ON THE INFLUENCE OF THE HUMAN FACTOR IN THE ACTIVITIES OF LAW ENFORCEMENT INSTITUTIONS IN UKRAINE

Nikolay KOVAL, Igor KOVBAS

Covered in:
CEEOL, Ideas RePeC, EconPapers, Socionet, HeinOnline

Published by:
Lumen Publishing House
On behalf of:
STEFAN CEL MARE UNIVERSITY FROM SUCEAVA,
FACULTY OF LAW AND ADMINISTRATIVE SCIENCES,
DEPARTMENT OF LAW AND ADMINISTRATIVE SCIENCES
ON THE INFLUENCE OF THE HUMAN FACTOR IN THE ACTIVITIES OF LAW ENFORCEMENT INSTITUTIONS IN UKRAINE

Nikolay KOVAL¹, Igor KOVBAS²

Abstract
In this scientific work, the authors consider issues related to the study of ways of building a civilized society and the state on the territory of Ukrainian lands and participation in this process of law enforcement agencies, in particular law enforcement and law enforcement agencies of the state. Accordingly, the article deals with aspects of how and in what ways law enforcement institutions, including law enforcement agencies, as legal entities, are taken up in the development of a civilized state in Ukraine, and what productive role in this process is given to the human factor. Therefore, issues affecting the range of law-enforcement institutions and law-enforcement bodies, as state formations, their legal status, as well as the legal status of employees of these formations, which, as individuals, in accordance with the procedure established by law, with the observance of the established requirements become a civil servant. When appointing to a regular post in law-enforcement formations, individuals as civil servants receive the legal status of an official or official of these institutions. The issues outlined are essential and important in the organization and functioning of state law enforcement institutions in the implementation of law enforcement activities in order to carry out tasks and perform functions in the life of society and the state.

Keywords:
Law enforcement function of the state, law enforcement system, law enforcement agencies and law enforcement agencies, law enforcement, law enforcement officer and law enforcement agency, legal status of a law enforcement officer and law enforcement agency.

¹ Candidate of Law, Professor, Professor of the Department of Administrative Law and Process and Customs Safety, University of the State Fiscal Service of Ukraine, Chernivtsi Ukraine
² Candidate of Legal Sciences, Associate Professor of the Department of Public Law Chernivtsi National University named after Y. Fedkovych Chernivtsi Ukraine
INTRODUCTION

The complexity of building a developed civilized society on the territory of the now established Ukrainian state is due to the reorientation of the consciousness of the Ukrainian population from one coordinate of values to others, that is, to more democratic and humane. This process is associated with the confession of values based on the introduction of a state-organized society into a state of social relations of the individual and the state which envisages the priority of a person before the state.

The transition of the population of Ukrainian lands from the perception of the values that it confessed to the acquisition of an independent, sovereign, democratic state which became Ukraine, to the values that underlie the life of society and the state, implement the highest social value of human being, life and health, honor and dignity, inviolability and security, and the rights and freedoms of man and citizen and their guarantees determine the content and direction of the state, led to the adoption and implementation of the daily life of an independent and independent Ukrainian state basic fundamental political and normative policy document which is its constitution - the Basic Law of independent, democratic, social state ruled by law Ukraine [1, 21].

The implementation of the provisions of the said policy-normative, programmatic document, which is the Constitution of Ukraine (hereinafter referred to as the CU), mobilizes the Ukrainian people, that is, citizens of all nationalities who inhabit the territory of Ukraine for implementation in the present and the future, which involves a rather complex and multidimensional, the complex application of principles, approaches, means, methods, measures, methods, etc., for building on the territory of Ukrainian lands a civilized state that adheres to European values.

An important role in the introduction of the principles of the main normative legal act of the Ukrainian state, that is, its constitution in the existence of personality and society, the enforcement establishments law enforcement in the vital activities of the state and Ukrainian society are the law enforcement function of the state. One of the components of law enforcement institutions of the state is the law enforcement agencies that are part of the state mechanism. Bringing a part of the state apparatus, which is a legally regulated subsystem of state bodies, their units and units that authorized to send state power in society management, law enforcement institutions, by regulating public relations or influence on personality or
members of society using encouraging methods, as well as coercion applicable to the legal procedures of the order.

By forming one or another law enforcement agency as a legal state instance, the state creates a situation that justified as "de-jure", in Latin meaning de jure- to follow the law, [2: 218] legal law enforcement institution.

Law enforcement institutions, including law enforcement agencies, the mechanism of the state is obliged to ensure the needs and interests of citizens, to ensure the activities of the rights and freedoms of man and citizen, protect and protect the sovereignty, independence, democratic and constitutional structure of the state of Ukraine, law and legitimate interests of enterprises, institutions and organizations, establishment of lawfulness, the strengthening of legality, conducting preventive and prophylactic measures to prevent unlawful acts, detection and preliminary investigation of committed offenses, protection and protection of all forms of ownership.

The execution of the law enforcement established by law enforcement establishments, including law enforcement agencies and the implementation of the authority provided by individuals who are established by the persons who are established in accordance with the law and in accordance with the requirements provided for in a particular ordinary person, in one or another state law enforcement institution. Thus, the individual, which is established in accordance with the law on compliance with the necessary law for observing the relevant position, which is provided for in the state painting (de-jure) of the law enforcement institution, is noted as a civil servant, and this is an "official" or "official" person.

Considering the problem issues related to the formation and functioning of the law enforcement function, the law enforcement system, the "law enforcement systems, including law enforcement agencies," law enforcement "," employee of the law enforcement agency ", who becomes an individual, who acquires the status of an official and official and fulfill its intellectual-physical actions in the process of exercising law enforcement activities aimed at ensuring the fulfillment of tasks facing the other state law enforcement institution.

Given this indicated, in this scientific work proposes to form an opinion regarding the question of the substantiation of the influence of the human factor in the activities of law enforcement institutions.

Investigating the stage problem that is initiated in the scientific work name, it should be noted that its discussion should be started from the analysis of the provisions that are fixed in the Constitution of Ukraine and
ON THE INFLUENCE OF THE HUMAN FACTOR IN THE …

which, in particular, there are other issues. First of all, this provision is directly related to the approach of the Ukrainian legislator to regulate the relationship between individuals and the state. Thus, in the preamble of the Constitution of Ukraine, the basic conceptual foundations for the definition, updating and development of Ukrainian statehood in the time of the present and for the future are fixed. The Constitution to the generally accepted signs that are inherent in statehood in general, adds such fundamental principles on the grounds of which in the Ukrainian lands should be built, and already such a geopolitical formation is already being constructed, which is a sovereign and independent, democratic, social and legal state Ukraine [1].

At present, in the teaching of the state and the right of scientists, language leads and defend the idea of a "legal state". The legal state is the decisive and most meaningful element of the dominant in modern civilized countries of the statehood type. It is the organization of political power based on the recognition and aspirations for the real provision of human rights and freedoms and the citizen, the rule of law, mutual responsibility of the person and the state, etc. [3: 11].

Currently, the experience of political and legal opinion suggests that for the legal state it is necessary to recognize and observe the inherent human rights (humanitarian and legal components), the rule of law and legal laws (regulatory component), the reliable legal organization of the state power system, which is distributed to the legislative, executive and judicial (institutional-legal and organizational-own component). Scientists note that all these components are closely interconnected and complement each other [4: 678].

It should be noted that the legal state as a concept is "software" for its implementation in the viability of society. The indicated phenomenon is embodied in life with the help of conceptual structures with historically changing content. Therefore, given the foregoing, and taking into account the content of the idea of a legal state, it should be borne in mind that the conceptual structures are subject to certain changes depending on which factors are recognized as the most significant in one or another period of the history of development of society and the state.

The formation of Ukraine as a legal state is related to the creation and functioning of democratic and capable civil society and strengthening its control to the activities of national state institutions, as well as influence on their formation. Democratic society and legal relations in it do not provide antagonism by their social essence, at the same time, overcoming the negative consequences in the activities of state institutions requires the
elimination of the reasons that they generate and, above all, who affect social inequality. However, by themselves civil society does not capable to solve this task independently. Therefore, it requires the transition from the liberal to the social model of statehood and puts this duty on the legal state, which recognizes the legitimacy of its existence [3: 11].

Investigating the basis of the principles that are programmatic for Ukrainian society and its state regarding relations with a person and a citizen should be taken into account in the art. 3 Constitution of Ukraine Regulations Where is a person, her life and health, honor and dignity, immunity and security recognized in Ukraine with the highest social value, and the rights and freedoms of man and their guarantees determine the content and direction of the state's activities, this provision leads to the state to respond to a person to its activities and entrusts an imperative to establish and ensure the rights and freedoms of man as a main obligation of the state [1].

In the Constitution of Ukraine, the imperative recorded, which regulates that legal life in Ukraine and the order in society and the state are based on the principles, according to which nobody can be forced to do what is not provided by the legislation in Part 2 of Art. 19 The Constitution is enshrined in the provisions of which the authorities of the government and local self-government bodies, their officials are obliged to act only on the basis of the authority, and in the manner prescribed by the Constitution and the laws of Ukraine [1].

Regarding the regulation of the activities of state authorities in the Constitution of Ukraine, it is provided that the state authorities in Ukraine are carried out on the basis of its division into legislative, executive and judicial. The bodies of legislative, executive and judicial authorities shall exercise their powers in the established constitution within the laws of the law and in accordance with the laws of Ukraine [1].

What is the rules of the procedure for the creation and functioning of individual special government bodies, then in the Constitution of Ukraine, it was ensured that the protection of sovereignty and territorial integrity of the state of Ukraine, ensuring its economic and information security is the most important functions of the state and is the case of the whole Ukrainian people. Defense of the state and protection of its sovereignty, as well as territorial integrity and unto the religion, relied on the Armed Forces of Ukraine (hereinafter referred to as the AFU). Provision of the state safety and protection of the state border of Ukraine relies on the relevant military formations and law enforcement agencies of the state, the
organization and procedure of which are determined by the relevant laws. The Armed Forces and other military formations that are formed in the procedure established by law, can not be used to anyone to restrict the rights and freedoms of citizens or used to overthrow constitutional system, eliminating authorities from the implementation of the functions provided for or the observance of the implementation of their activities. The specified article reforms that the state assumes the social protection of Ukrainian citizens who are in the Service of AFU and other military formations, as well as members of their families [1, 21].

The specified provision in the Constitution of Ukraine are taking place in the work of the Constitution of Ukraine to go on those human rights and citizens who regulate the relationship between man with the state in the implementation of the authorities of public administration of the authorities in the life of the society.

The Constitution of Ukraine, as a normative legal act for the entire legal system of Ukraine, including for the law enforcement system of the state, is the basic and such that has the highest legal force. The provisions of Ukraine shall be established in the Constitution of Ukraine to establish the Ukrainian state to form appropriate mechanisms for the implementation of constitutional foundations in the viability of society and the state. To this end, the state creates the necessary system formations that provide the introduction of tasks and functions of the state in the process of implementing them in everyday life.

By implementing the specified software provisions of the main law of the Ukrainian state of scientists, practical workers, officials develop and substantiate certain models and structures that can be used in the adoption of relevant regulatory acts and the implementation of the mechanism for their implementation in the viability of society, the state.

The fully measures also regulate the legal regulation of social relations with the use of the constitutional term "law enforcement agencies". The introduction of this term into current legislation provides for its connection with a number of other law enforcement categories, which are interconnected with the specified term and cause them understanding in a set of a certain phenomenon of legal reality, individual elements of which can be of normative legal regulation.

The indicated constitutional provisions have a significant impact on the formation of a procedure for the implementation of the law enforcement function of the state. However, as a phenomenon of legal reality, the law
enforcement function of the state to this time the terminologically not recorded in the regulatory and legal acts of national legislation.

According to theoretical developments, the implementation of the law enforcement function of the state is impossible without the existence of a permanent law enforcement system, because it is the basis of it to maintain a major burden on the provision of rights, freedoms and satisfaction of the needs and legal interests of the individual and society as a whole.

In the theory of law and the state there are work, regarding the law enforcement agencies, as a legal category is considered in a close relationship with the law enforcement system created by the state to ensure the implementation of law enforcement function of the state [5]. Therefore, by extrapolating the theoretical developments of the law enforcement function of the state and its law enforcement system, it is possible to substantiate the provisions on which the state institutions should be attributed to the category "law enforcement agencies", as well as the need for and the feasibility of adopting a regulatory act, which would be recorded from whom the civil servants have been recorded in relation to such concepts as "official", "official", as well as "employee of the law enforcement agency".

National scientists as defined by the law enforcement functions of the modern state - as an independent and priority direction of state policy, in the process of implementing which means of legal means to achieve a certain social effect on the protection of the rights, freedoms and legal interests of man and citizen, right in general, the basics of constitutional order, strengthening the legality and law enforcement, and is a legal form of achieving other goals of society and the state [6: 8]. [7: 71].

Theoretics of the right provide the following definition of the concept of law enforcement system, which, in their opinion, is a set of state-legal entities and public formations that, with the help of their inherent means, methods, as well as compliance with appropriate guarantees, ensure the protection of a person and a citizen from various kinds of unlawful acts [8: 23].

According to the theory of law to the law enforcement system, the scientists include the principles, purpose, tasks, functions, objects and subjects of legal protection, security laws, law-enforcement activities and law enforcement relationships [5]. Incidentally, the scientists indicate that "law enforcement system" - the concept is more wider than the concept of "system of law enforcement agencies". In their opinion, the law enforcement system includes three substances, in particular, such as: a) the goals and
objects of protection of law; b) entities of law enforcement; c) law enforcement activity [9: 225].

Regarding the understanding of the "law enforcement system", individual scientists are distinguished by two existing approaches to its definition: first, they consider it as a set of law enforcement agencies; Secondly, as a complex socio-legal phenomenon that structurally includes law enforcement agencies and other elements of them [10: 67]. [11: 39-42].

Considering the first approach, it should be noted that the concept of "law enforcement system" and "system of law enforcement agencies" according to their approach are actually identified.

According to O. Sokolenko, law enforcement agencies reflect first of all the institutional aspect of the law enforcement system. The functioning of law enforcement agencies is impossible out of connection with other elements of the law enforcement system, in particular the regulatory and legal provision of building law enforcement agencies and the implementation of the relevant law enforcement. Only the unity and the licensing of legal regulation of public relations in the field of law enforcement requires the creation and functioning of law enforcement agencies that practically exercise law enforcement activities in the conditions of a democratic, social, legal state and can be considered as the only acceptable way of organizing legal protection [12: 92].

According to the idea of the priority of law in the legal regulation of social relations, the normative subsystem should be put first placed, the law enforcement agencies represent the subsystem that is agreed upon, goals and methods of the subsystem of law-enforcement legal aid. In turn, the law enforcement system acts as a subsystem in relation to the system of higher order - the "legal system" [9: 225].

By maintaining the above, in our opinion, should not be limited to the above-mentioned legal regulations and law enforcement institutions as the components of the law enforcement system, and it is necessary to take into account also the "activity" nature of which is the practical implementation of competent law enforcement establishments of the provisions of the relevant regulatory acts in the viability of personality, society and the state. Regarding this issue, some scholars are concluded that the law enforcement agencies and law enforcement activities are interconnected and interrelated. The indicated nature of the relationship involves that law enforcement activities depend directly on the institutions that implement it. The formation of law enforcement institutions must meet the requirements of the optimal implementation of law enforcement
activities. However, not all scholars are considered the above opinion. Thus, A. Kulisko notes that law enforcement activities should not be included in the institutional subsystem, which is represented by law enforcement institutions, and it is necessary to allocate a special subsystem of the law enforcement system, which reflects the functional (effective) law of law enforcement. According to his judgments in the law enforcement system, first of all, the normative, institutional and functional subsystems should be allocated [13, p. 6]. This opinion is also supported by us.

Adhering to the proven scholars and the reason approved by us approximation of the law enforcement agent, it should be noted that the law enforcement system includes both normative and institutional and functional subsystems. Speaking about regulatory and legal regulation in general of the law-enforcement system, that is, on its construction and functioning, it should be noted that normative-legal regulation in the law-enforcement sphere also affects law-enforcement activity, which is a functional subsystem of the law-enforcement system. By consistent with the interaction of the subsystems of the law enforcement system should be formulated the subjective composition of its institutional component. In this regard, the comparison of the institutional subsystem is noted that the notice of law enforcement activities, which acts as uniformly absolutely all institutions, which is one or another participation in the exercise of law enforcement agencies. Thus, if under a functional subsystem, it is necessary to understand law enforcement activities, the institutional subsystem should form its entities of the law enforcement system, which, according to a number of scholars, are both state law enforcement agencies, and other universal state and municipal authorities who are endanized by individual law enforcement authorities, as well as non-state-owned publications involved in law enforcement activities. Although this statement is discussion and subject to additional substantiation [13: 6; 14, c. 48; 15; 16: 4].

A similar understanding of the entities of the law enforcement system has a branch of the subjects of law enforcement activities that carry out protection of law and legal relations in order to implement the law enforcement function of the state and the protection of general social values.

We also support the idea that law enforcement agencies play a leading role in comparison with other entities that exercise law enforcement activities. The leading role of law enforcement agencies in the exercise of law enforcement activities is due to their law enforcement specialization, constantness and professionalism of the exercise of law enforcement officers, the possibility of application of state-government means of
influence. Accordingly, the system of law enforcement agencies as a central entity of law enforcement activities is also the central subject of the law enforcement system.

Therefore, it seems proceeding for the reasons for the perception of conclusions that the universal bodies of the law enforcement in the implementation of law enforcement agencies are entitled to the perception of conclusions that are determined by the law enforcement agencies.

At the same time, as a whole, on the specified position, it should focus on the fact that the executor of the activities of law enforcement institutions is their employees who are in accordance with the laws of the order of the participation of the relevant positions and endowed with the relevant authority on the implementation of the state on the state of the state, through the mediation of the relevant law enforcement institution, state-owned and legal actions. Thus, in the process of implementing the law enforcement function of the state, the intermediary system formed law enforcement agency is carried out by the law enforcement institutions in the field of law enforcement. This law enforcement activity on behalf of the state is performed by an individual, that is, a person who is an employee of a law enforcement institution. Thus, due to human volitional intellectual and physical efforts, legally-significant act are committed, or the relevant decisions are accepted. Therefore, investigating this aspect of this problem, the attention should be taken to focus on the activities of an individual in sociosis This is an objective process of interaction between people in society and the state and the surrounding person with a natural environment. Thus, legal law enforcement in legal entity implements its powers with the help of human volitional intelligent and physical efforts of an individual who is from the right law-enforcement institution carries out state-owned, legal and significant actions. That is, there is an area of the jurisprudence situation, which is referred to as de facto from the Latin de fakt, which actually exists [2: 215].

Representatives of philosophical science seem that under the concept of human activity, it is necessary to understand the specific human form of an active relation to the world, the content of which is purposeful, it is advisable to change its change, consciously transformation of it [17].

According to M. Tarasenko, the main feature of human activity is an objective process of interaction between people, as well as nature, the essence of which is manifested through the collective and social form of activity, which is characterized by the appearance, the assignment of the
purpose, the imposition, volitional attitude, versatility, control and the control of the subject [18].

Human activity, scientists identify both human work, which includes a goal, means of its achievement, the process of activity and the result [19: 24-25].

The main moments of human activity, according to scientists, are: firstly, the presence of a subject of activities that are in society is only a person as a carrier of social activity; Secondly, the purpose of the activity that is being used to the conscious behavior of a person characterizing the prediction in the thinking of the result of the activities and ways of achieving its achievement by certain means is nothing like the perfect image of the desirable, according to which the subject is turned into operation; According to third, human activity covers the means used to be decided to make decisions, or actions or retention from them through the transformation of reality; Fourthly, this is the subject of activity as an object to which actions are directed; Fifth, this is the result of the activity, that is, what is striving for; And finally, six times, it is the process of activity that is human active action [20: 211-213].

Considering the views of scientists that universal objects of human activity are nature and society, as well as the culture associated with them, and its general result - "Promulgated" nature, culture. Scientists note that society is simultaneously the condition, and the real process of man, that is, the individual, a social group, a society, which is happening in concrete conditions and by means of knowledge and conscious transformation of reality, that is, due to the implementation of a person of activity. Human activity from the position of its understanding of scientists is a specific human form of active relation to the world, the content of which is a whole, directed his change, a conscious approach to its transformation. As a subject of activity, a person must in all thinking and act, act and think [17: 193].

According to the following, the following conclusion should be made, the state establishing such a state institution with a law enforcement establishment with certain tasks and endowed (de-jure), for the implementation of their implementation, uses individuals who are established by the law and in accordance with the requirements provided for by him or another position, in one or another state law enforcement institution, having received the legal status of a civil servant and the right to exercise authority and commitment to committing state-government, legal and significant (de-facto).
REFERENCES:

[1]. The Constitution of Ukraine: Law of Ukraine, dated June 28, 1996, No. 254k / 96-VR; 1996.
[2]. Modern dictionary of foreign words: about 20 thousand words and phrases. Dictionaries of Ukraine. Concluded A.I. Skopneno, T.V. Tsimbalyuk. - K.: Dovira; 2006; 789.
[3]. Telipko VE. Scientific and Practical Commentary of the Constitution of Ukraine. Ed. Musyaki VL - K: Center for Educational Literature; 2011: 544.
[4]. Problems of the general theory of law and state. Textbook for high schools. Under the general. edit Academician of the Russian Academy of Sciences, doctor of sciences, prof. VS Nersesyantsa - M. : Norma; 2006: 832.
[5]. Guida EO, Beloziorov EV, Zavalny AM et al. Theory of state and law: textbook . EO Guides - K.: FOP O. S. Lipkan; 2011: 576. Available from: http:// westudents.com.ua/knigi/465-teorya-derjavi-ta-prava-gda-O-.html
[6]. Gorinetsky YI. The law-enforcement function of the states of Central Europe: theoretical and practical aspects. K.: NAVSU; 2005: 20.
[7]. Sazhnev IV. Some questions regarding the definition of the law-enforcement function of the state, IV.V. Sazhnev. The Bulletin of the Zaporizhzhya Law Institute; 2000; 4: 62-71.
[8]. Barsukova OV. Law-enforcement function of the modern state. Materials of the International scientific-practical conference. Law enforcement function of the state: theoretical and methodological, historical and legal problems: - Kharkiv: KhNUVS; 2015: 352.
[9]. Lazarev VV. The theory of law and state: a textbook . 2nd Ed. Pererab. Law and Law; 2001: 576.
[10]. Bonyak VO. Methodological analysis of interpretations of the concept of "law enforcement system" (Visnyk of Dnipropetrovs'k. un-th them Alfred Nobel. Sir "Legal Sciences"); 2011, 1 (1): 67-71.
[11]. Pivnenko V. The Law-enforcement System of Ukraine: Definition and Functioning. Bulletin of the Prosecutor's Office; 2003, 2: 39-45.
[12]. Sokolenko OL. Concept and structure of the law-enforcement system. Actual problems of domestic jurisprudence (Dnipro National University named after Oles Honchar, Vip); 2013, 4: 91-96.
[13]. Kulish AM. The law-enforcement system of Ukraine: the administrative and legal principles of organization and functioning: author's abstract. Sciences: special 12.00.07, Kulish AM; KhNUVS - Kh; 2009; 31.
[14]. Bratko AG. Law-enforcement system (theory questions) Moscow: Yurid-Lit; 1991; 205
[15]. Piotrovsky VY. Law-enforcement system in the conditions of formation of a law-governed state in Russia: historical-legal, theoretical-legal aspects. Special 12.00.01, St. Petersburg; 2003: 27.
[16]. Pikul T. O. Law-enforcement bodies in the mechanism of the state of Ukraine (theoretical and legal questions of functioning); 2004: 20.
[17]. Gubernsky LV, Kremin VG, Prijalchuk AO, et al. Man and the World: Handbook (Head.red. L.V. Provincial, - 2-nd, vippry i lisov). K: T-"Knowledge", KOO, 2001, 349 p.
[18]. Tarasenko MF. Activities in the life of man and society / Training materials online [Electronic resource]. Available from: http://pidruchniki.com/15941024/sotsiologiya/diyalnist_zhitti_lyudini_sus_pilstva#472
[19]. Vilkov V Yu, Saltovsky OI. Man and the World: a manual. Kyiv: Center for Educational Literature; 2004: 352
[20]. Koval MV, On the issue of the legislative settlement in Ukraine of the general legal status "employee of a law enforcement agency, p. 199-235 Criminal Procedural Code of Ukraine: Ideology and Practice of Assimilation: Collective Monograph, For Collegiate. Odessa: Publishing House "Helvetica"; 2018: 1148.
[21]. Bulletin of the Verkhovna Rada of Ukraine, 1996, No. 30, Art. 141; 1996.