established by the Government of the Russian Federation. The police is hereby prohibited to accept for service special means, firearms and rounds for them and ammunition which inflict too grave injuries or serve as a source of an unjustified risk. 3. In the state of justifiable defense, in extreme need or while apprehending a person who has committed a crime a police officer if he/she lacks the necessary special means or firearms is entitled to use any improvised means and also on the grounds and in the procedure established by the current Federal Law to use weapons other than those deemed the standard ones of the police".

The legal basis for application of physical force, special means and firearms by the police officers is the norms of the following laws: No. 3-FL, Federal Constitutional Law No. 3-FCL from May 30, 2001 "On State of Emergency" [4], Federal Law No. 27 -FL from February 06, 1997 "On Internal Troops of the Ministry of Internal Affairs of the Russian Federation" [3], RF Law "On Weapons" [2].

Despite the official figures on reducing the overall number of crimes in Russia, violent and lucrative-violent crimes have the negative trend to growth. Therefore, one of the duties of the police is to carry out preventive and prophylactic measures on the issues of combating crime. It can be assumed about the inevitable

growth in the number of cases of direct suppression of offences related to the active resistance of criminals to the police. There are quite many examples of armed and group criminal counter the activities of police officers at the moment of suppression of crimes. And they cannot be ignored. Such crimes have become the fact of everyday reality, virtually neutralizing the effectiveness of law enforcement activities of internal affairs bodies. All of this requires the improvement of the activities of the internal affairs bodies regarding the use of the arsenal of legislative measures of countering crime.

Among legislative acts that form the legal basis of application of physical force by police officers, a special role is played by the norms of criminal law. Preventing crimes and other socially dangerous acts, police officers act in situations under circumstances precluding the criminality of deed. While protecting the interests of citizens against criminal encroachments, on the one hand, they run the risk of their own lives and health, on the other hand, they cause significant harm to other protected public relations.

It should be pointed out that this professional activity may not always be predetermined in detail and highly elaborated. As a consequence, there is an inevitable possibility of occurrence undesirable, including socially dangerous consequences of the actions of police officers. Reasoning from this fact, the actual task of the Russian criminal law is to establish such legal norms regulating professional activities of police officers in respect of crimes suppression, which could reduce the risk of wrongful actions up to a minimum. This can be as real as criminal-law institute of circumstances excluding criminality of a deed will be consistent with and not contrary to the norms of Russian legislation, which define the legal basis of the police activity at the moment of application of physical force.

In this regard, considerable interest for regulation of professional-service relations that arise in the process of law enforcement activity is represented by such circumstances precluding criminality of a deed as necessary defense, infliction of harm on a detained person who has committed a crime and extreme necessity. These types of circumstances precluding criminality of a deed are associated with the most active police actions to prevent and suppress crimes and administrative offenses.

However, as evidenced by the results of our poll in the form of questioning of 70 officers of the internal affairs bodies of the Khabarovsk region, the problem of application circumstances precluding criminality of a deed in practice raises serious difficulties. The majority of surveyed employees of internal affairs bodies (93%) face difficulties in their practical activities due to the application of necessary

defense, infliction of harm on a detained person who has committed a crime and extreme necessity. Where in 45% of cases the problems are associated with the correct legal assessment of the activities of the internal affairs bodies' employees in these legal situations, 21% – with the specific circumstances of a case. At that, you should note that only 7% of the employees have indicated that they do not have difficulties in the process of application of the said circumstances.

Regarding the considered circumstances precluding criminality of a deed, we can emphasize the following general signs that characterize legal nature of police activity to protect individuals, society and the State against socially dangerous encroachments:

First, there is always active conduct of police officers, who cause substantial harm to legally protected interests, that is, to another person, society or the State in the commission of such actions. Often the size of the harm is so substantial, that objectively, it corresponds to the gravity of the harm inflicted by the suppressed crime. Therefore there is question of the possible responsibility for infliction such harm.

Secondly, active conduct of police officers regarding the application of necessary defense, infliction of harm on a detained person who has committed a crime and extreme necessity is exercised from socially useful motives. For the necessary defense and infliction of harm on a detained person who has committed a crime, these motives are initiated by external circumstances – the need to protect against socially dangerous attack on itself, another person or on other legally protected interests, the need to apprehend a criminal. In case of extreme necessity such socially useful motives arise from internal motifs to achieve a socially useful result, preventing a greater harm.

Thirdly, since the legal regulation of the circumstances precluding criminality of a deed lies in the plane of the criminal law, in their official activity police officers must abide norms enshrined in articles 37-38 chapter 8 of the Criminal Code of the Russian Federation [1].

Fourthly, if all of the conditions of lawfulness of necessary defense, infliction of harm on a detained person who has committed a crime and extreme necessity are observed , the conduct of police officers will exclude both criminal and any other responsibility (administrative, disciplinary, civil-law one).

Fifthly, infliction of harm resulting from non-compliance with the conditions of lawfulness of necessary defense, infliction of harm on a detained person who has committed a crime and extreme necessity gives rise to the criminal responsibility of a police officer. However, due to the socially beneficial motives of

necessary defense and infliction of harm on a detained person who has committed a crime, the legislator recognizes these crimes privileged (article 108 of the Criminal Code of the RF "Homicide Committed in Excess of the Requirements of Justifiable Defense or in Excess of the Measures Needed for the Detention of a Person Who Has Committed a Crime" and article 114 of the Criminal Code of the RF "Infliction of Grave Injury or Injury of Average Gravity in Excess of the Requirements of Justifiable Defense or in Excess of the Measures Needed for the Detention of a Person Who Has Committed a Crime"). In excess of the limits of extreme necessity such actions of a police officer are taken into account as mitigating circumstances in sentencing.

Thus, normative-legal regulation of the lawfulness of application of physical force by police officers is of systemic nature and includes related legal provisions of administrative and criminal law. In this regard, it is very important to define the hierarchy of these norms in the legal regulation of the use by police officers of physical force, special means and firearms. In other words, to answer the question, which law norms are predominant? The answer to this question is of purely practical importance, since as evidenced by the comparative-legal analysis between administrative and criminal legislation, there are irremovable contradictions on the issues of legal regulation of the use by police officers of physical force, special means and firearms. In particular, according to part 3 article 19 of the Law No. 3-FL, a police officer in the application of physical force, special means and firearms acts taking into account the emerged situation, the nature and danger level of actions of persons, who are subject to application of physical force, special means and firearms, and the nature and force of their resistance. At that, police officer is obliged to seek minimization of any damage. However, norms of criminal law do not contain an indication that a person in a state of necessary defense should strive to cause minimum damage to the attacker. Moreover, in case of a surprise attack, the limits of inflicted damage are not indicated at all, i.e., it is permissible to kill an assailant.

According to articles 37, 38, 39 of the Criminal Code of the RF, today the citizens have more rights, when they protect the legitimate interests of other persons from socially dangerous encroachments or impending danger, as well as in course of criminal-law detention of a criminal with use of firearms, rather than police officers, who are required to carry out their activities within the framework of Section V of the Law No. 3-FL.

In analyzing this issue an interest is aroused by the opinion on this matter of the staff of internal affairs bodies. So, on the question "What in your opinion is the legal basis of application of necessary defense, infliction of harm on a detained

person who has committed a crime and extreme necessity in activities of internal affairs bodies?" three-quarters of surveyed employees (72%) indicate that this is solely the Federal Law "On the Police". Only one in four (28%) considers that the legal basis for the use of physical force should be the norms of criminal law. Every 14th (7%) indicates the Constitution of the Russian Federation among the legal sources. In this regard, it can be assumed that, in application of the circumstances excluding criminality of a deed in their professional activities, police officers will seek to rely solely on the norms of the Federal Law "On the Police". Moreover, the majority of employees of internal affairs bodies (86%) called for further specification of the grounds and procedure for the use of physical force and weapons in the departmental instructions of the Ministry of Internal Affairs of Russia.

However, the norms governing the grounds and procedure for the use of physical force by law enforcement officers only specify the limits of necessary defense or other circumstances, which exclude criminality of a deed, regarding certain legal situations. At that, special norms in respect to the general rules laid down in the criminal law, must not contradict them and the more restrict the rights of citizens to protection against socially dangerous encroachment. This point of view is prevailing in the theory of Russian law and backed by judicial-investigative practice. Therefore, the priority in determining the lawfulness of infliction of harm resulting from the use of physical force, special means and firearms in the activities of police officers is given to criminal legislation on necessary defense, infliction of harm on a detained person who has committed a crime and extreme necessity.

Special norms of the Federal Law "On the Police" are considered as additional conditions of the lawfulness in the activities of police officers within a particular circumstance precluding criminality of a deed. It is obvious that under this approach, special administrative-law norms, which enshrine the grounds and procedure for the use of physical force, have an auxiliary function.

Has the police the right to use physical force against a pregnant woman? The most traditional is unambiguously negative answer to this question. However, in reality, the Federal law "On the Police" does not establish any restrictions on the use of physical force against any category of citizens. The reason lies in the content of this term.

Legal regulation of the use of physical force by police officers is provided for in article 20 of the Law No. 3-FL, which stipulates that "A police officer has the right personally or in a unit (group) to apply physical force, including combat fighting technique, if non-coercive methods do not provide performing of duties charged on police in the following cases:

1) for suppression of crimes and administrative offenses;

2) for delivering to the official premises of a territorial body or police unit, to the premises of a municipal body, in another official premises of persons, who have committed crimes and administrative offenses, and for the detention of these persons;

3) for overcoming of resistance to the legitimate demands of a police officer".

Application of physical force can take the following forms:

1. Combat fighting techniques that may refer to any system of unarmed combat – boxing, judo, combat sambo, karate, etc., or do not refer to any one of them. At that, the use of painful hold and choke hold is allowed. In some cases, there may be applied techniques and strokes, which are obviously aimed at causing death or serious injury, for example, when a police officer is in a state of justifiable defense. The law provides for only one absolute exception – techniques that degrade human dignity cannot be applied.

2. Any other muscular impact on individuals, their property, not accompanied by the use of any items, materials, liquids, carried out with the purposes specified in article 20 of the Law No. 3-FL. Examples of such impact may be: transferring of a drunk in a special vehicle; removing a key from the ignition switch of a car, which the offender tries to use for escape; smashing of doors with a leg (shoulder) in order to apprehend a criminal; etc.

It becomes apparent that physical force in this form may be used, including in respect of law obedient citizens, for example, for moving onlookers from a crime scene, place of conducting specials operations, etc.

A very important point in the application of physical force by a police officer will be delimitation of committed by a person administrative offence and criminal offence. In this regard, if the person has committed an administrative offence, the police officer must, in accordance with part 4 article 5 of the Law No. 3-FL:

1) report its post, rank, surname, submit its warrant card at the request of the citizen, and then say about the reason and purpose of the compellation;

2) in the case of application in respect of the citizen of measures limiting its rights and freedoms, to explain the reason and grounds for such measures, as well as the arising from this rights and obligations of the citizen.

System interpretation of the Federal Law "On the Police" assumes that verbal contact with the citizen, in this case, involves the commission of exactly these actions in the mentioned sequence.

If the person has committed a crime, the police officer must first of all be guided by article 38 of the Criminal Code of the RF. Namely:

The current normative act regarding the issue of application of physical force by police officers (the order of the RF Interior Ministry No. 412 from July 29, 1996 "On Approval of the Manual on the Physical Training of Employees of Internal Affairs Bodies" [6] – (hereinafter – the Manual) is a "catalyst" of bringing police officers to disciplinary or criminal responsibility. Russian scientists have proved that the effectiveness of a technique of self-defense without weapons is possible only when "trainee" has repeated it about 600 times. Of course, an average police officer cannot effectively perform any action described in sections from 11.3 to 12, due to objective or subjective reasons. And this Manual allows punches in nose, neck, groin, collarbone, "solar plexus", temporal fossa, and throat. A police officer, who is not a master of sports in combat fighting, in application of a combat technique through antidynamic punch can harm the health of a citizen.

Therefore, in order to avoid the responsibility of a police officer:

1) if a natural person has committed an administrative offense a police officer can apply fighting techniques: bending of one's arm behind its back from behind; bending of one's arm behind its back twisting inward; "dive" bending of one's arm behind its back; "jerk" bending of one's arm behind its back along with an antidynamic punch or distracting punch on the thigh if the police officer can professionally perform these technique. In any case, infliction of any harm to health must not take place. Police officer, who has been trained within the framework of service and fighting training (according to the Manual), is physically stronger than an average citizen, and if the health of a citizen is harmed, the actions of the employee are not lawful, because, according to official documents of the Department on combat training of a regional internal affairs body, a police officer every week is engaged in physical training and does not have right to use physical force by causing harm, which results in violation of the rights and legitimate interests of the citizen. These are the realities of judicial practice.

2) if a natural person has committed a crime, in this case, police officer can apply combat fighting techniques in accordance with criminal-law legislation.

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