MODERN CHALLENGES OF THE LAW ENFORCEMENT SYSTEM DEVELOPMENT IN UKRAINE AND ORGANIZATION OF ITS FUNCTIONING

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Abstract. The article is devoted to the scientific study of the problem of finding ways to form a modern theoretical and legal model of administrative and legal principles of law enforcement in Ukraine with the selection of the most significant, under the current conditions of law enforcement and the current political and legal environment. The system of law enforcement agencies in Ukraine is considered as a functional integrity of law enforcement agencies and the links between them. This system is considered in structural and functional sections, which are closely related. The structural breakdown of the law enforcement system in Ukraine reflects its elements and the links between them. The functional section of the law enforcement system in Ukraine reflects the activities of the relevant bodies, as well as determines their place in the system of national security agencies as a system of the highest order. In particular, law enforcement agencies are classified as security and defense. The current challenges of the law enforcement system development in Ukraine and the organization of its functioning are: its complexity due to the large number of subjects of law enforcement functions; problems of interaction between the subjects of law enforcement and between these entities and other entities that are not covered by the system under study. Perspective directions of law enforcement bodies system development in Ukraine are determined by: 1) unification of the legal status regulations of law enforcement subjects activity in accordance with the direction of law enforcement activity carried out by them; 2) development of scientific research on law enforcement individual subjects; 3) development of interaction between specific subjects of law enforcement; 4) determining the optimal ratio of unification and differentiation of administrative and legal regulation of organization and activities of the law enforcement system in Ukraine.

Keywords: law enforcement agencies, law enforcement activities, justice, unification, differentiation, system.

INTRODUCTION

2018 № 2469-VII (hereinafter – the Law «On National Security») (on national security: Law of Ukraine of 21.06.2018 № 2469-VII, «2018») establishes the foundations and principles of national security and defense, goals and basic principles state policies that will guarantee society and every citizen protection from threats, based on which the activities of law enforcement agencies should be organized, formed and improved system of measures and means of law enforcement activities. In the context of implementation of the provisions of
This Law and in order to form and determine the priorities of national interests of Ukraine 
and national security in 2020, the National Security Strategy of Ukraine was adopted 
(approved by Presidential Decree of 14 September 2020 № 392/2020) and Defense of 
Ukraine of September 14, 2020 «On the National Security Strategy of Ukraine: Decree of the 
President of Ukraine of 14.09.2020 № 392/2020, «2020), which highlights the protection 
of the individual, society and the state from crime, in particular corruption, ensuring the 
restoration of violated rights, compensation for damage.» (President of Ukraine, 2020)

These regulations are strategically important for the development and functioning of the 
national security system directly related to the activities of the law enforcement system, 
the reorganization of which is actively positioned, and steps in this direction should have 
ystemic character and be carried out with minimal strategic, tactical and operational 
errors, public sensitivity to their presence and direct influence on the rights and freedoms 
of citizens, the realization of their legitimate interests.

Thus, it is urgent to find optimal scientific approaches to the formation of theoretical and legal 
model of administrative and legal foundations of law enforcement agencies, taking into account 
the regulatory potential of administrative law science and features of stabilizing nature of 
administrative law regulatory impact on processes related to turbulent organizational change 
in national security and defense sector. Administrative activities of law enforcement agencies 
are aimed at ensuring public safety and order, which are known to be part of national security, 
and therefore the effectiveness of its implementation is a guarantee of a safe environment in 
the state and proper protection of rights, freedoms and legitimate interests of citizens.

In researches and publications, scientists pay attention to the problems of law enforcement, 
study aspects of administrative activities of individual law enforcement agencies, bypassing 
the search for the essence of law enforcement on administrative and legal grounds as a 
general and ascending problem for all other studies. Generalization of scientific developments 
allows to allocate the works devoted to human rights, information, control and supervision 
and international activity of law enforcement agencies. Author's view on the essence of 
law enforcement is presented by A.P. Gel, V.V. Kovalska, R.Ya. Tea and others. Much of the 
research is devoted to the analysis of the essence of administrative activity (identified 136 

The object of the study is public relations regarding the activities of law enforcement 
agencies. The subject of the research is the current challenges of the law enforcement 
development system in Ukraine and the organization of its functioning. The aim of the 
article is to study scientifically the problem of finding ways to form a modern theoretical 
and legal model of administrative and legal principles of law enforcement in Ukraine with 
the selection of the most important, under the current conditions of law enforcement and 
the existing political and legal environment.

MATERIALS AND METHODS

There were worked through acts of normative and legal nature, which regulate relations 
in the field of law enforcement activities and relate to the definition of the system of law 
enforcement bodies of Ukraine, the practice of their application was worked through.
The work took into account the general criteria of scientific objectivity, used both general scientific and special legal methods of scientific knowledge. The research strategy is determined by the system method. Using the formal-logical method allowed to determine the relationship between the main categories and concepts of the study: «law enforcement», «law enforcement activity», «national security» and so on. Using the formal-dogmatic method, the place of the system of law enforcement agencies of Ukraine in the system of national security subjects is determined. With the help of synthesis method in conjunction with the formal-logical method, specific challenges to the development of the law enforcement system in Ukraine, as well as its organization and functioning have been identified. With the help of the dialectical method in connection with the formal-logical method the challenging directions of law enforcement bodies system development in Ukraine are determined.

RESULTS AND DISCUSSION

The systemic nature of the scientific task to be solved in the study is manifested in the selection of such problem aspects of administrative and legal foundations of law enforcement agencies as common law, administrative law, public administration. The conditions for this are: systematization of legal research, the subject of which is to find ways to solve the problem of determining the nature and content of law enforcement administrative and legal principles and highlight the most established scientific views on the nature of administrative and legal activities of law enforcement agencies; formulation of features and disclosure of the essence and content in relations of law enforcement activities field as a subject of administrative and legal regulation; identification of modern challenges to the development of the law enforcement system in Ukraine and the organization of its functioning; taking into account the administrative and legal principles of law enforcement agencies; substantiation of provisions on the characteristics of the relationship between the forms and functions of administrative and legal activities of law enforcement agencies; disclosure of general trends in the transformation of methods of administrative and legal activities of law enforcement agencies; substantiation of the ways of implementation in the legislation of Ukraine of the best world practices on system of law enforcement bodies functioning on administrative and legal bases; disclosure of topical issues of ensuring the effectiveness of administrative and legal regulation of law enforcement agencies in Ukraine and identifying proposals for their solution.

The concept of law enforcement is often used as a starting point for defining a law enforcement agency. However, the concept of law enforcement, in turn, is also interpreted ambiguously. Thus, according to the narrow understanding, law enforcement activity is the activity of the competent state bodies in the field of combating crimes and offenses, which is carried out within specially defined rules and procedures and provides for the possibility of state coercion. Accordingly, the system of law enforcement agencies includes only those bodies for which law enforcement is the main and which in accordance with the tasks assigned to them have special jurisdictional and organizational means. In some cases, law enforcement agencies include only those that fight crime and delinquency, the results of which are legal liability under criminal procedure and administrative law. There is also an opinion that law
enforcement agencies should include only those bodies which employees are engaged in professional activities aimed at performing special tasks. Instead, within the broad sense law enforcement bodies are all state bodies, local governments and self-organizations of the population that carry out law enforcement activities, in one way or another implement or promote the implementation of law enforcement functions. As V. Tatsiy rightly points out, as a result of a broad interpretation of the law enforcement function, the system of law enforcement agencies should include almost all bodies that perform law enforcement functions in one way or another, i.e. indirectly engage in law enforcement activities (Voluyko & Druchek, 2020; Shai, 2014; Tatsiy, 2012a).

In our opinion, the position that law enforcement agencies are the activity of all state bodies and non-governmental organizations to ensure respect for the rights and freedoms of citizens, their implementation, ensuring law and order; in the narrow sense, it is the activity of specially authorized bodies in order to protect the rights and freedoms of citizens, law and order and ensure legality, which is implemented in the form prescribed by law and within the powers granted to these bodies (Voluyko & Druchek, 2020).

The Law of Ukraine «On National Security» clearly defines an expanded interpretation of the concept and system of law enforcement agencies as such, which the law entrusts with law enforcement functions and law enforcement activities, which, in turn, is to guarantee state security, protection of Ukraine’s border; protection and defense of the state national interests, public order; human and civil rights and freedoms. As for the concept of the law enforcement system, as can be seen from the text of the Law, it more clearly highlights its outlines, but generally defines only some elements of the legal status of the latter, including their tasks and competence. It is noteworthy that along with the concept of «law enforcement agencies» the Law contains such concepts as «state bodies of special purpose with law enforcement functions», «law enforcement bodies of special purpose», «military formations with law enforcement functions», which obviously, due to the variety of tasks assigned to this type of body, and the legislator’s efforts to more accurately determine their competence. In view of the above, we express the opinion that one of the urgent tasks of legal science should be the creation of theoretical and legal foundations of law enforcement agencies of Ukraine in the light of the concept of national security (Voluyko & Druchek, 2020).

Thus, the basis of the system of law enforcement agencies should be the results of elaboration of theoretical and legal principles of this system interaction with higher level systems, including the system of national security actors, as well as with other systems: expert institutions; public institutions endowed with powers related to the implementation of law enforcement, etc. (Sitchenko, 2019; Naumenko, 2019). So, L. O. Sitchenko, revealing the administrative and legal principles of interaction between law enforcement agencies and public institutions, notes that the interaction of law enforcement agencies with public institutions is seen as a process of business cooperation of institutions entrusted with law enforcement tasks and functions with public institutions (both state and non-governmental) of various directions, based on the established grounds (principles) of joint activities, legislation, administrative agreements, memoranda of cooperation in certain forms, within a certain mechanism to achieve law enforcement objectives of the subjects of interaction. Administrative and legal support for the organization of interaction is associated with a
system of legal acts formed by specially authorized entities necessary for the establishment, implementation, implementation of relevant joint activities, and as a result – achieving the objectives and goals of interaction, through which participants in joint processes activities are endowed with the relevant rights and responsibilities necessary to delimit their competence and authority on issues of interaction (Sitchenko, 2019). S. M. Naumenko, based on the results of administrative and legal principles study of expert institutions interaction with law enforcement agencies, provides a definition of such interaction and formulates the tasks of expert institutions as subjects of such interaction. Interaction of expert institutions with law enforcement agencies is defined as joint activities based on the law, agreed on the goals, objectives, time, place and other conditions of their activities aimed at fulfilling tasks in criminal proceedings and other cases of application of special knowledge. Tasks of expert institutions, including as subjects of interaction with law enforcement agencies, are systematized through their division into three groups: 1) tasks of conducting research and providing an opinion, which include: conducting research on behalf of and materials of the relevant law enforcement agency; conducting an assessment of property and property rights in accordance with the law, including damages; 2) tasks as a participant in criminal proceedings, namely: technical and forensic support of the scene, other investigative actions and operational and investigative measures; identification and collection of evidence necessary for expert research and criminal proceedings; identification with the help of forensic records of persons involved in the commission of a crime or offense; providing, within the competence, consultations on the issues of technical and forensic support of criminal proceedings; 3) tasks on information and technical support of criminalistic activity: keeping records of instruments of criminal offenses and other objects obtained or seized during criminal proceedings; ensuring the functioning of information retrieval systems and accounting, providing access to them. (Naumenko, 2019).

Forms of police activity in the field of ensuring the rights and freedoms of a child can be considered as a system of homogeneous actions that have external expression and aimed at implementing the tasks and powers of the National Police of Ukraine to create optimal conditions for ensuring and free exercise of human rights and freedoms and the freedoms of a child in particular. There are such forms of activity of the National Police of Ukraine in the field of protection of the rights and freedoms of a child, as: organizational, law enforcement, educational, law enforcement (Mogilevska, 2020).

On the issue of systematization of law enforcement agencies – you can specify the scientific approach, which criterion is chosen direction of their activities: law enforcement; control (exercise of jurisdictional powers in the system of executive bodies); protection of the Constitution of Ukraine and exercise of state control (Tatsiy, 2012b, Popivnyak, 2020).

Today, state control bodies have the function of detecting offenses, after which the relevant materials are passed to law enforcement agencies. In this regard, the affiliation of a significant number of state control bodies to law enforcement agencies is not unambiguous, and their activities should be characterized as search and control. The search nature is inherent in the activities of the relevant subjects of anti-corruption, as well as – defined by law enforcement bodies subdivisions. This conclusion is consistent with the results of current research on the legal nature of law enforcement. In particular, S.S. Shoptenko, according to the study of the
essence of administrative and jurisdictional activities of law enforcement agencies points to such a feature as the possibility of applying measures of state coercion as a result of its implementation (Shoptenko, 2018). Thus, the issue of classification of control and search bodies can be considered as requiring in-depth substantive analysis.

The reference to statistical reporting data, which reflect the results of the activities of certain law enforcement agencies, in particular – the National Police, indicates the need to systematize the directions and forms of its work. So, it is quite difficult to identify the criteria for structural construction of the National Police of Ukraine Report on the results of work in 2020. In particular, there are such areas as: organization of a single security space, general optimization of work, child safety, effective response to domestic violence, etc. The National Police of Ukraine Report on the results of work in 2020 (Report of the National Police of Ukraine ..., 2020). It has several functions: protection of law and order, control, protection of the Constitution of Ukraine, etc. This negatively affects the transparency of the National Police of Ukraine, which is one of the established international standards of public administration (European Governance Standards, 2011).

A separate area of improving the system of law enforcement agencies of Ukraine can be considered as the development of legislative techniques for normative consolidation of its operation principles. Thus, the structural and substantive regulation in this area is complex – there are a significant number of laws and regulations: «On the Prosecutor’s Office» (on the Prosecutor’s Office: Law of Ukraine of 14.10.2014 № 1697-VII, «2014), «On the National Police» (On the National Police: Law of Ukraine of 02.07.2015 № 580-VIII, "2015), «On the Security Service of Ukraine» (On the Security Service of Ukraine: Law of Ukraine of 25.03.1992 № 2229-XII, «1992) etc. This approach of the legislator to the settlement of each law enforcement agency status complicates the availability of relevant norms elaboration, there is a question of ensuring transparency of power relevant subjects (Verkhovna Rada of Ukraine, 2015).

The above scientific approaches to the law enforcement agencies and their forms of activity systematization indicate the theoretical possibility of identifying the general principles of their activities, which should be enshrined in relevant legislation, each of which should be devoted to the principles of a particular group of law enforcement agencies (Nagorna, 2018).

That is, further elaboration of the development of law enforcement in Ukraine involves the implementation of such tasks as: monitoring of general theoretical and sectoral legal research, the subject of which is to find ways to solve the problem of determining the nature and content of administrative and legal principles of law enforcement; development of features and legal characteristics of relations in the field of law enforcement as a subject of administrative and legal regulation; monitoring the challenges of the development of the law enforcement system in Ukraine and the organization of its functioning; development of administrative and legal principles of law enforcement agencies; development of the characteristics of the relationship between the forms and functions of administrative and legal activities of law enforcement agencies; improving the methods of administrative and legal activities of law enforcement agencies; implementation in the legislation of Ukraine of the best world practices of law enforcement bodies system functioning on administrative and legal bases; further consideration of general issues of administrative and legal regulation of
law enforcement agencies effectiveness ensuring in Ukraine and formulating proposals for their solution (Petrov, 2014).

The implementation of these tasks involves taking into account not only the general administrative and legal principles of law enforcement in Ukraine, but also – the peculiarities of their work in certain areas of public relations. As the result, L. Mohylevska, revealing the organizational form of the National Police of Ukraine in the field of ensuring the rights and freedoms of children, highlights its purpose: creating conditions to ensure the implementation of law enforcement acts regulating police activities in the field of personal rights and freedoms. All this is done to establish a relationship between the various bodies of the state, which helps these bodies to share positive experiences, develop the most effective measures for the realization of human and civil rights and freedoms, allows officials to monitor compliance with legal norms guaranteeing human rights and freedoms, and the citizen, allows to influence the behavior of the citizens themselves in the process of exercising their rights and freedoms, and in case of violations to use effective means of influence and, finally, to eliminate shortcomings or gaps in this area. This form is manifested in several aspects. First, this work is internal – meetings, training, retraining and advanced training, inspections, individual educational work, etc.; secondly, work with the public – reports, speeches to the public, thematic lectures, speeches in the media, etc. Another form of organizational nature is work with statements and messages of individuals, analytical materials for monitoring the state of human rights and freedoms. The organizational form aims to promote the creation of effective conditions under which police officers exercise their powers, including activity in order to protect the rights and freedoms of a child. This is achieved by creating conditions for the functioning of the National Police both externally and internally. Implementation of this involves appropriate financial and technical support of units, organization of special training in case of operations and tactical measures, as well as solving problems in creating conditions for citizens to exercise their rights and freedoms, provide them with certain information, issue relevant decisions and administrative acts. For example, it could be an organization of interaction of the National Police with other territorial and line units, children services, administrations of educational institutions for the prevention of juvenile delinquency or organizational measures to search for juveniles who left home and did not return, and the issuance of passports to minors a person from the moment of reaching the age of 14, detention and return home of a minor who is begging and wandering – all this creates conditions for them to exercise their rights and freedoms, etc. (Mogilevska, 2020).

The next form is law enforcement, which is associated with the creation of the necessary conditions to ensure rights and freedoms through the issuance of law enforcement acts, which is part of legal facts system, which is the organizational and legal mechanism for constitutional rights and freedoms. The main purpose of such acts is to specify the content of rights and freedoms, to establish the order, limits and grounds for their implementation and individualization of other legal facts related to the exercise of rights and freedoms. Thus, the National Police of Ukraine issues departmental regulations that allow the relevant units to perform functions to ensure the rights and freedoms of the minors. This is realized through the application of legal norms with the adoption of government decisions to exercise rights
and freedoms. So, in the system of guarantees of human rights and freedoms, law enforcement is subject to the task of protection of rights, i.e. the cessation, detection and investigation of crimes and administrative offenses. The third form is educational, which helps to create all the necessary conditions for raising the level of legal awareness of each individual citizen and the National Police in the context of protection of the rights and freedoms of a child. Educational work in the police is, first of all, purposeful activity of heads of all levels, public institutes on formation of high civic, moral and professional qualities in personnel, mobilization for successful performance of operational and service tasks, strengthening of legality and strengthening of official discipline. In the context of the rule of law, educational work carried out by the police has become particularly relevant. And the last form of the National Police of Ukraine activity is law enforcement. It is aimed at protecting the most important social relations governed by the rule of law from any encroachment. This form is directly related to ensuring the rights and freedoms of citizens, as well as creating the most favorable conditions for their implementation. It should be noted that not all police activities are considered to be law enforcement, but only those that are determined by actions aimed at stopping illegal behavior (Mogilevska, 2020).

Due to that, the immanent problem of administrative and legal regulation of the law enforcement system is the ratio of its unification and differentiation. Unification is associated with the systematization of the general principles of law enforcement in accordance with specific areas of their activities, and differentiation involves taking into account the specifics of a particular area of public relations as a matter of law enforcement agencies jurisdiction (Verkhovna Rada of Ukraine, 1992). Thus, the Draft Law on Child-Friendly Justice was submitted to the Verkhovna Rada of Ukraine (registered on June 4, 2021 at № 5617). The project is designed to strengthen the protection of rights and create conditions for the re-socialization of juveniles who have committed criminal offenses. To achieve this goal, it is considered necessary: to create conditions to ensure the legality, validity and effectiveness of any decision on a child in conflict with the law, as well as to protect the rights of child victims and child witnesses; bring justice for children as close as possible to international standards; to strengthen the positive elements of the existing system of bodies and services for children and to reform its inefficient or incapable components; provide children with access to justice by exemption from court fees. However, as indicated in the conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine dated 01.12.2021, the submitted bill is characterized by the absence of an independent subject of legal regulation. The preamble of the draft states that «this Law aims to create conditions for the organization and effective operation of child-friendly justice, and is the basis for prevention of delinquency in children, proper treatment of children in contact with the law and its social rehabilitation, prevention of secondary victimization of a child who is a victim or witness». Instead, based on the content of the norms proposed in the draft, most of them are already provided by other regulations. In addition, it indicates duplication of the provisions of certain acts with force of general provisions, in particular – the Law of Ukraine «On Mediation», adopted by the Verkhovna Rada of Ukraine on 16.11.2021 (Draft Law on Justice, Child-Friendly: Draft Law Of Ukraine dated 04.06.2021 № 5617, «2021» (Cabinet of Ministers of Ukraine, 2021). This indicates that in the further systematization of law

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enforcement agencies of Ukraine it is necessary to take into account norms of general nature (which actualizes the unification of legislation on the law enforcement system) and special rules, including those due to the specifics of a particular area of legal relations (Verkhovna Rada of Ukraine, 2021).

CONCLUSIONS

The system of law enforcement agencies in Ukraine should be considered as a functional integrity of law enforcement agencies and the links between them. This system should be considered in structural and functional sections, which are closely related.

The structural breakdown of the law enforcement system in Ukraine reflects its elements and the links between them. The primary element is a specific law enforcement agency. It is expedient to classify law enforcement agencies according to the direction of their activity: protection of law and order; protection of the Constitution of Ukraine; control and search activities (taking into account the competence of jurisdictional nature in the exercise of relevant powers). The links between these bodies can be both vertical and horizontal.

The functional section of the law enforcement system in Ukraine reflects the activities of the relevant bodies, as well as determines their place in the system of national security agencies as a system of the highest order. In particular, law enforcement agencies are part of the security and defense forces sector.

Current challenges for the development of the law enforcement system in Ukraine and the organization of its functioning are: its complexity given the large number of law enforcement functions subjects; problems of interaction between the subjects of law enforcement and between these entities and other entities that are not covered by the system under study.

Perspective directions of the system of law enforcement bodies development in Ukraine are: 1) unification of legal regulation of law enforcement entities legal status in accordance with the direction of law enforcement activities carried out by them; 2) development of scientific research on individual subjects of law enforcement; 3) development of interaction between specific subjects of law enforcement; 4) determining the optimal ratio of unification and differentiation of administrative and legal regulation of the organization and activities of the law enforcement system in Ukraine.

REFERENCES


