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## TEORETYCZNE I PRAWNE PODSTAWY ŚWIADCZENIA USŁUG ADMINISTRACYJNYCH MINISTERSTWA SPRAW WEWNĘTRZNYCH UKRAINY W ZAKRESIE ZABEZPIECZENIA OBIEKTÓW SYSTEMU ZEZWOLEŃ

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Zmiany w prawie karnym Ukrainy miały miejsce w sferze nielegalnego handlu bronią palną, amunicją, materiałami wybuchowymi, urządzeniami wybuchowymi, a także w związku z reformą wszystkich władz państwowych i Operacji Antyterrorystycznej (ATO), która odbywa się na Ukrainie od 2014 r., doprowadziło to do rozpowszechnienia bardzo dużej ilości broni, amunicji i materiałów wybuchowych, które nie są zarejestrowane w organach Narodowej Policji, a ich nielegalna dystrybucja stanowi już zwiększone zagrożenie dla bezpieczeństwa publicznego i narodowego państwa. Stopniowy rozwój państwa ukraińskiego zależy od stabilności stosunków społecznych, ochrony interesów jednostki, i wymaga skutecznej pracy wszystkich organów ścigania, w szczególności Narodowej Policji. Istotną rolę w realizacji zadań przewidzianych w przepisach ustawowych odgrywa działalność Narodowej Policji w zakresie zabezpieczania procedur licencyjnych.

**Słowa kluczowe:** system licencjonowania Ministerstwa Spraw Wewnętrznych Ukrainy, licencjonowanie, usługa administracyjna.

## THEORETICAL-LEGAL BASIS OF PROVISION OF ADMINISTRATIVE SERVICES OF THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE TO PROVIDE FACILITIES OF THE PERMIT SYSTEM

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**Abstract.** Changes in the criminal legislation of Ukraine have occurred in the sphere of illegal trafficking of firearms, munitions, explosive materials, explosive devices, as well as in connection with the reform of all state authorities and anti-terrorist operation, which is taking place on the territory of Ukraine since 2014, This has led to the distribution of an extremely large number of weapons, munitions and explosive materials, which are not registered with the National Police authorities and their illegal distribution already poses an increased threat to the public and the national security of the state. Progressive development of the Ukrainian state not least depends on the stability of social relations, protection of individual interests and requires effective work of all law enforcement bodies, in particular the National Police. A significant role in the implementation of the tasks prescribed by the statutory law, belongs to the activity of the National Police in the sphere of ensuring licensing procedures.

**Key words:** licensing system of the Ministry of Internal Affairs of Ukraine, licensing, administrative service.

## ТЕОРЕТИКО-ПРАВОВІ ОСНОВИ НАДАННЯ АДМІНІСТРАТИВНИХ ПОСЛУГ МВС УКРАЇНИ ЩОДО ЗАБЕЗПЕЧЕННЯ ОБ'ЄКТІВ ДОЗВІЛЬНОЇ СИСТЕМИ

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Зміни в кримінальному законодавстві України відбулися у сфері незаконного обігу вогнепальної зброї, боєприпасів, вибухових матеріалів, вибухових пристроїв, а також у зв'язку з реформуванням усіх органів державної влади та АТО, що проводиться на території України з 2014 року. Це призвело до розповсюдження надзвичайно великої кількості зброї, боєприпасів та вибухових матеріалів, які не зареєстровані в органах Національної поліції. Їх незаконне розповсюдження вже становить підвищену загрозу громадськості та національній безпеці держави. Поступовий розвиток України не в останню чергу залежить від стабільності суспільних відносин, захисту інте-

ресів особистості та потребує ефективної роботи всіх правоохоронних органів, зокрема Національної поліції. Значна роль у виконанні завдань, передбачених статутним законодавством, належить діяльності Національної поліції у сфері забезпечення ліцензійних процедур.

**Ключові слова:** ліцензійна система МВС України, ліцензування, адміністративна послуга.

## 1. Introduction.

It should be noted that in terms of legal support, the institution of administrative services in Ukraine is regulated by law in the relevant Law of Ukraine “On Administrative Services”, which establishes general principles and guarantees for the provision of administrative services by executive authorities and local governments. However, this Law does not contain provisions that would describe in detail the procedures for providing administrative services in the field of licensing of permitting facilities, and this is quite logical given the specific activities and administrative and legal status of the executive branch. Meanwhile, the procedures for providing administrative services and their lists are approved at the departmental level by information and technological cards of administrative services, which directly follows from the provisions of the relevant law.

The purpose of the article is permitting procedures in the field of administrative services provided by the Ministry of Internal Affairs of Ukraine to ensure the operation of the permit system.

In Ukrainian administrative and legal science, such scholars as V. Averyanov, K. Afanasyev, I. Golosnichenko, V. Campo, S. Kivalov, I. Koliushko, T. Kolomoyets, and V. Kuybida studied the legal regulation of the provision of administrative services, M. Tishchenko, O. Kuzmenko, N. Nyzhnyk, Y. Bytyak and others. However, the issue of providing administrative services to the Ministry of Internal Affairs of Ukraine and the National Police has so far remained out of the attention of scientists and needs further study.

At the present stage of the state-building process, one of the priority areas of administrative reform in Ukraine should be considered activities to improve the provision of administrative services. Among law enforcement agencies that provide administrative services, the most important place, given the wide range of functions and powers, is occupied by the National Police of Ukraine as the central executive body, whose activities are coordinated by the Ministry of Internal Affairs.

There is an official definition of the concept of "permit system", given in Article 1 of the Regulation “On the permit system”. “Permitting system is a special procedure for the manufacture, purchase, storage, transportation, accounting, use of specially designed items, materials and substances, as well as the opening and operation of individual enterprises, workshops and laboratories to protect the interests of the state and public safety” (On approval of the Regulations on the permitting system, 1992).

## 2. The permit system as a form of executive and administrative activity in accordance with current legislation.

The permit system as a form of executive and administrative activity in accordance with current legislation extends to a much wider range of public relations and is carried out by many bodies of executive power and public administration.

As for legal sources, in some of them, for example, in the Regulations on the permitting system, its impact is limited to specially defined objects, materials and substances, as well as the opening and operation of individual enterprises, workshops and laboratories, in others, such as the Law of Ukraine “On Licensing of Certain Types of Economic Activity” of June 1, 2000, such activity is identified with economic activity and extends to a much wider range of public relations (On approval of the Regulations on the permitting system, 1992).

Legal regulation of the provision of administrative services in the field of licensing of facilities in the system of the Ministry of Internal Affairs of Ukraine is carried out in a number of legislative and mainly in bylaws, among which, as we noted above, one of the main is the resolution of the Cabinet of Ministers of Ukraine “On approval of the list of paid services provided by units of the Ministry of Internal Affairs, National Police and State Migration Service and the amount of fees for their provision”, which approved 32 administrative services and 14 other services, the amount of administrative fees (fees) and central, territorial bodies, their structural units are responsible for providing relevant services.

The legal basis for the provision of services in the system of the Ministry of Internal Affairs are bylaws, mostly departmental orders of the Ministry of Internal Affairs of Ukraine: “On Amendments to the Regulations on the Main Service Center of the Ministry of Internal Affairs” (Order of the Ministry of Internal Affairs of Ukraine, 2018).

At the same time, the draft law “On service services and service centers of the Ministry of Internal Affairs of Ukraine” should be singled out as one that introduced a conditional division of police services into administrative and other.

The activities of the National Police in the implementation of the licensing system in the field of arms trafficking is quite complex and diverse as any management activity. Its essence is to develop and implement a set of measures aimed at preventing damage that may be caused to public and state interests, property, personal safety of citizens due to uncontrolled possession and use of weapons. This activity is built in accordance with the tasks set before the National Police by various regulations.

The main ones are:

- 1) exercising systematic control over compliance with the rules of manufacture, storage and use of weapons, prevention and termination of violations of the rules of its use;
- 2) inspection of persons who are registered for work related to the use, storage, manufacture and transportation of weapons, as well as the organization of control over such persons;

3) preparation and timely implementation of preventive measures to prevent theft (loss) of weapons, ammunition, prevention of cases of their illegal use;

4) identification and elimination (neutralization) of the causes and conditions that contribute to the violation of the rules of the permit system for weapons;

5) taking measures of influence against violators of the rules of possession of weapons provided by law.

The activities for the implementation of the permit system by these units consist of a number of areas, the main of which include:

- registration and issuance of relevant permits;
- preparation and maintenance of documentation for the objects of the permit system;
- conducting scheduled and unscheduled inspections of facilities;
- organization of prevention of violations of the rules of the permit system;
- organization and implementation of reception of citizens, consideration and verification of their applications, complaints;
- interaction with other services of the National Police, as well as with other state bodies and public organizations;
- analysis of the state of work at fixed enterprises and institutions;
- compilation of reports, information, etc.

Concentrated management process is manifested in the management decision, i.e the functions of public administration in general and those performed by the National Police to implement the permit system, in particular, are implemented, most often through the adoption and implementation of management decisions.

As various services and divisions of the police take part in the implementation of the permitting system, the guidelines of the Ministry of Internal Affairs of Ukraine are necessary for the coordination of their joint activities, definition of specific tasks and functions. The Ministry of Internal Affairs of Ukraine, as noted, on the implementation of the permit system makes decisions for all entities whose activities are related to the objects of the permit system. On these issues, the Ministry of Internal Affairs of Ukraine issues orders, instructions, guidelines, guidelines, etc.

According to Art. 91 of the CCU, a legal entity may carry out certain activities only after obtaining a special permit (license) (Civil Code of Ukraine, 2003).

Licensing is a means of state regulation of economic activities aimed at ensuring security and protection of economic and social interests of the state, society, rights and legitimate interests, human life and health, environmental safety and environmental protection.

According to paragraph 6 of the first part of Article 1 of the Law of Ukraine “On Licensing of Economic Activities”, a license is a state document that certifies the licensee’s right to conduct the type of economic activity specified in the license for a certain period subject to licensing conditions. licensing of certain types of economic activity) (On licensing of economic activities, 2015).

The subjects of relations arising in connection with licensing are, on the one hand, the business entity, and on the other hand – the licensing authority.

Business entity – a legal entity registered in the manner prescribed by law, regardless of its organizational and legal form and form of ownership, which conducts business activities, except for public authorities and local governments, as well as a natural person – a business entity.

Licensing body – an executive body designated by the Cabinet of Ministers of Ukraine, or a specially authorized executive body of councils for licensing certain types of economic activity.

An economic entity that intends to carry out a certain type of licensed economic activity, personally or through an authorized body or person, applies to the relevant licensing authority with a standard application for a license.

The licensing body is an executive body designated by the Cabinet of Ministers, or a specially authorized executive body of local councils for licensing certain types of economic activity (Article 1 On licensing economic activities) (On licensing of economic activities, 2015). In Ukraine there is no single state licensing body that issues licenses for all activities. Licenses are issued by various higher or local executive bodies, the list of which is determined by the Cabinet of Ministers. If a license for any type of activity can be issued by both a higher and a local executive body, it is considered that on the basis of a license issued by the central body, economic activity can be carried out throughout Ukraine, and on the basis of a license issued by a local authority – on the territory of the relevant administrative-territorial unit. Licensing bodies develop special regulatory acts – licensing conditions, which establish qualification, organizational, technological and other requirements that must be met for a certain type of economic activity (Article 8 of the Law on Licensing of Economic Activities) (On licensing of economic activities, 2015).

The license conditions may establish requirements for education and special knowledge of the licensee’s employees, special requirements for premises, equipment, other technical means used in the licensing activity, etc. The activity of the licensed business entity must be carried out in strict accordance with the licensing conditions established for this type.

### **3. On licensing of economic activities.**

To obtain a license, an economic entity must personally or through an authorized person apply to the relevant licensing authority with a standard application (Article 10 On licensing of economic activities) (On licensing of economic activities, 2015).

The application for a license must contain the following information:

1. information about the business entity – the applicant (name, location, identification code, bank details of the legal entity; name, passport data, identification number of the individual);
2. type of economic activity in accordance with Art. 9 of the Law on licensing of economic activities for which the applicant wants to obtain a license.

The application for a license and the documents attached to it are accepted according to the description, a copy of which is issued to the applicant. If the application is signed or submitted by a person who does not have the authority to do so, or the documents attached to the application are issued in violation of statutory requirements, such application may be left by the licensing authority without consideration (Part 8 of Article 10 on licensing types of economic activity) (On licensing of economic activities, 2015). The licensing authority shall notify the applicant in writing of leaving the application without consideration. After eliminating the reasons that left the application without consideration, the application for a license may be re-submitted. According to the application accepted for consideration, the licensing body may take one of two decisions: on the issuance or refusal to issue a license. The general deadline for making a decision is 10 working days from the date of receipt of the application. Special legislation may provide for other deadlines for decision-making (Article 11 on licensing of certain types of economic activity). After reviewing the application and making a decision on the issuance or refusal to issue a license, the licensing authority within three working days from the date of the decision shall notify the applicant in writing.

In accordance with Art. 15 of the Law “On licensing of economic activities” for the issuance of a license fee is charged, which the applicant must pay within 30 calendar days after sending him notice of a positive decision. Otherwise, the licensing authority may revoke its decision to issue a license (Article 14 on licensing of economic activities) (On licensing of economic activities, 2015). In the general case, the amount of the fee for the issuance of a license is 20 (twenty) non-taxable minimum incomes, but there is also a differentiated amount of the fee for the issuance of a permit. Within three working days from the date of receipt of the document confirming the payment for the license, the licensing authority shall issue a license and issue it to the applicant. The licensee is obliged to carry out licensing activity personally and has no right to transfer the license or its copy to other legal or physical person for carrying out economic activity.

In the event of a negative decision to refuse to issue a license, the licensing authority may accept, if there are grounds such as, first, the inaccuracy of the information in the documents provided by the applicant for a license. In this case, the applicant may submit a new application for a license not earlier than three months after the decision to refuse; secondly, non-compliance of the applicant’s activity with the licensing conditions established for the type of economic activity specified in the application for a license. In this case, the applicant may submit a new application for a license to the licensing authority after eliminating the reasons that led to the refusal to issue a license.

In this case, the decision to refuse to issue a license may be appealed by the licensee in court.

Administrative services, as service services of the Ministry of Internal Affairs of Ukraine today have a developed character. Legislative consolidation of the concept of “administrative service” is contained in the Law of Ukraine “On Administrative Services” of September 6, 2012, according to which “administrative service is the result of the exercise of power by the subject of administrative services at the request of an individual or legal entity, change or termination of the rights and / or obligations of such a person in accordance with the law” (About administrative services, 2012).

The Law also outlined the sphere of public relations related to the provision of administrative services, the subjects of which are the Ministry of Internal Affairs of Ukraine and the National Police. Such legal relations regulated by the Law do not apply to the following relations: implementation of state supervision (control); metrological control and supervision; accreditation of conformity assessment bodies; inquiry, pre-trial investigation; operational and investigative activities; litigation, enforcement proceedings; notarial acts; execution of punishments; access to public information; application of legislation on protection of economic competition; carrying out activities related to state secrets; acquisition of rights on a competitive basis; acquisition of rights in respect of objects restricted in civil circulation.

Control over the work on the implementation of the permit system and coordination of efforts of all territorial police bodies to prevent and eliminate violations of the rules of manufacture, repair, purchase, storage, accounting, protection, transportation and use of firearms, pneumatic, melee weapons, ammunition and explosives and prevention of theft and use for criminal purposes is entrusted to the deputy chiefs of the main departments of the National Police in the regions, which in accordance with the division of functional responsibilities are responsible for this area of work (On approval of the Instruction on the procedure for manufacture, purchase, storage, accounting, transportation and use of firearms, pneumatic, melee and melee weapons, domestic devices for firing cartridges equipped with rubber or similar non-lethal metal projectiles and cartridges to them, as well as ammunition for weapons, main parts of weapons and explosives, 1998).

The exclusive competence of the Ministry of Internal Affairs of Ukraine includes control over the functioning of the following objects of the permitting system, which are subject to licensing:

- storages, warehouses and bases where explosives and substances are stored;
- shooting ranges and shooting ranges, hunting and sports stands;
- enterprises and workshops for the manufacture, repair, disposal of firearms, gas and melee weapons, special equipment charged with tear gas and irritants, personal protection, active defense;
- shops selling firearms, melee weapons, gas weapons and ammunition;

– points of study of the material part of the weapon, special means, rules of handling them and their application (On approval of the Instruction on the procedure for manufacture, purchase, storage, accounting, transportation and use of firearms, pneumatic, melee and melee weapons, domestic devices for firing cartridges equipped with rubber or similar non-lethal metal projectiles and cartridges to them, as well as ammunition for weapons, main parts of weapons and explosives, 1998).

In addition, the Ministry of Internal Affairs together with the State Committee of Ukraine for Industrial Safety, Labor Protection and Mining Supervision, Labor Protection and Mining Supervision supervises the circulation of explosives, as well as the operation of storage facilities, warehouses and bases where they are stored.

**Conclusions.** Issues of improving the provision of quality administrative services to the population by the executive authorities in general and in particular by the Ministry of Interior and the National Police are of particular importance in the context of European integration processes and reforms. It is clear that the assessment of the quality of administrative services provided is quite abstract, as it is a subjective assessment of the expected result. However, based on the experience of European countries in this area, it is necessary to pay attention to the requirements of legality and transparency in the activities of government. This can be achieved by enshrining in law an exhaustive list of administrative services and the subjects of their provision; constant monitoring of the process of providing services and assessing the quality of services provided; development of the system of electronic services with the help of modern information technologies, etc.

An important direction in the organization of the National Police in the provision of administrative services of the permit system is the implementation of broad preventive measures, the essence of which is to prevent violations of the rules of the permit system for weapons, which lead to various harmful consequences, including the commission of particularly serious crimes.

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