

## Law Enforcement Agencies in the System of Entities of Protection and Defense of Human Rights

### Правоохоронні органи у системі суб'єктів охорони та захисту прав людини

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#### Abstract

The purpose of this article is to define the role of law enforcement agencies in the system of protection of human rights and freedoms. The legal relations that arise during the activities of law enforcement agencies regarding the protection of human rights and freedoms were the subject of the study. Such methods of scientific cognition as dialectical, logical-semantic, formal-legal and analytical were used during the writing of the article.

Through a series of research analyzes and comparisons, the definition of "law enforcement agencies" was provided. During the writing of this scientific work, the level of impact of effectively functioning law enforcement agencies on the entire system of protection of fundamental human and civil rights and freedoms was traced. It is stated that due to the multisectoral nature of activity of law enforcement agencies, their extensive system, etc., it is impossible to group them in one legislative act. The root cause for this is that all law enforcement agencies have different functions, different tasks, they do not have the same powers, and so on. It is emphasized that, regardless of the state in which they are located, law enforcement agencies (and especially their activities to ensure inalienable protected rights) will always be a model for a society as a whole. Hence the foundation of the widespread scientific thesis that the quality of law

#### Анотація

Мета даної статті полягає у визначенні ролі правоохоронних органів у системі захисту прав та свобод людини. Предметом дослідження виступили правовідносини, що виникають під час діяльності правоохоронних органів щодо захисту прав та свобод людини. Під час написання статті використано такі методи наукового пізнання, як: діалектичний, логіко-семантичний, формально-юридичний та аналітичний.

Шляхом проведення низки науково-дослідних аналізів та порівнянь було надано визначення поняття «правоохоронні органи». У ході написання даної наукової роботи було простежено рівень впливу ефективно функціонуючих правоохоронних органів на усю систему захисту основоположних прав і свобод людини та громадянина. Констатовано, що зважаючи на багатогалузевий характер діяльності правоохоронних органів, їх розгалужену систему тощо неможливо в одному законодавчому акті згрупувати їх. Першопричиною цього є те, що на всі правоохоронні органи покладено різні функції, перед ними стоять різні завдання, вони мають зовсім не однакові повноваження та ін. Підкреслено, що незалежно від держави, в якій вони знаходяться, правоохоронні органи (а особливо їх діяльність із забезпечення невід'ємних охоронюваних прав), завжди будуть взірцем для усього суспільства. Звідси

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enforcement work in the field of protection and observance of constitutional rights, freedoms and legitimate interests of individuals is a direct reflection of the level of success and competence of all actors in society.

**Key words:** law enforcement agencies, fundamental rights and freedoms, law enforcement system, protection of protected rights, constitution, subjects of protection, guarantee of security.

## Introduction

Human and civil rights in Ukraine are recognized and protected by law, and therefore, must be guaranteed and ensured by public authorities and their officials at all levels. Thus, human rights, determine, first of all, the minimum conditions for the preservation of life, human dignity and honor; secondly, it is a universal category, which is an opportunity for a person to enjoy the basic, most important benefits and conditions of a safe, free existence of an individual in society (Ivanova, Felyk, Shopina, Bieliakov, 2020, p. 474, 476).

Therefore, the efficiency of guarantees of fundamental human rights and freedoms depends on the level of development of legal principles, concepts of law and democracy, the state of the economy, the law-making atmosphere in society, the level of legal education and culture of the population, etc. To realize the interests of society in the most important areas of life, the State develops and implements appropriate policies, including, law enforcement (Tsyhanov, Chumachenko, Panova, Golub, 2020, p 160).

As is well known from the history of the development of public relations, law enforcement agencies have always been a key element in the system of the legal mechanism for ensuring the rights and freedoms of citizens. This is explained by the fact that it is with the effective and coordinated activity of law enforcement agencies aimed at protecting inalienable human rights and freedoms, the level of law and order in the state can be maintained at the appropriate level. However, as soon as law enforcement officials appointed by the state to defend the rule of law begin to despise the rights and freedoms they are supposed to protect, the primacy of the rule of law deteriorates sharply. Otherwise, the leveling or improper performance of their duties by law enforcement officials leads to illegal

походить фундамент широко розповсюдженої наукової тези про те, що якість роботи правоохоронців у сфері захисту та дотримання забезпечуваних конституцією прав, свобод та законних інтересів осіб є прямим відзеркаленням рівня успіху та компетентності усіх суб'єктів суспільства країни в цій сфері.

**Ключові слова:** правоохоронні органи, основоположні права та свободи, правоохоронна система, захист охоронюваних прав, конституція, суб'єкти захисту, гарантія безпеки.

human rights violations, as authorized officials have such restrictive tools that no government agency or other official has.

Law enforcement agencies are perceived by society as an institution empowered to act (including the use of force) here and now, and this allows solving various, virtually all types of human problems, and this is a feature which is common to such various actions as detention of the offender, law and order control, intervention in cases of domestic violence, etc. Accordingly, it is important that law enforcement agencies meet the expectations of both the law and the society (Hamula, 2016). Moreover, for example, the internal affairs bodies (today the National Police) are a special, very specific social institution, the purpose of which almost always remains the same - to protect human rights and freedoms, ensure property security, be perceived by society and support the government (Nehodchenko, 2002).

Thus, today, when Ukrainian society is moving towards a European future, preferring to be in the same family with other developed countries, a more flexible and efficient law enforcement system is needed than ever before. At a time when citizens choose the best among many political forces and political leaders sometimes proclaim rather dangerous appeals, it is important to have an unprejudiced political force that protects the rights of all members of society.

Taken into account all the above, the purpose of the article is to determine the role of law enforcement agencies in the system of subjects of protection and defense of human rights based on the analysis of existing scientific approaches and current legislation.

### Theoretical framework

In recent years, a large number of scholars have dealt with issues related to the place of law enforcement agencies in the system of subjects of protection and defense of human rights. This is primarily due to the fact that the general state of respect for fundamental rights and freedoms of man and citizen depends on daily behavior of law enforcement officials, as well as the quality of their direct activities.

It follows that the invention of logical schemes and explanations of how the activity of law enforcement agencies should take place and be directed towards proper observance of the rights of each member of society has become one of the most important tasks for modern and future researchers. That is why scientists from time to time wrote and published works on a possible solution to this issue. It should be noted that the most authoritative among others are the research publications of such scientists as: Albul S. V. (2012), Bahrii T. Ya. (2012), Bilozyorov E. V., Gida E. O., Zavalnyi A. M. (2010), Bonyak V. O. (2015), Hamula P. I. (2016), Ivanova H., Felyk V., Shopina I., Bieliakov K. (2020), Karkach P. (2013), Kasaraba Yu. Ya. (2006), Kobzar O. F. (2016), Kovaliv M. V. (2018), Nehodchenko O. V. (2002), Rolandy G., Verdier T. (1999), Tatsii V. Ya. (2013), Tsyhanov O., Chumachenko I., Panova I., Golub M. (2020), Yarmysh N. M. (2016), Zavalnyi M. V. (2018) etc.

### Methodology

Methods and techniques of scientific knowledge, which are defined in accordance with the purpose of the subject of study, are the methodological basis of the article. The methodological basis of the work is a combination of general scientific and special methods, which in complex application allow to achieve the goal.

With the help of dialectical and logical-semantic methods the essence of the categorical apparatus of research is revealed, namely the scientific positions of scientists regarding the understanding of the concept of "law enforcement agency" are given. The use of this scientific method is still very important, because the disclosure of any problematic issue is not possible without a clear understanding of the terminology.

The formal-legal method was used in the study of scientific sources dealing with the activity of law enforcement agencies, including in the field of protection of human rights and freedoms. The

use of this method made it possible to more clearly define the concepts associated with the research topic. This method involves the application of logical laws and rules.

The analytical method was used in the analysis and justification of some theoretical author's positions, for example, that today, taken into account the multi-vector activity of law enforcement agencies, it is not possible to normalize their legal regulation in a single legal act. Analysis is the dismemberment of an object into its component parts for the purpose of their comprehensive study. The analytical method is aimed at determining the internal trends and capabilities of the subject.

The normative basis of the work is the Constitution of Ukraine and current legislative acts of Ukraine, which concerns the activity of law enforcement agencies on the protection of human rights and freedoms.

Scientific works of specialists in the field of administrative law and other branches of legal sciences were the scientific and theoretical basis of the article.

### Results and discussion

As history shows, the lack of the rule of law has led to an increase in predatory activities which are likely to have adverse effects on productive activity. The question is then: why is there law enforcement in some countries and less (or hardly any) in other countries? a question that is also relevant beyond the realm of transition economies. Since the rule of law is enforced by government, the question is then: why are some governments too weak to enforce the law and others are not? (Rolandy & Verdier, 1999).

From the first historically known state formations to the present day, law enforcement agencies have always played an important role in public relations. This importance is based primarily on the specifics of the powers exercised by law enforcement officials provided for by the relevant legislation. In particular, their primary and priority task is the protection of the individual, protection of the rights and freedoms of every person, in order to ensure that the legislator gave authorized law enforcement officials the opportunity to apply restrictive measures. At the same time, it is constantly established at the legislative level that the application of each restrictive measure is possible only on the grounds and in the manner prescribed by law. And this is quite right, because the clarity of legislative provisions

directly related to the application of restrictive measures is a guarantee against arbitrariness on the part of law enforcement officials.

In general, it should be noted that one of the main reasons for the establishment of law enforcement agencies by political authority of any state is the desire of the authorities to implement state decrees and orders quickly and in a timely manner, and that the state, represented by its agencies and bodies, to keep its monopoly right to regulate public relations and the use of force. The latter is extremely important because it is considered almost the only guaranteed way to maintain law and order and authority of State bodies in time of crisis (Bilozyorov, Gida & Zavalnyi, 2010).

At the same time, it should be emphasized that the state and political system can function long and effectively only when law enforcement agencies not only ensure equal rights and interests of government and state institutions, but also adequately protect the rights, freedoms and interests of all other participants of public relations. Similar responsibilities of law enforcement agencies are currently enshrined in the legislation of most countries.

In this context, Ukraine is no exception, which main law, namely the Constitution of Ukraine, clearly and unambiguously refers to human life, health, honor and dignity as the highest social value in the state. With this in mind, it becomes absolutely clear why domestic law enforcement agencies have this area of activity (protection of inalienable rights and freedoms of man and citizen) as their highest priority. In order to achieve the tasks set before them, government agencies, including law enforcement officials, are active to create and continuously improve those effective ways and means that would be able to protect the above benefits. One of these should be considered the relevant legal levers, due to which, in fact, the principles of legality and true rule of law are ensured both in the state system and in society as a whole (Albul, 2012).

Taken into account all the above, it is necessary to single out such a key legal lever as an independent and politically unprejudiced national judicial system. After all, it is this component that largely determines whether the state and local law enforcement agencies of a particular country will violate the rights, freedoms and legitimate interests protected by law. Through a number of evidence-based studies, scholars have proven that the level of quality and efficiency of the judiciary, along with the level of their independence, has a direct

impact on the state to freely express thoughts and opinions in the State, as well as the general level of compliance with the rights and freedoms set out in the law.

In our study, we draw attention to the fact that there is no clear definition of such terms as "law enforcement" and "law enforcement agencies" at the legislative level. This issue was intensified due to the introduction of the term "law enforcement agencies" in 2016 into the Constitution of Ukraine, in particular, paragraph 2 of Part 1 of Art. 131-1 established that the prosecutor's office, which carries out: "organization and procedural management of pre-trial investigation, resolution of other issues in accordance with the law during criminal proceedings, surveillance of covert and other investigation (search) actions of *law enforcement agencies*" (Law of Ukraine, 2016).

As Kobzar (2016, p. 4) noted, the recent events in our country are extremely relevant to the search for and introduction of new approaches regarding reforming law enforcement agencies in Ukraine. Instead, domestic legislation is characterized by uncertainty of their system and functional purpose. This situation does not contribute to further strengthening of reforming or their coordinated activity, especially in the field of human rights and public order. However, we cannot agree with this statement, because, in our opinion, taken into account the multisectoral nature of law enforcement agencies, their extensive system, etc., it is impossible to group them in one piece of legislation. The root cause for this is that all law enforcement agencies have different functions, they have different tasks, they do not have the same powers and so on.

In this context, it is necessary to support Tatsii (2013), who noted that the concept of "law enforcement agencies" is one of the vaguest in Ukrainian jurisprudence, internally contradictory and excessive in scope. This notion is also distinguished by its pointlessness in the constitutional laws, the lack of subjectivity of the composition". According to him, the introduction of the term "law enforcement agencies" was carried out with the adoption of the Constitution of Ukraine, but there was no further legislative clarification. In this regard, there is still dispute over the content of this term.

Kovaliv (2018, p. 168) stated the lack of unity in the views of scientists regarding the understanding of the defining features of law enforcement and, accordingly, the formulation of its general concept. Thus, in particular, some scholars believe that the concept of law



enforcement agencies should be understood as all government agencies and public organizations that at least partially perform the law enforcement function, even if it is not the main one for them. Others consider this concept in a broad and narrow sense.

According to Yarmysh (2016, p. 83), the concept of "law enforcement agencies" is analogous to the term "law and order institutions", which should include authorities that include enforcement, armed units and employees who have the right to use coercion, in particular with the use of firearms.

By law enforcement agencies Bonyak (2015) means the executive authorities, for which the law enforcement function is the main one, and they exercise powers aimed at protecting human rights, freedoms and law and order; these bodies have the right to apply coercion to people legally; in their structure they have armed formations.

According to Part 1 of Art. 2 of the Law of Ukraine of 23.12.1993 № 3781-XII "On state protection of court and law enforcement officers" law enforcement agencies include the prosecutor's office, the National Police, the security service, the Law Enforcement Military Service in the Armed Forces of Ukraine, the National Anti-Corruption Bureau of Ukraine, the State border authorities, bodies of revenues and duties, bodies and institutions of execution of punishments, pre-trial detention centers, bodies of state financial control, fishery protection, state forest protection, other bodies exercising law enforcement or law security features.

It is undeniable that in a modern civilized and democratic state, where there is a real rule of law, the court, as a state and public institution of justice, is the most reliable tool to protect violated or unrecognized rights, freedoms and legitimate interests. At the same time, the main duty of the governmental authority in the state of law should be to guarantee the fair and impartial action of the judiciary. Thus, the government will provide an opportunity for citizens and others to protect their rights and interests confidently, having equal access to the justice system. It should be emphasized that the political system of almost all developed democratic states is based on such principles. That is, in such a system, the court is a decisive and independent body that establishes justice in society.

According to the above information, the straightforward tasks of law enforcement agencies in the rule of law and liberal-democratic state are clear and effective enforcement of court

decisions, protection of public order, supervision of compliance with the current legislation regulations by all public relations entities and ensuring safe vital activity for the whole society. However, it should be emphasized regarding the supervision of compliance with the laws, that in the legal society only those regulations are adopted, implemented and protected which do not contradict the country's constitution, and above all - do not infringe on inalienable personal rights and freedoms basic for every person, namely for life, health, honor, dignity, private property, etc.

Recent trends, namely requirements for developed democratic countries, include calls for the unification of countries that share common moral and legal values into appropriate long-term alliances and coalitions. It should be emphasized that the tendency to work together in broad coalitions between independent states has been and is extremely characteristic of the developed countries of the Western world. In particular, this has become more common since World War II (the effective alliance of the "anti-Hitler coalition" and further emergence of the United Nations (UN) on its basis).

Western European countries may be used as a case study, which ability to form a coalition has been well known for centuries, since the Crusades, and the United States, which political elites gradually abandoned the principles of isolationism in foreign policy in the middle of the last century, beginning the search for a strong alliance with the democracies of Europe and other parts of the world. It is these above-mentioned states that have initiated and founded the vast majority of existing alliances, coalitions and associations in the political, economic, security, cultural, educational and many other spheres. The result was the emergence of the United Nations, the European Union, NATO, the Council of Europe, Interpol, UNESCO, Europol, and so on.

Researchers of the role of law enforcement agencies in the process of protecting the rights and freedoms of members of society are most interested in those associations that directly or indirectly belong to the unions in the field of law enforcement. As a rule, this term refers to alliances formed on the basis of mutually ratified agreements between the governments of two or more foreign states and aimed at joint supervision of member states for proper protection of fundamental rights, freedoms and legitimate interests of individuals and organizations in their countries, also for mutual

assistance in the search for and detention of those entities that violate these rights and freedoms.

It should be added that the participation of the state in such organizations enables it to demonstrate to the world the transparency and openness of its true intentions in the field of proper protection of fundamental inalienable goods. After all, all members of such alliances must regularly publish reliable data on the current level of freedom and transparency within the country, data on the quality of law enforcement activity, the efficiency of the judiciary and the level of corruption. The implementation of these actions is part of the obligations of a member state of such an association to the entire world community (Bahrii, 2012).

Also, the participation of a state in international alliances and organizations will significantly increase the ability of other countries to require it to fully comply with its international obligations to ensure the proper protection of human rights. In other words, it will significantly strengthen the "jurisdiction" of the country to the world community, including international judicial bodies. This state of affairs, in turn, will greatly improve the domestic situation with the protection of rights and freedoms, as it will create ample opportunities for various pressure from the international community on those government (including law enforcement) structures that will violate the above rights and freedoms and legitimate interests (Kasaraba, 2006).

By the way, one of the most commonly used tools to encourage criminal and corrupt regimes to be more transparent and cooperative is the so-called "sanctions". They can be both sectoral (imposed against entire sectors of the economy) and personal, or "targeted" (imposed against individuals involved in violations of human rights and freedoms, and members of their families). For example, it could be a ban on the head of law enforcement to enter the country or seize his property and bank accounts, and so on.

But, despite the significant opportunities of the modern world community to prevent cases of violations of personal human rights and freedoms in some countries, as well as opportunities to create effective law enforcement associations and disseminate useful information, the most important thing is the creation and further operation in each the country its own system of checks and balances, which will serve as a kind of legal leverages. The main task of these leverages is naturally recognized as the prevention of gross offenses by any subject of

public relations in the state, combating the arbitrariness of government and oligarchic circles, and most importantly - creating equal opportunities for all members of society to protect their violated and unrecognized rights.

It should be noted that recently attention of developed and democratic countries to the situation with the protection of fundamental rights and freedoms in Ukraine has increased. In particular, the United States, the European Union, Canada, and other countries prefer to provide more logistical and financial assistance to the Ukrainian state than at present. This is recognized as an extremely important matter, because at this time the whole Ukrainian society needs significant financial injections into its own economy, defense and public policy. Among other things, investing in the law enforcement system is considered very useful, as its effective work will be able to eliminate several current problems of Ukraine. These include, in particular, corruption, embezzlement, smuggling, etc. (Karkach, 2013).

Addressing the analysis of the legislation of the EU and the USA, Zavalnyi (2018) pointed out the absence of direct analogues of the domestic terms "law enforcement" and "law enforcement agencies". In English-speaking countries, particularly in the United States, the terms "Law Enforcement Activity" and "Law Enforcement Agencies" are used, which can be translated as "law enforcement activity" and "law enforcement authorities". However, these terms are usually understood in Ukraine as "law enforcement" and "law enforcement agencies". The term "Law Enforcement Agencies" covers police and intelligence agencies. Police bodies are executive bodies specially authorized to conduct police activity - a special type of public administration activity carried out with the use of state (administrative) coercion, including restrictive measures and extreme forms of coercion - legitimate violence, namely legally prescribed use of force in a broad sense of this concept (in Ukrainian law - direct administrative coercion): physical force, special means and weapons.

## Conclusions

Therefore, summarizing the above statements, it is worth noting the following.

*First*, law enforcement agencies in any country are the main actors to ensure and protect fundamental human rights and freedoms. However, their activity should be controlled by independent courts and society as a whole.

Secondly, today there is no legal interpretation of the term "law enforcement agencies" in domestic legislation, and their structure is not clearly defined. This is due to the diversity of law enforcement agencies that perform different functions, have different tasks, etc., and consequently, the basic principles of their activity are regulated in various laws and departmental bylaws.

In our opinion, the process of reforming the law enforcement system in Ukraine is complicated by the lack of a clear definition of such basic concepts as "law enforcement activity", "law enforcement", "law enforcement system" and "special services", which are widely used not only in scientific circulation, but and in legislative acts.

In the legislation of Ukraine, the concepts of "law enforcement activity" and "law enforcement agencies" are defined through each other, and there are no normatively defined criteria by which a specific activity or authority can be attributed to law enforcement. Consequently, the absence of clear and unambiguous legal definitions of basic concepts gives rise to further shortcomings, in particular, in the legislative definition of the spheres of competence of security sector bodies, and, consequently, in the practical organization of activities of the national security system.

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