

Сергій Гречанюк,

*доктор юридичних наук, доцент
завідувач кафедри Тернопільського
національного економічного університету*

ADMINISTRATIVE ACTIVITY AS PART OF ACTIVITY OF LAW ENFORCEMENT AGENCIES OF UKRAINE

Referring to the analysis of various problems of activity of different law enforcement agencies it is necessary to start from already traditional for modern legal science issues of existence and functional affiliation of the system of law enforcement agencies. The complexity of this issue is not so much in the affiliation of a particular body to the system of law enforcement agencies, but in the dynamics of the processes of law enforcement system in general. Recently in Ukraine different structures were created. Some of them received part of functions of previously existing bodies, others - are completely new and perhaps are more relevant and more general. However, practical ability of the first and the second, on the one hand, the dynamics of law enforcement processes, new challenges of statehood, on the other hand, create the need for improvement of many aspects of functioning of law enforcement agencies.

K. I. Beliakov considers administrative activity of law enforcement agencies as activity aimed at performance of functions of organization of work in the structures as such (solution of departmental tasks) and law enforcement functions of the state directly related to the objectives of prevention and combating offenses and has general social character [1].

The problem of proper understanding of law enforcement agency as a holistic theoretical notion, in our opinion, is not so acute, because general theory of law enforcement activity has developed sufficient number of them. Among these approaches we should mention the understanding of such scientists as V. I. Hoyman and V. V. Lazarev, who considered law enforcement agencies as part of the state mechanism, which in accordance with the distribution of power in the country is specially created for the protection of constitutional rights and freedoms of citizens, their association from unlawful trespass and arbitrariness, social support of democratic law and order, which use for this purpose specific legal methods, including force and associated with it control, – supervision and preventive regulation [2, p. 5; 3, p. 55–72]; V. Y. Piotrowski, who believed that law enforcement agencies are state bodies, carrying out specialized law enforcement activity, which ensures protection of rights, freedoms and legal interests of citizens, society and state institutions [4]; M. M. Burbyky, who using the works of O. S. Zakharov, V. S. Kowalski noted that the term «law enforcement» is relatively new. It appeared in the former Soviet Union in the early 1960s for replacement of the term «punitive bodies». Today law enforcement agencies, according to him, are jurisdictional bodies authorized by the state to perform in accordance with the law functions or tasks of protection of legal order, investigation or prevention of violations of law, restoration of violated rights, protection of national (state) security, *maintenance* of law and *order*, ensuring legitimacy [5, p. 12; 6, p. 21–25]; M.I. Melnyk and M.I. Khavroniuk, who considered that to law enforcement agencies belong only those public authorities, which acting within criminal procedure or administrative procedure combat crimes and offenses, have legal responsibility solely in the sphere of public law. To such they include: courts, prosecutors, police, tax police, Security Service of Ukraine, State Security Department, Border Troops, military service of the Armed Forces of Ukraine, State Customs Service, *State Fire Supervision* Bodies etc.[7, p. 31–32]; I.A. Serdiuk who considers activity of law enforcement agencies through the system of their relationships, at the same time he states that law enforcement relations – is legal form of social interaction of legally capable persons, which has imperious character, determined by the fact of commission of the offense and aims to restore violated rights, bring the offender to a certain type of legal responsibility and enables compulsory execution of subjective legal obligation prescribed by law or contract and through law enforcement act [8, p. 173–174]; Y. O. Zahumenna, who states that in contrast to other systems of government bodies, the system of law enforcement agencies does not have traditional organizational structure, such as the system of executive bodies, and is an integrated system, systemic factor of which is not structural (organizational) but functional criteria – directly law enforcement activity that is determined by their common functions, which consist mainly in the protection of rights [9, p. 145–150]; A. M. Kuchuk, who under law enforcement agencies understands specially authorized state bodies endowed with public authority for the purpose of professional exercise under and in accordance with the law, and in cases established by law – in the appropriate

© Сергій Гречанюк, 2017

procedural form with the use of legal remedies aimed at protection of rights and freedoms of man and citizen, law and order, all social relations regulated by law [10, с. 166–167]; O. V. Tyurina, which states that law enforcement system is a set of specialized state bodies which carry out law enforcement activities. Law enforcement activity is system-forming factor of the association of law enforcement agencies (types of law enforcement types) into a system, which intended purpose is comprehensive and complete protection of fundamental rights, freedoms and legitimate interests of man and citizen [11, p. 164]; T. O. Pikulia, who states that law enforcement authorities are main subjects of law enforcement activity. They include bodies, which perform along with secondary (subsidiary) one or more main law enforcement functions that are crucial in their work (prophylactic, protective, resocialization, operational-search, investigation of crimes, court proceedings, consideration of cases concerning administrative offenses, consideration of cases concerning financial and administrative economic offenses, enforcement of sentences, decisions, rulings and orders of courts, resolutions of bodies of inquiry and pretrial investigation and prosecutors) [12, p. 179] etc. Generalization of these provisions allows to speak about specific purpose of aforementioned bodies, which, in our opinion, are expressed in features of law enforcement agencies. In turn, the latter has its own peculiarities, which in general determine its nature and specifics of its institutional expression – law enforcement authority. Firstly, and perhaps the main feature – social importance of this activity, since a wide range of tasks insures organization of many social relations and in general peaceful coexistence of people; secondly, this type of activity is carried out by people – by law enforcement officials. This feature primarily indicates the possibility of subjective perception of different processes and potential abuse, which mainly negatively characterizes it. Reduction of subjectivity in law enforcement activity is a guarantee of increase of the level of legitimacy and must be achieved through the use of a larger number of technical devices, automation of certain processes and increase of means of control; thirdly, the purpose of this activity is to regulate relations in order to protect subjective rights, as well as encourage people to fulfill their duties under the law. That is law enforcement activity is poised on the brink of conflict of public interest (factual possibility of some people to violate the rights of others) and does not allow going beyond the law, which is achieved via regulation, prevention and bringing to responsibility as a result of violation of existing regulations; fourthly, priority of law enforcement bodies over other state and private institutions, because they actually have to reflect the position of the state in the field of law enforcement, which is extremely important guarantee for the existence of any state. In addition, endowing the law enforcement agencies with special tasks, state also gives them special powers which are different from others, and in some cases, subject to compliance with special procedure can interfere in the private sphere; Fifthly, inefficient system of law enforcement bodies determines the appearance of uncontrollable social processes which result in a surge in deviant behavior of its individual members, identification of law enforcement agencies with public authorities, that, as a consequence, leads to the aspirations of society to change the latter. Thus, law enforcement agencies to some extent reflect the state of public perception of the government. That is why law enforcement agencies should be under the constant attention of the state.

Speaking about the features of administrative activity of law enforcement agencies, then O. V. Jafarova quite rightly highlights the following features: firstly, its state-imperious character – exercising their administrative powers on behalf of the state, law enforcement officials are authorized to supervise the observance of established rules of conduct, *to make a legal assessment* of actions of people, detect violations and respond to them in accordance with applicable legislation. Law enforcement agencies give binding instructions within their jurisdiction and are eligible to apply coercive measures provided by current legislation. Secondly, administrative activity of law enforcement agencies is subordinated. It is carried out according to the requirements of laws and other legal acts and is constructed in accordance with the purposes and within the limits set by law, as well as through the use of appropriate legal remedies. During implementation of these activities the police officers are obliged to act according to the rule: legitimate is everything that is permitted by law and meets its objectives. Thirdly, administrative activity has also executive-prescriptive character: its main goal is the implementation of the current legislation on matters within the competence of law enforcement agencies. At the same time for proper exercise of its executive functions they are endowed with governmental competence, which envisage the possibility of the use of measures of administrative influence. Fourth, its preventive orientation. During its implementation the tasks of prevention of crimes and their harmful consequences are solved. Such preventive orientation is ensured through identification and elimination of causes of perpetration of offenses and conditions, which promote them. Fifthly, accountability and controllability - this feature means the presence of right of separate state bodies, public organizations, members of parliament and local councils to monitor compliance with legality in the activities of law enforcement agencies [13].

The feature of content of legal relations law is that law enforcement or jurisdictional authority, being mostly authorized party of aforementioned legal relationships for solving its tasks and implementation of functions stipulated by these tasks endowed with public authority, representing the dialectical unity of legal rights and legal obligations of state body and officials of this body. Obligated party of legal relations (physical or legal person who committed the offense), respectively, endowed with corresponding legal rights and legal obligations of state body, employees and officials person of this body[14, p. 180]. Traditionally, when talking about the system of law enforcement bodies, scholars[15] give examples of its references in normative acts. The Law of Ukraine «On State Protection of court employees and law enforcement officials» to the list of law enforcement attributes: prosecution authorities, internal affairs, security service, military service in the Armed Forces of Ukraine, customs agencies, state border protection, tax authorities, penal institutions, state control and audit service, fisheries bodies, bodies of the state forest protection, bodies that carry out law enforcement functions[16]. The Law of Ukraine «On democratic civilian control over the military and law enforcement agencies of the state» law enforcement agencies defines as « public authorities, which according to the law carry out law enforcement functions» [17]. The Law of Ukraine «On the fundamentals of National Security of Ukraine» law enforcement authorities defines as public authorities, entrusted with implementation of law enforcement functions by the Constitution and laws of Ukraine. The last are fighting criminality, ensure protection and rescue of population in case of emergency situations of technogenic and natural character [18]. Different understanding of law enforcement system in the regulatory context negatively affects the ability to properly understand the nature of their activities and accordingly often to build their activities improperly. For example, inclusion the state control and revision service, fisheries, state forest protection in law enforcement system is clearly a relic of the Soviet model of structure of government bodies and requires transformation taking into account modern trends in the development of public administration.

In summary, we should note the following.

1. Administrative activity of law enforcement agencies is not limited to activity associated with ensuring public order and ensuring the rights of citizens, as it is now generally considered in scientific works.

2. Law enforcement agencies in Ukraine are now experiencing a time of active reforms and require new approaches to the organization and activities. The issues of administrative activity are available in activities of virtually all law enforcement agencies. Its feature is that it is impossible to determine typical forms and methods, which would be the same for all law enforcement agencies. Some of them are endowed with the ability to perform administrative and jurisdictional activity, others - are characterized by solely management activity, the third - by the supervisory activity. Some of them combine several of these characteristics.

3. The issue of system of law enforcement agencies is too developed in modern legal science and does not require additional attention. In our opinion, on this issue it is necessary to state the renewal of this system through exclusion from it explicit rudiments of the Soviet system and integration of new law enforcement agencies into it, in particular, this concerns the system of anti-corruption bodies, bodies of investigation etc.

4. The issue of administrative activity of law enforcement agencies needs further improvement through the formation of organizational algorithms, through which analysis of real influence of these bodies on the processes of combating offenses is carried out, identification of issues that are characteristic for a particular body and prevention of their occurrence in the activity of another body, development of specific organizational and managerial procedures, which will contribute to implementation of joint activities, implementation of the assigned tasks.

Reference

1. Belyakov K. I. *Deyaki pytannya informatsiyoi polityky pravookhoronnykh orhaniv Ukrayiny u period informatyzatsiyi [Elektronnyy resurs] / K. I. Belyakov. – Available at : <http://www.srime-research.ru/library/beliakov.htm> [in Ukrainian].*
2. Goyman V. I. *Pravookhranitel'nyye organy v Sovetskom pravovom gosudarstve. Ponyatiye, sistema, napravleniya sovershenstvovaniya / V. I. Goyman, V. V. Lazarev // Teoreticheskiye i organizatsionno-pravovyye problemy primeneniya nakazaniya : sbornik nauchnykh trudov. – Ufa, 1990. – S. 3–16 [in Russian].*
3. Goyman V. I. *Pravookhranitel'nyye organy v mekhanizme pravovoy gosudarstvennosti / V. I. Goyman, V. V. Lazarev // Pravovoye gosudarstvo: problemy formirovaniya. – Krasnoyarsk : Izd-vo Krasnoyarskogo universiteta, 1991. – S. 55–72. [in Russian].*
4. Piotrovskiy V. YU. *Pravookhranitel'naya sistema v usloviyakh formirovaniya pravovogo gosudarstva v Rossii (Istoriko-pravovoy i teoretiko-pravovoy aspekty) : dis. ... kand. yurid. nauk : spets. 12.00.01 «Teoriya i istoriya gosudarstva i prava; istoriya pravovykh ucheniy» / Piotrovskiy Vladislav Yur'yevich ; Severo-Zapadnaya akademiya gosudarstvennoy sluzhby. – SPb., 2003. – 154 s. [in Russian].*

5. *Sud, pravookhoronni ta pravozakhysni orhany Ukrainy : pidruchnyk / O. S. Zakharova, B. C. Koval's'kyi, V. C. Lukoms'kyi ta in. ; vidp. red. V. Malyarenko. – 3-tye vyd., pererobl. i dopovn. – K. : Yurinkom Inter, 2007. – 352 s. [in Ukrainian].*
6. *Burbyka M. M. Mizhnarodnyy dosvid administratyvno-pravovoho zabezpechennya vzayemodiyi pravookhoronnykh orhaniv / M. M. Burbyka // Nauka i pravookhorona. – 2013. – № 2(20). – S. 21–25 [in Ukrainian].*
7. *Mel'nyk M. I. Pravookhoronni orhany ta pravookhoronna diyal'nist' : navch. posib. / M. I. Mel'nyk, M. I. Khavrornyuk. – K. : Atika, 2002. – 576 s. [in Ukrainian].*
8. *Serdyuk I. A. Pravookhoronni vidnosyny: ponyattya, yikh osoblyvosti ta vydy : dys. ... kand. yuryd. nauk : spets. 12.00.01 «Teoriya ta istoriya derzhavy i prava; istoriya politychnykh i pravovykh uchen'» / Serdyuk Ihor Anatoliyovych ; Kyyivs'kyi natsional'nyy universytet vnutrishnikh sprav. – K., 2008. – 200 s. [in Ukrainian].*
9. *Zahumenna YU. O. Pravookhoronni orhany: ponyattya, oznaky, funktsiyi, osoblyvosti diyal'nosti / YU. O. Zahumenna // Pravo i bezpeka. – 2010. – № 3. – S. 145–150 [in Ukrainian].*
10. *Kuchuk A. M. Teoretyko-pravovi zasady pravookhoronnoyi diyal'nosti v Ukraini : dys. ... kand. yuryd. nauk : spets. 12.00.01 «Teoriya ta istoriya derzhavy i prava; istoriya politychnykh i pravovykh uchen'» / Kuchuk Andriy Mykolayovych ; Instytut zakonodavstva Verkhovnoyi Rady Ukrainy. – K., 2007. – 213 s. [in Ukrainian].*
11. *Tyurina O. V. Suchasni systemy pravookhoronnykh orhaniv (porivnyal'no-pravove doslidzhennya) : dys. ... kand. yuryd. nauk : spets. 12.00.01 «Teoriya ta istoriya derzhavy i prava; istoriya pravovykh i politychnykh vchen'» / Tyurina Oksana Volodymyrivna ; Natsional'na akademiya vnutrishnikh sprav Ukrainy. – K., 2001. – 184 s. [in Ukrainian].*
12. *Pikulya T. O. Pravookhoronni orhany v mekhanizmi derzhavy Ukrainy (teoretyko-pravovi pytannya funkcionuvannya) : dys. ... kand. yuryd. nauk : spets. 12.00.01 «Teoriya ta istoriya derzhavy i prava; istoriya politychnykh i pravovykh vchen'» / Pikulya Tetyana Oleksandrivna ; Natsional'na akademiya vnutrishnikh sprav Ukrainy. – K., 2004. – 203 s. [in Ukrainian].*
13. *Dzhafarova O. V. Sutnist' ta napryamky administratyvnoyi diyal'nosti pravookhoronnykh orhaniv Ukrainy [Elektronnyy resurs] / O. V. Dzhafarova. – Available at : <http://www.pravoznavec.com.ua/period/article/3678/%CE..> [in Ukrainian].*
14. *Serdyuk I. A. Pravookhoronni vidnosyny: ponyattya, yikh osoblyvosti ta vydy : dys. ... kand. yuryd. nauk : spets. 12.00.01 «Teoriya ta istoriya derzhavy i prava; istoriya politychnykh i pravovykh uchen'» / Serdyuk Ihor Anatoliyovych ; Kyyivs'kyi natsional'nyy universytet vnutrishnikh sprav. – K., 2008. – 200 s. [in Ukrainian].*
15. *Il'chenko O. V. Vyznachennya systemy derzhavnykh pravookhoronnykh orhaniv Ukrainy ta yikh mistse v systemi orhaniv derzhavnoyi vlady [Elektronnyy resurs] / O. V. Il'chenko. – Available at : <http://essuir.sumdu.edu.ua/bitstream/123456789/22651/5/11iovodv.pdf> [in Ukrainian].*
16. *Pro derzhavnyy zakhyst pratsivnykiv sudu i pravookhoronnykh orhaniv : Zakon Ukrainy vid 23 hrudnya 1993 roku № 3781-XII // Vidomosti Verkhovnoyi Rady Ukrainy. – 1994. – № 11. – St. 50. [On State Protection of court employees and law enforcement agencies: Law of Ukraine of December 23, 1993 № 3781-XII // Bulletin of Verkhovna Rada of Ukraine. – 1994. – № 11. – St. 50.]*
17. *Pro demokratychnyy tsyvil'nyy kontrol' nad Voyennoyu orhanizatsiyeyu i pravookhoronnymy orhanamy derzhavy : Zakon Ukrainy vid 19 chervnya 2003 roku № 975-IV // Vidomosti Verkhovnoyi Rady Ukrainy. – 2003. – № 46. – St. 366. [On democratic civil control over the military and law enforcement agencies of the state: Law of Ukraine of June 19, 2003 № 975-IV // Bulletin of Verkhovna Rada of Ukraine. – 2003. – № 46. – St. 366.]*
18. *On the fundamentals of National Security of Ukraine: Law of Ukraine of June 19, 2003 № 964-IV // Bulletin of Verkhovna Rada of Ukraine. – 2003. – № 39. – St. 351 [Pro osnovy natsional'noyi bezpeky Ukrainy : Zakon Ukrainy vid 19 chervnya 2003 roku № 964-IV // Vidomosti Verkhovnoyi Rady Ukrainy. – 2003. – № 39. – St. 351.]*

Стаття надійшла до редакції 15.03.2017.