

State Guarantees for the Establishment of a Monthly Long-Service Allowance of Academic Staff to a Police Officer Seconded to a Higher Education Institution with Specific Training Conditions to Ensure the Educational Process

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Abstract. The selective establishment of an allowance for pedagogical workers, depending on the subordination and type of educational institution in Ukraine, is a discriminatory attitude towards a certain category of persons who, having the appropriate scientific or teaching experience, provide the educational process without receiving state-guaranteed allowances for this. The study reveals the problem of violation of the right of pedagogical workers among police officers serving in institutions of higher education with specific training conditions to receive allowances for the length of service of an academic worker. It is established that such a supplement is not charged at all to police officers who carry out pedagogical and academic activities in higher education institutions of the Ministry of Internal Affairs of Ukraine. The purpose of the study is to substantiate the legality of establishing and mandatory payment of scientific surcharges to police officers sent to educational institutions to ensure the educational process. The key methods of research are systematic and structural analysis, which allowed generalising and analysing bylaws, legislative and departmental regulations on the establishment of a long-service allowance for an academic worker to persons involved in ensuring the educational process in educational institutions with double subordination. It is proved that the state guarantee regarding the obligation to establish a long-service allowance for an academic worker, which is provided for by the laws of Ukraine, applies to police officers who are sent to higher educational institutions for service in the positions of educational workers. It is proved that in relation to such police officers, it is the legislative provisions that are special, and not the provisions of bylaws, and therefore, bylaws cannot be applied in case of competition of legal norms. The implementation of legislative and departmental regulations on the state guarantee of the rights of academic workers in terms of calculating the long-service allowance of an academic worker to a police officer sent to a higher education institution for further service as a educational worker and enrolment in the teaching experience of a police officer of periods of work in the positions of pedagogical and academic workers would lead to the expected economic effect, namely, an increase in its monetary support by approximately 10-30% of the official salary established by the educational institution

Keywords: higher education institution with specific training conditions, scope of management, special provisions, competition of legal norms, rule of law

Introduction

Nowadays, the legal status of a police officer sent for further service to a higher education institution with specific training conditions (hereinafter – HEI), which belongs to the sphere of management of the Ministry of Internal Affairs of Ukraine, for the position of an academic worker, is not defined. Because of this, problematic issues arise regarding the components of the salary (monetary support) of such employees, in particular in terms of calculating (paying) a state-guaranteed long-service allowance for an academic worker. There is also a discussion about the possibility of considering the teaching experience in the periods of work of such an employee in pedagogical positions inherent only in higher education institutions with specific

training conditions, which directly affects the determination of such a supplement.

The purpose of the study is to eliminate the discriminatory situation in the remuneration of police officers sent to the HEI to ensure the educational process.

The purpose of the study is to identify a single approach to understanding the state guarantee regarding the mandatory long-service allowance for an academic worker to a police officer sent to the HEI for service as an educational worker.

The author failed to find foreign and Ukrainian studies that directly relate to the subject matter, namely, concerning the solution of problematic issues of monetary support for police officers in Ukraine seconded to educational institutions

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to ensure educational activities. This is mainly conditioned by the fact that the subject of the study is mostly of an applied nature, and the problem itself arose due to non-compliance with the rule of law during the reform of the central executive authorities in the field of management of HEIs.

There are only general theoretical studies that are directly or indirectly related to the investigation of the problems of material support for educational workers and police officers. Among such studies, the following should be noted. K.K. Dovbysh conducted a scientific investigation of the principles of legal regulation of remuneration [1]. T.A. Masalova analysed the views of researchers and current legislation on the essence of monetary support for police officers [2]. D.O. Marusevych considered the theoretical foundations of administrative and legal regulation of monetary support for police officers [3]. D.V. Shvets investigated the theoretical and legal aspects of the current state of legal consolidation of guarantees of professional activity of police officers [4]. S.M. Bortnyk highlighted the problems of legal regulation of labour rights of police officers [5]. I.I. Senchuk considered socio-economic guarantees of professional activity of police officers [6]. M.I. Inshyn studied social security of police officers as a guarantee of their professional activity [7]. At the international level, the papers by Malcolm K. Sparrow are devoted to certain means of ensuring the activities of police officers, in particular, regarding the identification of factors that significantly affect the proper performance of police duties by police officers [8]; Kęstutis Vitkauskas studied elements that affect the effectiveness of a police officer in the conditions of the European Union [9].

The scientific originality of the study is conditioned by the fact that for the first time it is justified that it is mandatory to establish a long-service allowance for an academic worker to a police officer sent to an educational institution for a pedagogical position.

The author's personal contribution is that as a result of systematisation and analysis of the current laws and regulations on the salary of academic workers, it is proved that state guarantees for the establishment of scientific allowances and surcharges for academic workers in civilian educational institutions also apply to police officers seconded to educational institutions to ensure educational activities.

Materials and Methods

Considering the research topic, goals, and objectives, the following methods are used. The method of systematic and structural analysis allowed investigating: a) the current legislation in the field of education, which must be strictly implemented by higher education institutions, regardless of departmental subordination; b) the regulatory essence of the long-service allowance for an academic worker. This method was used in the processing and generalisation of laws and regulations regarding the legal regulation of the activities of higher education institutions with specific training conditions. Comparative, logical and legal, logical and normative, and comparative and legal methods were used in the process of analysing legislative and equivalent acts regulating the legal basis for calculating the long-service allowance for an academic worker to a police officer, and during the formulation of conclusions on the mandatory termination of an ongoing offence regarding the non-fulfilment of state guarantees of the rights of an academic worker to a police officer sent to serve in the educational institution. The dogmatic

method was used to disclose the content of the payment of a long-service allowance for an academic worker, regardless of whether or not such a person has the status of a police officer. The structural and functional method (analysis) was used to investigate the legal basis for paying a long-service allowance for an academic worker to a police officer. The sociological method was used to obtain primary information about existing offences in the field of calculating and paying monetary support to police officers as teaching staff. The formal and logical method contributed to the formulation of the conclusions of the study.

The materials of this study contain a normative legal basis, which consists of the current legislative and equivalent laws and regulations that define state guarantees of the rights of academic workers in terms of calculating and paying a allowances for teaching experience to a police officer working in a pedagogical position in the HEI.

Results and Discussion

Police officers, who serve as pedagogical workers in HEIs, having experience in teaching, are in a discriminatory situation, which consists in the inaction of the HEI to calculate and pay an objective amount of wages (monetary support). Contrary to the Law of Ukraine "On Education" No. 2145-VIII, such persons from the beginning of 2016 [10] to the present are not charged at all, and therefore are not paid a long-service allowance for an academic worker. The specified allowance, as a state-guaranteed component of the salary (monetary support) of an academic employee, should be paid to a police officer with simultaneous compensation when paying personal income tax amounts, in accordance with the provisions of the Resolution of the Cabinet of Ministers of Ukraine No. 44 of 01/15/2004 [11].

The amount of monetary support for police officers is determined depending on a number of criteria, namely: special rank, term of service in the police, position, conditions of service and intensity, qualifications, availability of an academic degree (academic title). According to Article 94 of the Law of Ukraine "On the National Police" [12], police officers sent to state institutions receive monetary support, considering the official salary for their position in such an institution.

In the HEI, teachers and academic staff are provided with monthly long-service allowances in the amount of 10% to 30% of the official salary, depending on the scientific or teaching experience (Part 4 of Article 61 of the Law of Ukraine "On Education" No. 2145-VIII) [10].

HEI with specific training conditions is a state-owned institution that trains cadets (trainees, students), adjuncts at certain levels of higher education for further service in the positions of officers (non-commissioned officers, senior officers) or commanding officers to meet the needs of the Ministry of Internal Affairs of Ukraine (in accordance with paragraph 6 of Part 1 of Article 1 of the Law of Ukraine "On Higher Education" No. 1556-VII) [13].

The Ministry of Internal Affairs of Ukraine has the right to establish by its acts special requirements for the management and activities of the relevant HEI. Acts on the implementation of the rights and obligations of academic and pedagogical workers are approved in coordination with the central executive authority in the field of education and science, in particular the Ministry of Internal Affairs of Ukraine (paragraph 4 of Article 23 of the Law of Ukraine "On Higher Education") [13].

The departmental regulation, which is the Order of the Ministry of Internal Affairs of Ukraine “On Approval of the Regulations on Higher Educational Institutions of the Ministry of Internal Affairs” dated 14.02.2008 No. 62, established that higher educational institutions of the Ministry of Internal Affairs of Ukraine are state educational institutions that are subordinate to the Ministry of Internal Affairs, established and operate in accordance with the legislation of Ukraine (paragraph 1.1); universities of the Ministry of Internal Affairs of Ukraine in their activities are guided by the Constitution of Ukraine, laws of Ukraine “On Higher Education”, “On Education”, “On Militia” (*no longer valid*), other laws and regulations of Ukraine, resolutions of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, laws and regulations of the Ministry of Education and Science of Ukraine, the Ministry of Internal Affairs, and its Provisions (paragraph 1.2) [14].

The study emphasises that the mentioned regulation was adopted by the Ministry of Internal Affairs of Ukraine, and therefore, the implementation of its prescriptions by HEIs with specific training conditions is mandatory.

From a comprehensive analysis of these legal norms, it can be seen that the current legislation regulates the creation of HEIs with specific training conditions and one of the features of their legal status is that the Ministry of Internal Affairs of Ukraine cannot fail to fulfil state guarantees for the establishment of legally defined allowances (surcharges) for police officers sent to pedagogical positions in HEIs. At the same time, the main legal act regulating the activities of such institutions and which provides for guarantees of the rights of academic workers, including material and financial support, are the laws of Ukraine “On Higher Education” No. 1556-VII [13], “On Education” No. 2145-VIII [10].

Such HEIs are subject to the provisions of the mentioned laws, and therefore, accordingly, pedagogical workers (police officers) are guaranteed the establishment of monthly surcharges for the length of service of a academic worker in legally defined amounts. These legislative provisions define the minimum amount of long-service allowance for an academic worker of any HEI.

The fact that an academic worker is simultaneously considered a police officer sent to state institutions and is subject to legal guarantees provided for by the Law of Ukraine “On the National Police” [12] does not negate their right to receive a long-service allowance in the amount established by Article 61 of the Law of Ukraine “On Education” [10].

Separately, the study focuses on the mandatory enrolment in the length of service (seniority) of an academic worker of periods of work in positions that are inherent only in higher education institutions with specific training conditions, on the example of the position of deputy head of the department.

The list of positions of academic workers was approved by Resolution of the Cabinet of Ministers of Ukraine “List of Positions of Pedagogical and Scientific-Pedagogical Workers” dated June 14, 2000 No. 963 (hereinafter – the List) [15]. According to the List, such positions include, among other things, positions head of the department – professor, associate professor, etc. Among these positions in the List, there is no position of deputy head of the department.

However, the position of deputy head of the department is provided for by the Order of the Ministry of Internal Affairs of Ukraine No. 62 dated 02/14/2008, according to which “to the positions of scientific and pedagogical workers of

higher education institutions of the third and fourth accreditation levels, except for the main positions defined in Article 48 of the Law of Ukraine ‘On Higher Education’ No. 2984-III (*the Law became invalid on the basis of Law No. 1556-VII of 07/01/2014, VVR, 2014, No. 37-38, Article 2004*), belong to the positions of the head of the institute (faculty, department) and their deputies” (paragraph 5.2) [14].

Article 13 of the Law of Ukraine “On Higher Education” (1556-VII) [13] defines the powers of the Ministry of Internal Affairs of Ukraine as the central executive authority in the field of education and science, the sphere of management of which includes universities with specific training conditions. Such institutions do not fall within the scope of the National Police department. Therefore, these HEIs are subject to laws and regulations adopted by the Ministry of Internal Affairs of Ukraine, and not by the National Police. In addition, HEIs in their activities are required to consider the provisions of the Order of the Ministry of Internal Affairs of Ukraine dated 02/14/2008 No. 62 [14], in particular, in terms of assigning the position of deputy head of the department to a pedagogical position.

In addition, the position of deputy head of the department is provided for by other regulatory documents, in particular, the procedure for awarding academic titles to scientific and scientific-pedagogical workers (Section II, Part 1, Paragraph 3; Part 3, Paragraph 3) [16].

As evidenced by legal practice, the HEI does not see any grounds for recalculating the monetary support for police officers with the accrual of a long-service allowance for an academic worker, referring to the norms of the resolution of the Cabinet of Ministers of Ukraine dated 11/04/2015 No. 910 “On Monetary Support for Police Officers Sent to State Bodies, Institutions and Organisations” (with amendments and additions) [17], that a seconded police officer is paid monetary support and other types of it, defined by the provisions of the resolution of the Cabinet of Ministers of Ukraine from 11/11/2015 No. 988 “On Monetary Support of National Police Officers” [18] and Order of the Ministry of Internal Affairs of Ukraine dated 04/06/2016 No. 260 “On Approval of the Procedure and Conditions of Financial Support for Police Officers of the National Police and Applicants for Higher Education with Specific Training Conditions for Police Training” [19].

Notably, any refusal of the higher educational institution to charge a long-service allowance of an academic worker to a police officer with a reference to the above-mentioned bylaws is groundless and illegal.

Resolution of the Cabinet of Ministers of Ukraine No. 910 of 11/04/2015 (as amended) establishes, “... that police officers sent to state bodies, institutions and organisations are paid monetary support based on official salaries for the positions that these persons hold in state bodies, institutions, and organisations to which they are seconded, and other types of monetary support for police officers defined by law” [17].

The author of the study does not deny the operation of the norms of this act, but only insists on the need to comply with the requirements of the laws of Ukraine “On Higher Education” No. 1556-VII [13], “On Education” No. 2145-VIII [10] in terms of compliance with state guarantees to academic workers, since a seconded police officer carries out pedagogical activities as a academic worker of the HEI, which is managed by the Ministry of Internal Affairs

of Ukraine, and not by the National Police. And the fact that a pedagogical worker is simultaneously a police officer sent to a higher education institution (HEI) with remaining in the police service indicates that the officer is subject to legal guarantees provided for by the Law of Ukraine "On the National Police" [12], and in no way negates their right to receive a long-service allowance of an academic worker in the amount established by Article 61 of the Law of Ukraine "On Education" No. 2145-VIII [10] (admittedly, if there is an appropriate teaching experience).

The regulation provided for in paragraph 4 of Resolution No. 988 of the Cabinet of Ministers of Ukraine of 11/11/2015 authorises the heads of bodies and institutions (*exclusively*) of the National Police, within the limits of the appropriations approved for them for monetary support, decide on the establishment of monetary support for police officers [18]. At the same time, the higher education institutions under study belong to the sphere of management of the Ministry of Internal Affairs of Ukraine, and not the National Police, and therefore, in their activities they are obliged to comply with the provisions of the current legislation on education (on higher education), including in terms of compliance with state guarantees of the rights of educational workers.

And, in conclusion, the Order of the Ministry of Internal Affairs of Ukraine of 04/06/2016 No. 260 [19] was adopted in compliance with the provisions of the Resolution of the Cabinet of Ministers of Ukraine of 11/04/2015 No. 910 [17], resolution of the Cabinet of Ministers of Ukraine of 11/11/2015 No. 988 [18]. According to part 18, Section I of the specified order, police officers who carry out scientific and educational, scientific, or creative activities are paid in accordance with the procedure established by the current legislation [19]. This means that the concept of "current legislation" includes, first of all, the Constitution of Ukraine, laws, and bylaws. The highest legal force of the law lies precisely in the fact that other laws and regulations are adopted based on laws, which are bylaws in their content, and therefore cannot contradict the law. As a result, bylaws cannot narrow the effect of legislative provisions (laws), in particular, in terms of calculating the minimum amount of allowance guaranteed by the state for the length of service of an academic worker to police officers.

The author of the study supports the statement of I.I. Senchuk that "the monetary support of a police officer should create conditions for staying in the service and stimulating the highest quality personnel" [6, p. 91]. Decent monetary support ensures the creation and support of the motivation of a police officer to continue their service, including in the HEI. If the HEI has less monetary support for a police officer compared to a practical unit of the National Police, this will primarily lead to the refusal of qualified personnel to continue serving in the scientific and educational spheres.

Conclusions

Nowadays, police officers sent to the HEIs to ensure the scientific and/or educational process are in a discriminatory position against educational workers who do not have the status of a police officer, and therefore, receive scientific allowances and surcharges in legally defined amounts. Failure of the HEI to fulfil its obligations to ensure the rights of educational workers to police officers who provide educational services consists in the actions (inaction) of the HEI, as a result of which the police are in a state of continuous continuation of inaction in relation to them and, accordingly, the law is violated in relation to them. Such police officers are paid incomplete monetary support at the expense of unjustified non-payment of mandatory surcharges (as the main components of the salary of an academic worker) in the amount established by current legislation.

The current bylaws do not provide for the payment of a long-service allowance of an academic worker to police officers who serve in the HEIs in the positions of teaching staff. The establishment of such a supplement for research and teaching staff is provided for by the Law of Ukraine "On Education". In relation to educational workers (police officers) who serve in HEIs, it is the mentioned law that is special, and not the specified bylaws, and therefore, the provisions (norms) of this law should be applied in case of competition of legal norms in resolving controversial issues.

From the moment of appointment to a pedagogical position in the status of a police officer sent to a HEI with remaining in the police service, regardless of whether it is a police officer or a civilian, monthly long-service allowances should be accrued and paid in legally defined amounts with simultaneous compensation for the payment of personal income tax amounts.

Violation of guarantees of the rights of educational workers (police officers) in HEIs of the Ministry of Internal Affairs of Ukraine may be stopped by the latter's voluntary compliance with the provisions of the current legislation on education, and the regulations on higher educational institutions of the Ministry of Internal Affairs.

State coercion to comply with the provisions of the current legislation may be applied to HEIs with specific training conditions. In case of non-compliance with the legislation on remuneration of labour by a higher education institution, an educational worker (police officer) has the right to apply to the administrative court with a claim for recovery of the salary. The plaintiff (police officer) is exempt from paying the court fee. The current legislation also does not provide for any limitation periods.

The expected economic effect of compliance with the rule of law is significant – an increase in the monetary support of a police officer as an academic worker by 10-30% of the official salary.

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Державні гарантії встановлення щомісячної надбавки за вислугу років науково-педагогічного працівника поліцейському, відрядженому до закладу вищої освіти зі специфічними умовами навчання для забезпечення освітнього процесу

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Анотація. Вибіркове встановлення науково-педагогічним працівникам в залежності від підпорядкування та виду навчального закладу в Україні надбавки за вислугу років є не що інше як дискримінаційне ставлення до окремої категорії осіб, які, маючи відповідний науковий або педагогічний стаж, забезпечують науковий та освітній процес, не отримуючи за це гарантовані державою доплати. У статті розкрито проблему порушення права науково-педагогічних працівників з-поміж поліцейських, які проходять службу в закладах вищої освіти зі специфічними умовами навчання, отримувати до грошового забезпечення надбавки за вислугу років науково-педагогічного працівника. Встановлено, що така надбавка взагалі не нараховується поліцейським, які здійснюють педагогічну та науково-педагогічну діяльність в закладах вищої освіти Міністерства внутрішніх справ України. Метою дослідження є обґрунтування законності встановлення та обов'язковості виплати наукових доплат поліцейським, відрядженим в заклади освіти для забезпечення освітнього процесу. Ключовими методами дослідження є метод системного та структурного аналізу, який дав змогу узагальнити та проаналізувати законодавчі, підзаконні та відомчі нормативні акти, що урегульовують встановлення надбавки за вислугу років науково-педагогічного працівника особам, які задіяні в забезпеченні освітнього процесу в закладах освіти з подвійним підпорядкуванням. Доведено, що державна гарантія щодо обов'язку встановлення надбавки за вислугу років науково-педагогічного працівника, яка передбачена законами України, розповсюджується на поліцейських, яких відряджено до закладів вищої освіти для проходження служби на посадах науково-педагогічних працівників. Обґрунтовано, що стосовно таких поліцейських саме законодавчі положення є спеціальними, а не положення підзаконних актів, а отже, підзаконні акти не можуть застосовуватися в разі конкуренції правових норм. Виконання законодавчих та відомчих приписів щодо державного гарантування прав науково-педагогічних працівників у частині нарахування надбавки за вислугу років науково-педагогічного працівника поліцейському, відрядженому до закладу вищої освіти для подальшого проходження служби на посаді науково-педагогічного працівника, а також зарахування до педагогічного стажу поліцейського періодів роботи на посадах педагогічних та науково-педагогічних працівників призведе до очікуваного економічного ефекту, а саме збільшення його грошового забезпечення орієнтовно на 10-30 % від посадового окладу, встановленого закладом освіти

Ключові поняття: заклад вищої освіти зі специфічними умовами навчання, сфера управління, спеціальні положення, конкуренція правових норм, верховенство права