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# CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"  
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia  
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# Modern methods of preventing crimes related to the excess of power or official authority in the system of law enforcement agencies

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*Oleksandr Horoshynskyi* \*

## Abstract

The aim of the research was the examination of modern methods of crime prevention related to the excess of official power or authority in the law enforcement system. The methodological basis of the study was the dialectical method of scientific knowledge, as the main method of objective and comprehensive analysis. The results highlight that over the past eight years in Ukraine 391 judgments, 4258 decisions on procedural actions were made during the consideration of crimes under Article 365 of the Criminal Code of Ukraine. The study of the Unified State Register of Judicial Decisions shows that the largest number of verdicts was pronounced in 2014 - 78, in 2015 - 58, in 2016 - 50, in 2017 - 46, the smallest number in 2018 - 28, in 2019 twice as much in comparison with the previous year - 46, in 2020 - 38, in 2021 - 47. Everything allows to conclude that, measures to prevent crimes related to abuse of power should be comprehensive. In particular, they must be effectively correlated with the legislative framework of the state's protection and prevention policy, which signify the essential basis of any substantive democracy.

**Keywords:** law enforcement; excess of power; legal principles; preventive measures; international experience.

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\* Postgraduate student of the Department of Criminal Law of the National Academy of Internal Affairs.  
ORCID ID: <https://orcid.org/0000-0002-7999-5789>

## Métodos modernos de prevención de delitos relacionados con el exceso de poder o autoridad oficial en el sistema de las fuerzas del orden

### Resumen

El objetivo de la investigación fue el examen de los métodos modernos de prevención de delitos relacionados con el exceso de poder o autoridad oficial en el sistema de las fuerzas del orden. La base metodológica del estudio fue el método dialéctico del conocimiento científico, como principal método de análisis objetivo y exhaustivo. En los resultados se destaca que, en los últimos ocho años, en Ucrania se dictaron 391 sentencias, 4258 decisiones sobre actuaciones procesales durante el examen de los delitos previstos en el artículo 365 del Código Penal de Ucrania. El estudio del Registro Estatal Unificado de Decisiones Judiciales muestra que el mayor número de veredictos se pronunció en 2014 - 78, en 2015 - 58, en 2016 - 50, en 2017 - 46, el menor número en 2018 - 28, en 2019 el doble en comparación con el año anterior - 46, en 2020 - 38, en 2021 - 47. Todo permite concluir que, las medidas para prevenir los delitos relacionados con el abuso de poder deben ser integrales. En particular, deben estar efectivamente correlacionadas con el marco legislativo de la política de protección y prevención del Estado, que significan la base esencial de toda democracia sustantiva.

**Palabras clave:** agente de la ley; exceso de poder; principios legales; medidas preventivas; experiencia internacional.

### Introduction

Law enforcement officers have a wide range of functions and powers to use force, detain or arrest offenders, conduct undercover investigative actions to investigate crimes. During the execution of such powers, law enforcement officers are given considerable freedom of action. However, the granting of broad discretionary powers leads to the question of the extent to which law enforcement agencies use their functions and the legality of exceeding their powers.

The current situation in the state has caused an increase in various types of crimes. At the same time, economic circumstances force the authorities to reduce the number of law enforcement agencies through layoffs, despite the obvious growth in the need to protect the population. Protection of public order and protection against this type of threats, such as meetings, demonstrations, gatherings, requires employees to be prepared to risk their own lives. A modern law enforcement officer must protect against the enemy in difficult conditions.

Crimes committed by law enforcement officers are one of the most dangerous social phenomena that have a negative impact on all spheres of social relations and processes taking place in the state, as a result of which stability and security in society is undermined.

Different attitudes of the public to the fact of excesses of power by law enforcement officers increase mistrust, hostility and violence among the population.

Today, the problem of criminal acts of officials becomes a transnational problem and ceases to have a purely national aspect.

Thus, the purpose of this article is to conduct a study of crimes related to the abuse of power or official authority by law enforcement officers and to determine the main ways to avoid and prevent their commission.

## **1. Materials and methods**

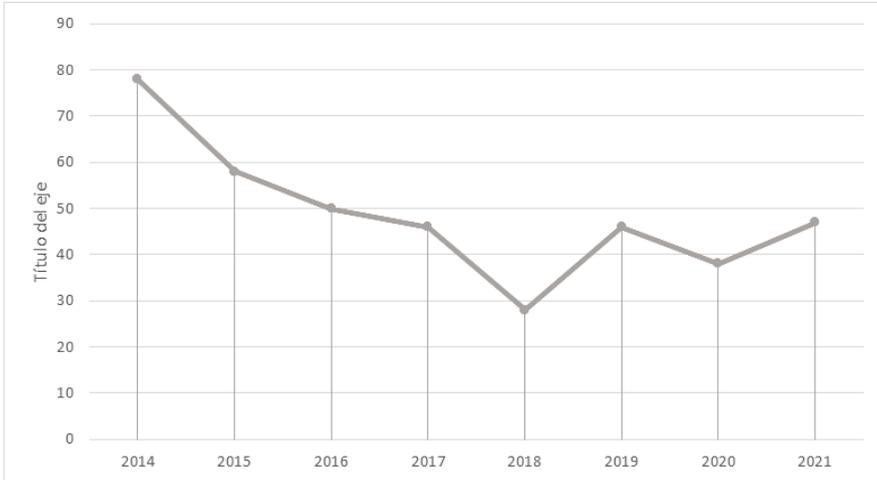
The methodological basis of the research was the dialectical method of scientific knowledge as the main method of objective and comprehensive analysis. Thanks to its application, legal and social phenomena affecting the actions of law enforcement officers were analyzed in relation to each other, statistical survey data, judicial practice related to issues of abuse of power by law enforcement officers were studied.

## **2. Results**

Over the past eight years, 391 verdicts were handed down in Ukraine, and 4,258 decisions were made regarding procedural actions during the consideration of crimes provided for by Article 365 of the Criminal Code of Ukraine. The study of the Unified State Register of Court Decisions shows that the largest number of sentences was pronounced in 2014 - 78, in 2015 - 58, in 2016 - 50, in 2017 - 46, the smallest number in 2018 - 28, in 2019 twice more compared to the previous year – 46, in 2020 – 38, in 2021 – 47 (Figure 1) (Unified State Register of Court Decisions, 2022).

**Fig. 1 (developed by the author).**

**In recent years, it has become obvious that the abuse of authority by law enforcement officers is a widespread phenomenon and requires effective methods of combating it. Such methods may depend on a number of political, legal, and social factors.**



The fight against this type of crime is one of the serious problems in countries all over the world.

Every law enforcement officer must be aware of the importance of due process. Abuse of power directly contradicts the concept of proper legal behavior.

The activities of law enforcement officers within the framework of their functions are aimed at ensuring national security at all levels, ensuring law and order, as well as protecting human rights, freedoms and interests in society. Each state has its own structured system of law enforcement agencies, which is clearly regulated by the current national legislation (Smernytskyi, 2021).

Abuse of power or official position is interpreted as intentional, with the aim of obtaining any unlawful benefit for himself or another natural or legal person, the use of power or official position by an official against the interests of the service, if it caused significant damage to the rights, freedoms and interests of individuals protected by law citizens or state or public interests, or the interests of legal entities (Chubenko *et al.*, 2018).

Until 2014, the subjects of the specified type of crime could be any officials who were entrusted with the duties of implementing the functions of state authorities. Such persons were defined as representatives of state

authorities or local self-governments who held positions related to the performance of organizational-administrative or administrative-economic functions in state authorities, local self-governments, state or communal enterprises, institutions or organizations, and the excess of power or official powers, the actions of an official who does not have official powers and goes beyond his powers during the performance of his administrative and economic functions, or the actions of an official who has powerful powers, but in this case exceeds not them, but his other powers, were recognized, or exceeds its authority over persons who are not its subordinates (Information and consulting platform, 2018).

The question of the specificity of the definition of the subject of the crime provided for in Article 365 of the Criminal Code of Ukraine was repeatedly raised. Discussions among academics raised the question of why the specified article stipulates responsibility specifically for law enforcement officers, bypassing other officials whose actions can have no less dangerous social consequences. The legislator explained such measures by the fact that in 2013, most of the crimes stipulated by Article 365 of the Criminal Code of Ukraine were committed by law enforcement officers (Paseka, 2017).

Khavroniuk (2014) claim that the intentional commission of actions that obviously go beyond the limits of the given powers by another public official in any field, except for law enforcement officers, can have only administrative, disciplinary and civil legal responsibility, the possibilities of which should be used to the full extent in all necessary cases through the mechanisms provided for in the relevant normative legal acts.

In view of the above, the main differences in the distinction between the concepts of «exceeding power or official authority» and «abuse of power or official position» are that an official illegally and contrary to the interests of the service uses the rights and powers granted to him by law, as defined in Article 364 The Criminal Code of Ukraine stated that the crime provided for in Article 365 of the Criminal Code refers to the commission of actions by a person who is superior to this department or an official of another department.

In addition, the actions must be performed under those conditions, if their performance is allowed only in special cases, that is, with a special permit or an appropriate order. As for the subject, in this case, actions are supposed to be performed individually, which should have been performed only collegially. In addition, no one has the right to perform or allow such actions.

From the moment of the initial codification until the entry into force of the Criminal Code of Ukraine, the domestic criminal law did not contain a legislative definition of a special subject of the specified type of crime. However, the doctrinal analysis demonstrates that this concept was developed by the science of domestic criminal law.

A special subject of a crime is a person who, in addition to general features, has special features. They usually include: position, official duties, demographic characteristics, membership in the service (Makarov *et al.*, 2019).

In the scientific literature, the term «law enforcement officer» refers to a person who puts the interests of society above his own. Legal and professional training is an important prerequisite in the formation of law enforcement culture (Sushytska *et al.*, 2021).

As mentioned earlier, law enforcement officers can exercise their own powers at their own discretion. This practice sometimes leads to too much freedom of action, which ultimately exceeds the limits of the necessary defense in critical situations.

Some scholars consider the necessary defense in two manifestations. In the first, as an individual way of protecting oneself or other persons, the state from socially dangerous encroachments. In the second, as a way to protect oneself during active actions from the side of law enforcement officers: offensive movement forward, and therefore, in the hands of law enforcement officers, there must be an appropriate and accessible toolkit capable of meeting the ever-increasing demands of everyday criminal reality (Miliukov, 2021).

Law enforcement officers are usually empowered to detain persons who have committed a crime. In those cases, if the detainee was harmed, which clearly does not correspond to the nature and danger of the committed act, law enforcement officers must bear responsibility for this on an equal basis with all citizens, and their position cannot be burdened only because they are representatives of the authorities. Because police officers risk their lives while performing their duties.

The unconditional prosecution of representatives of law enforcement agencies who, in the course of their duties, exceeded the limits of necessary harm, to criminal liability under Articles 365 of the Criminal Code of Ukraine, in fact, may lead to increased liability for exceeding the measures necessary to detain the person who committed the crime. Under such conditions, criminal liability may arise for causing any light damage, regardless of the degree of the offense committed by the criminal.

According to sociological research, the level of trust of citizens in law enforcement agencies in Ukraine in 2020 is 40.8%. Compared with other European countries, this indicator reaches 39% in Hungary, up to 94% in Finland. Compared to 2019, the number of cases of inappropriate behavior by law enforcement officers decreased from 20.2% to 9.6% (Klymenko, 2020).

In 1979, the United Nations General Assembly adopted the Code of Conduct for Law Enforcement Officials (Resolution GA 34/169), which was the main instrument providing normative guidance to states on the implementation of the role of the police in society. The articles of the Code mark a significant departure from the traditional, narrow definition to a more «legal», broad understanding of the police as officials who «serve» the community.

In practice, the human rights approach to law enforcement involves an obligation to refrain from unjustified restrictions on human rights; take reasonable measures to ensure the exercise of human rights and take positive measures to promote the exercise of human rights. For example, this approach requires that law enforcement officers do not unlawfully restrict the right to assemble, and take the necessary measures to protect those who organize a demonstration (United Nations Digital Library System, 2019).

The excess of power can manifest itself in the form of the use of force, manifestations of cruelty. One cannot fail to note that the use of force is a necessary and legal tool for the work of a law enforcement officer, given the specifics of his activity. Instead, the manifestation of «cruelty» is already a conscious act of employees, who usually make great efforts to hide their misconduct. At the same time, the use of force can occur by chance, which is explained by the problem of the lack of special professional skills. Thus, “excessive force” can be cruel, involve malicious intent, or simply accidental (Lourens, 2022).

Legislation of foreign countries differently distinguishes such *corpus delicti* as abuse of power or official position and abuse of power and official authority, as evidenced by the analysis of the criminal legislation of foreign countries (French Republic, Republic of Latvia, Georgia, Republic of Estonia, Russian Federation, Republic of Estonia, Italian Republic) (Nesterenko, 2021).

The American Police Foundation conducted a nationally representative survey that revealed the attitudes of America’s police officers on important issues related to police overreach. As a result, it was established that American law enforcement officers believe that extreme cases of excess of authority by the police do not happen often. At the same time, some respondents confirmed that sometimes they have to use more force than is allowed by law.

Despite a responsible attitude to legal norms that recognize the limits of the powers of law enforcement officers, the survey showed that it is not unusual for police officers to ignore the inappropriate behavior of their colleagues. Most police officers in the United States disapprove of the use of excessive force. Therefore, more than 30% of respondents expressed

the opinion that law enforcement officers do not have the right to use as much force as is often necessary when making arrests. Almost 25% believe that it is sometimes permissible to use more force than is allowed by law in order to control a person who physically assaults a police officer. Also, 22% of respondents indicated that officers in their department sometimes (or often) use more force than necessary, and only 16% reported that they never did.

Some respondents, almost 4 out of 10, reported that constant compliance with the rules is incompatible with doing the job. It is worth noting that American police officers believe that training and educational programs are an effective means of preventing the excess of power by officers (Weisburd *et al.*, 2015).

Exceeding the powers of law enforcement officer's contrary to the principles of legality, necessity and proportionality can lead to serious violations of human rights. For example, illegal and arbitrary use of violence may lead to violation of the right to life, arbitrary detention violates the right to freedom and integrity. In addition, a warrantless personal search can be a violation of freedom. Illegal actions can also manifest in the form of arbitrary use of information obtained as a result of the investigation, which is a gross violation of the right to privacy.

Values in law enforcement agencies are formed not only from normative acts, but also from traditional culture. The management's position regarding the excess of power can significantly affect the attitude of law enforcement officers to their powers.

Mutual respect and cooperation between state law enforcement agencies and the public are essential to ensure that security needs are effectively met.

In recent decades, international and regional documents have paid more attention to police accountability as a system that requires the involvement of a variety of external and civilian oversight actors. In this regard, the European Code of Police Ethics stipulates that «the police should be accountable to the various independent bodies of a democratic state, i.e. the legislature, the executive and the judiciary» (Council of Europe, 2021).

In the United States of America, there is a dedicated unit that employs experts in police practice to help review law enforcement incidents, documents and policies. These experts are involved in developing remedies and evaluating compliance actions (Department of Justice, 2022).

Therefore, in the case of the use of force, the actions of a law enforcement officer must comply with the following principles:

1. Necessity. This principle contains mandatory interrelated elements: the obligation to use non-violent means where possible; the obligation to use force only for the legitimate purpose of law enforcement

agencies; and the duty to use only the minimum necessary force that is reasonable under the circumstances. Whenever possible, law enforcement officers should use reasonable means to achieve a legitimate law enforcement objective before resorting to physical force. Such permissible means must be non-violent in nature and may include the use of symbols of police authority: uniform, vehicle, educational conversation, physical presence.

2. Legitimate purpose. The use of force must be carried out with a corresponding purpose for the implementation of the functions assigned to law enforcement agencies. That is, officers must use such force as is reasonably necessary under the circumstances to prevent a crime or to effect or facilitate the lawful arrest of offenders.
3. Limitation. Impossibility of applying force to a person who does not resist. Unnecessary use of force is obviously not legal.
4. Rationality. This principle is explained by the fact that the force used should not exceed the minimum reasonably necessary under the given circumstances, that is, be only to the extent necessary for the performance of the duties of officials.
5. Proportionality. This principle establishes a boundary between what is considered the legal use of force and the threat posed by the offender. That is, proportionality does not mean that force must be used by the law enforcement agency in strict accordance with any continuous use of force (where the level of force increases in stages) or as a similar response to violence by the suspect (UNODS, 2019).

Measures to prevent crimes related to abuse of power should be comprehensive. In particular, they must be effectively correlated with the legal framework of protection and prevention policy on the part of the state.

State measures, which consist in conducting a policy on the prevention of offenses in the field of law enforcement agencies, can affect the structure and behavior of law enforcement officers. Conducting internal audits at local levels and strengthening reporting can have a positive impact on employee accountability.

Law enforcement officers must pass expert checks during internal disciplinary commissions. In addition, it is important to ensure transparency during their conduct, so that the public can be sure that the internal procedures are effective and fair.

The work of structural subdivisions should also take into account the continuous training of employees, their evaluation and certification.

In addition to these measures, law enforcement officers can also be prosecuted in a civil lawsuit. These lawsuits can be filed against persons

who, as a result of exceeding their authority and official duties, caused a violation of the rights of citizens.

Civil lawsuits are the main mechanism for holding law enforcement officers accountable for causing moral damage. Provisions of the special Law of Ukraine: «On the Procedure for Compensation for Damage Caused to a Citizen by Illegal Actions of Bodies Carrying Out Operative-Investigative Activities, Pretrial Investigation Bodies, Prosecutor's Office and Court» dated December 1, 1994 No. 266/94-BP (The Law of Ukraine, 1995) and the Regulations on the Application of the Law of Ukraine «On the Procedure for Compensation for Damage Caused to a Citizen by Illegal Actions of Bodies Carrying Out Operational-Investigative Activities, Pretrial Investigation Bodies, the Prosecutor's Office and the Court», approved by the order of the Ministry of Justice, the General Prosecutor's Office and the Ministry of Finance of Ukraine dated 03.04.1996 according to No. 6/5/3/41 (Order of the Ministry of Justice, The General Prosecutor's Office, The Ministry Of Finance Of Ukraine, 1996) the right of a person to apply for compensation for damage caused by illegal actions of employees of state authorities is determined.

In our opinion, the specified normative legal acts are outdated and do not take into account all important aspects of the legal relationship arising between the victim and the law enforcement officer as a result of the latter exceeding his powers.

An important measure is to strengthen community rights to record police actions to promote accountability and encourage good law enforcement behavior.

The provisions of the previously effective Order of the Ministry of Internal Affairs of April 24, 2009 № 177 «On the organization of initial training of employees of the internal affairs bodies of Ukraine» regulated the procedure for applying mentoring. Therefore, a new employee was initially attached to a specific mentor (Order of the Ministry of Internal Affairs, 2009).

The Order of the Ministry of Internal Affairs of Ukraine dated 16.02.2016 №.105 approved “ Regulations on the organization of initial professional training of police officers who have been recruited for the first time in police service” according to which “a mentor from among the members of the management of the police body (institution, institution) is assigned to the police officer, where he serves, who monitors his performance of tasks, organizes for him individual practical training in fire, physical and tactical training, which is provided for in the individual curriculum” (Order of the Ministry, 2016).

The use of the mentoring institute is also followed in the provisions of the Order of the Ministry of Internal Affairs of Ukraine dated 29.01.2018

No. 51, which approved the Concept of the introduction of a three-level model of training of police officers, which provides that after the end of the initial professional training as a police officer, for the next six months, police officers serve in junior police positions under the guidance of mentors (Order of the Ministry of Internal Affairs Of Ukraine, 2018).

O.M. Karpenko and E.S. Zelenskyi (Karpenko and Zelenskyi, 2020) also emphasize the need to introduce a mentoring institute in the system of law enforcement agencies. According to scientists, the content of mentoring is broad, and therefore should not be limited to the transfer of professional knowledge, skills and abilities. The mentor should be an example for the trainee to follow. Such imitation can concern not only professional, but also personal, moral-willed qualities, civic and life position, conscious attitude to official duties, etc. Also, the task of the mentor may be to help the intern adapt to the conditions of service.

Mentoring in law enforcement agencies today is an important event that affects the personnel system as a whole. This practice makes it possible to adapt new law enforcement officers to the specifics of the profession, reduce psychological pressure on them, and establish the correct values of the chosen professional activity.

The experience of international states shows that cases of abuse of power by law enforcement officers are more common in developing countries.

For example, in the Republic of Kenya, abuse of power by law enforcement officers is commonplace. For a long time, there was a negative practice that police officers received bribes, unjustly accused and restricted freedom, sometimes even took the lives of citizens, without fearing any consequences, which clearly indicated abuse of power. The Kenyan population complains of helplessness and inability to protect themselves and their loved ones. Between 2019 and 2021, nearly half a thousand police killings were recorded in Kenya (IGM, 2021).

Given the powers vested in law enforcement agencies, it is undeniable that the police are both the primary protection and threat in a democratic society.

A law enforcement officer cannot be a law in itself. Despite the strong pressure, they should not act exclusively in accordance with the interests of the authorities, since it is important to maintain neutrality between political sentiments and the protection of citizens' rights. For example, in cases of rallies, demonstrations, and other disturbances, law enforcement officers should not take sides.

The universal attitude of law enforcement officers to citizens indicates equal law enforcement, which is a guarantee of a democratic society. Their personal attitude should not differ from the requirements of the positions

they hold. The neutrality of a law enforcement officer is when he simply enforces the rules, regardless of the characteristics of the individuals or groups who violate them.

However, there is another side to such a situation, where law enforcement officers cannot stand aside and be neutral, since they are a special body entrusted with the functions of ensuring compliance with state legislation.

Police in the UK are distinctly non-military and local, although more standardized than in the US. Responsibility for its control is shared between the Ministry of the Interior of the national government, the local police authority and the local police chief. There is no official bill of rights, but generally the police do not exercise powers beyond their authority over the average citizen, and the police are not armed. It is worth noting that the state clearly emphasizes the need to observe internal organization and self-control. It is believed that citizens are responsible for participating in the maintenance of law and order in their localities. Much attention is paid to the symbolic value of law enforcement officers as representatives of the nation, and they are taught to see themselves as a model of moral behavior.

The development of British policing has been accompanied by constant debate about how to protect democratic freedoms while remaining effective in fighting crime and disorder. The Home Office and the College of Policing are working together to develop relevant national standards aimed at improving the effectiveness of policing (Home Office, 2022).

France's law enforcement system is highly centralized, so it is less focused on providing services to serve the population. The unified national police system includes two components: the gendarmerie, which is part of the armed forces, and the national police, which is part of the Ministry of Internal Affairs.

They are controlled at higher levels. Prosecutor's offices play an important role mainly in criminal proceedings. On the other hand, the specific judicial system is not adversarial, so it is difficult for citizens to file a complaint against the actions of the police. According to the French, in order to protect democracy, the rights of society should prevail over the rights of the individual (Gary, 1995).

In the Republic of Kazakhstan, the General Prosecutor's Office developed a draft Concept and a draft Law of the Republic of Kazakhstan «On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan in connection with the introduction of a three-level model with the separation of powers and spheres of responsibility between law enforcement agencies, the prosecutor's office and the court».

The essence of this draft law is to coordinate all key procedural decisions that are taken regarding the rights and freedoms of the citizen with the

prosecutor, as well as the adoption of procedural and final decisions in criminal cases at all stages of the pre-trial investigation, including the election precautionary measures (Kulbaeva and Akhpanov, 2022).

Perhaps this practice will speed up the pre-trial investigation process, however, in our opinion, the fundamentally important functions of the procedural statuses of the subjects will not be demarcated in this case, which will significantly affect the powers of each of the aforementioned participants.

O.M. Boboshko (2018) emphasizes the need to distinguish powers between special subjects. Taking into account the fact that the current legislation does not clearly regulate the activities of pre-trial investigation bodies when conducting investigative actions, there are cases in practice when the rights and freedoms of citizens are violated. Under such conditions, court bodies and prosecutor's offices must definitely exercise their supervisory and control functions.

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders concluded that state governments should develop the widest possible range of legal remedies and arm law enforcement officers with various types of weapons and ammunition that will allow differentiated use of force and firearms. Employees should be equipped with non-lethal weapons that can stop an offender, but are not capable of causing death or injury.

In addition, law enforcement officers should be given the opportunity to have self-defense equipment, such as shields, helmets, body armor, and bulletproof means of transportation, so that there is no need to use weapons. It was rightly noted that states should implement rules and regulations regarding the use of force and firearms by law enforcement officials. In developing such rules and regulations, governments and law enforcement agencies must constantly consider ethical issues related to the use of force and firearms (United Nations, 1990).

## **Conclusions**

1. When applying criminal responsibility, each case of committing a crime has its own individual characteristics, taking into account those that individualize the person guilty of committing the same crime. Each personality has specific characteristics that make up its individuality. Such individualization is manifested in biological, psychological, social and professional characteristics.
2. The threat to the life and safety of law enforcement officers should be considered as a threat to the stability of society as a whole,

taking into account that law enforcement officers play a vital role in protecting the right to life, liberty and personal integrity, guaranteed by the Universal Declaration of Human Rights and confirmed in the International Covenant on civil and political rights.

3. In the case of the use of force, the actions of a law enforcement officer must comply with the following principles: necessity, legitimate purpose, limitation, reasonableness, proportionality.
4. Measures to prevent crimes related to excess of power should be comprehensive. In particular, they must be effectively correlated with the legal framework of protection and prevention policy on the part of the state. As a result of the study, taking into account international recommendations and the practice of foreign countries, the following measures are proposed:
  - conducting internal audits at local levels and strengthening reporting.
  - strengthening the rights of the community to record police actions to promote accountability and encourage proper behavior of law enforcement officers.
  - the active development of the institute of mentoring in law enforcement agencies, which is currently an important measure that affects the personnel law enforcement system as a whole. This practice makes it possible to adapt new law enforcement officers to the specifics of the profession, reduce psychological pressure on them, and establish the correct values of the chosen professional activity.

The experience of international states shows that cases of abuse of power by law enforcement officers are more common in developing countries.

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