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THE TOPICAL ISSUES OF IMPROVEMENT
THE FEDERAL LAW "ON THE POLICE"

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The authors substantiate the necessity of legislative consolidation of the notion of "police", suggest author's edition of article 1 and part 1 of article 4 of the Federal Law "On the Police".

Keywords: police, Russian police, the notion of "police", legislative consolidation of the notion of "police".

The Federal Law No. 3-FL "On the Police" from February 7, 2011, which entered into force on March 1, 2011 (as restated by the Federal Law No. 15-FZ from February 12, 2015) [1] (hereinafter referred to as the Law on the Police), is one of the most resonant and widely discussed laws of recent times, creates normative-legal grounds of organization and activity of the Russian police, serves as the basis for the development of normative legal acts of the so-called "police focus". It is based on the conceptual ideas, which correspond to contemporary realities, and enshrines, including, law enforcement function of the police [4, 5-8].

The notion of "police" in this normative legal act is indirectly disclosed through the prism of its social role in Russian society. So, according to part 1, article 1 "The Purpose of the Police", it is intended for protecting the life, health, rights and freedoms of citizens of the Russian Federation, foreign citizens and stateless persons, countering crime, protection of public order, property and ensuring public safety. At that, the police shall immediately come to rescue everyone who is in need of its protection against criminal and other wrongful encroachments.

At the same time, it should be noted that the Law on Police does not contain the legislative definition of the notion of "police", and is limited to the category of "police is intended for", that, in our view, requires amendments in the current legislation and the introduction of the definitions in legislative and scientific turnover.

The word "police" is derived from the Greek "politeia" (polis – a city), exactly so Aristotle called urban (at that time the idea of statehood was associated solely with a city) and in general public administration. At that time the main sense of efforts of state power was limited to ensuring external security [9, 9].

As noted out by F. Engels, "in regard to citizens, public authority originally existed only as a police force, which is as old as the State" [12, 105]. However, this statement cannot be taken literally because "for many centuries, the term of "police" was denoting not a specific body of the state, but state activity encompassing all internal public administration and called as police activity" [4, 122].

The term of "police" borrowed by the Romans was subsequently consolidated in the legal lexicon of the European states. Peter the Great took this term in Russian language from the German [6, 9].

Since the XVIII century the most common content of the notion of "police" has become the system of administrative bodies intended to combat offences.

The second half of the XVIII century in the Russian Empire is marked by the development of a new system of state bodies. A significant sign of this change in the composition and structure of the state apparatus is the establishment of regular police.

In the process of historical development in the Russian Empire, as in Western European countries, the scope of the term of "police" had a tendency to shrink.

At the turn of the nineteenth and twentieth centuries the powers of police in the Russian Empire were very indefinitely, "very widely and approximately" regulated by the legislation of that time [7, 18], that often led to the possibility of abuse, often as part of exercising the discretionary powers of the police. Enormous power, which the police possessed, turned back against itself [9, 18; 4, 171-172]. Domestic scientists pointed out that police "as if has lost self-esteem in the minds of its uselessness... "Police officer" was a swear-word [11, 5].

Decree of All-Russian Central Executive Committee and Council of People's Commissars of the RSFSR from July 10, 1920 approved the Provision on Workers' and Peasants' Militia [8], which summed up the creation of police for previous years, enshrined its structure, duties and competence. The Militia, "initially created from people's militias, all these decades performed traditional police functions of a specialized professional body for the protection of public order and fight against crime".

Currently, in most countries of the world, police is a specialized law enforcement body designed to protect life, health, property, public order and public safety" [7, 17]. Today it is time to return to the name that is traditional for this key body of law enforcement system [4, 7].

Political and legal prerequisites of renaming the Russian militia into the police are linked to the implementation of the Decree of the President of the Russian Federation No. 1468 from December 24, 2009 (as restated by the Decree No. 254 from March 1, 2011) "On the Measures to Improve the Activity of Internal Affairs Bodies of the Russian Federation" [2], which stresses the need for modernization of the existing structure of the internal affairs bodies, arrangement of their activity, personnel, financial and logistics supply of militia.

The adoption of the Decree of the President of the Russian Federation No. 208 from February 18, 2010 (as restated by the Decree No. 202 from April 4, 2014) "On some Measures to Reform the Ministry of Internal Affairs of the Russian Federation" [3] became the starting point in the development of the Law "On the Police". Preparation of the law took place with the participation of wide public layers, the involvement of leading scientists, representatives of the Public Chamber, practitioners of structural subdivisions of the Russian Interior Ministry, prominent human rights defenders.

Talking about the renaming militia into police, Yu. P. Solovey rightly noted that "the verbal form is now fully in line with the content of the denoted institute" [10, 18].

In any state police activity involves the possibility to apply measures of state coercion, in strict compliance with current legislation. At the same time, according to the shared by us opinion, S. P. Bulavin describing the applicability of these measures by police officers does not consider their application as a major attributive sign of police [10, 14]. A similar position is taken by V. V. Chernikov, who notes that "the mention of application coercion measures as an attributive sign of police is excluded from the definition of police" [5, 10]. According to the scientist, "police work is not only law-coercive, but also, and above all, law enforcement activity, since either applying the law or ensuring its compliance or restoration the police protect the law and appropriate public relations" [5, 10].

The absence in the law of indication to the coercive nature of police work, in our view, is an evidence of consolidation, first of all, of law enforcement purpose of police, which pushes coercion out of the primary roles.

The Law on Police contains an exhaustive list of rights and duties of a police officer, makes the work of the police more transparent and controlled by society, stipulates that the police activity is based, inter alia, on the universally recognized principles and norms of international law and international treaties of the Russian Federation, what seems very important in the protection of human and civil rights and freedoms in accordance with international standards.

The adoption of the Law on Police marked the beginning of a new phase in the history of Russian law enforcement bodies. At the same time, the lack of definition of the notion of "police" is a failure of the legislator, what proves the need to consolidate this definition in the legislation. Without claiming to be the truth in the last instance, in order to draw the attention of the scientific community to the existing gap in the legislation, we offer:

1. To state article 1 of the Federal Law "On the Police" in the following version:

"Article 1. The Notion and Purpose of Police

1. Police is a system of armed specialized law enforcement bodies, which is a part of a single centralized system of the federal body of executive power in the sphere of internal affairs, intended to protect the life and health of an individual, its rights and freedoms, property, interests of the society and the state against criminal and other unlawful encroachments.

2. Police is intended for protecting the life, health, rights and freedoms of citizens of the Russian Federation, foreign citizens and stateless persons (hereinafter – citizens, persons), countering crime, protection of public order, property and ensuring public safety.

3. Police shall immediately come to rescue everyone who is in need of its protection against criminal and other unlawful encroachments.

4. Within the scope of its powers police shall render assistance to federal governmental bodies, governmental bodies of the subjects of the Russian Federation and other state bodies (hereinafter – state bodies), local self-government bodies, other municipal bodies (hereinafter – municipal bodies), public associations, as well as organizations irrespective of forms of ownership (hereinafter – organizations), officials of these bodies and organizations (hereinafter – officials) in the protection of their rights”.

2. To state part 1 article 4 of the Federal Law “On the Police” in the following version:

“Article 4. Organization of the Police

1. Police is a part of the system of the Ministry of Internal Affairs of the Russian Federation”.

Currently, the system of normative legal acts governing the police activities continues its formation with taking into account international legal standards for the protection of the rights of man and citizen. The Russian “police” legislation is in conformity with the standards accepted in the most developed countries of the world community. At the same time, in order to improve the legal basis for police activity in the Russian Federation it is necessary to enshrine the notion of “police” in the current legislation.

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