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ARTÍCULO DE INVESTIGACIÓN

El sistema de aplicación de la ley como fenómeno social: estructura y perspectivas de desarrollo

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Resumen. El objetivo del estudio es evaluar los enfoques científicos para la interpretación del sistema de aplicación de la ley como fenómeno social, delinear su estructura y determinar las perspectivas de desarrollo. Los métodos de investigación incluyen análisis y síntesis, inducción y deducción, generalización, análisis sistemático y explicación, que es la base para un estudio exhaustivo de los temas discutidos. La hipótesis supone que el sistema de aplicación de la ley en Ucrania es un fenómeno social estructurado, cada componente del cual desempeña un papel funcional en la protección de los derechos, libertades y bienes públicos individuales. La conclusión señala que la estructura de los organismos encargados de hacer cumplir la ley, aunque compleja, es comprensible en el contexto social. Su principal finalidad social se implementa a través de procedimientos de protección que proporcionan una transición lógica de las relaciones jurídicas protectoras a las acciones ejecutivas directas. Estas funciones, realizadas por un grupo definido de personas, son jurídicamente significativas y actúan como el eslabón final de la cadena de «establecimiento, prestación, implementación y protección». Además, son socialmente necesarios, aseguran el mantenimiento

del orden público. El estudio enfatiza que la construcción de un verdadero Estado de derecho requiere optimización y mejoras estructurales a largo plazo.

Palabras clave: justicia social, sistema de aplicación de la ley, principios, organismos encargados de hacer cumplir la ley, tribunales, relaciones policiales, derecho, función policial, fenómeno social.

Law enforcement system as a social phenomenon: structure and prospects of development

Abstract. The study aims to assess scientific approaches to interpreting the law enforcement system as a social phenomenon, outline its structure, and identify future development prospects. The research methods include analysis and synthesis, induction and deduction, generalization, systematic analysis, and explanation, providing a basis for a thorough examination of the issues discussed. The hypothesis suggests that the law enforcement system of Ukraine is a structured social phenomenon, with each component playing a functional role in protecting individual rights, freedoms, and public goods. The conclusion notes that the law enforcement structure, though complex, is understandable within a social context. Its primary social purpose is realized through protection procedures, enabling a logical transition from protective legal relations to direct enforcement actions. These functions, carried out by a defined group of individuals, are legally significant, serving as the final link in the chain of «establishment, provision, implementation, and protection.» Furthermore, they are socially necessary, ensuring the maintenance of law and order. The study highlights that building a true legal state requires long-term optimization and structural improvements.

Keywords: social justice, law enforcement system, principles, law enforcement agencies, court, law enforcement relations, law, law enforcement function, social phenomenon.

INTRODUCTION

The issue of the state, its concept, essence and role in society belongs to the circle of the most relevant and debatable in modern legal science. This is due to a number of reasons, among which the following can be singled out: 1) they directly affect the interests of various layers of society, political parties and movements; 2) no other organization can compete with the state in the variety of assigned tasks and functions, in influencing the fate of society; 3) the state is a complex and internally contradictory socio-political phenomenon (Byelov, 2020). Thus, as a form of organization of society, the state is designed to ensure its integrity and control, to perform functions determined by the needs of society, and therefore to serve its interests (Byelov, Shved & Byelova, 2023).

The state establishes legal boundaries within which the law enforcement network and its bodies operate, including legislative acts governing this operation, powers, duties and procedures. In addition, the state is responsible for creating and maintaining the institutional scheme of the law enforcement system, which includes the police, prosecutor's office, courts, investigative services and other bodies. It provides funding, training, logistics and other resources necessary for the effective

operation of these bodies. The state is also responsible for the formation and implementation of policy in the law enforcement area, including the development of strategies to fight crime, prevent offenses, and defend individuals' rights and freedoms. An important aspect of the state's role is also providing transparency and accountability of law enforcement agencies, monitoring their functioning, which guarantees compliance with the law and protection of human rights. Therefore, the state plays a key role in the formation of an effective, fair and democratic law enforcement system that meets the needs of society and ensures the maintenance of law and order and security in the country.

Therefore, we suggest that the law enforcement system of Ukraine is a social phenomenon that reflects the current state of the formed relationships between the state and society in the context of the existing public demand for a safe social environment and balancing the balance of social justice.

ANALYSIS OF RECENT RESEARCH AND PUBLICATIONS

In the modern world, there is a significant number of texts, monographs, articles, etc., dedicated to systems and systems theory. For example, in philosophy it is noted that a system should be considered a whole complex formation, the internal relations between the components of which are much more intense than between these elements and the environment (Petrushenko, 2011; Yednak, 2020). The sociological theory of systems uses the term "social system". At the same time, the theory of law uses concepts such as "legal system" and "system of law", which are basic concepts in jurisprudence. Therefore, from the point of view of specialists in the theory of law, the term "system" must be seen as a certain integral phenomenon consisting of interconnected and interacting component. As V. Yednak notes, when clarifying the essence of the system of state bodies, it should be borne in mind that the structural components of such a system will be such bodies, and the peculiarities of their hierarchical structure should be considered as a connection of the components of such a system (Yednak, 2020).

Scientists such as V. Hrytsenko, K. Malyshev, O. Markeeva, and others use the first attitude when formulating the concept of law enforcement structure. For example, V. Hrytsenko notes that the law enforcement system of Ukraine is an structured network of state and non-state agencies, specialized state institutions, means, methods and guarantees aimed at protecting social relations, individuals' rights, liberties and concerns from illegal actions (Hrytsenko, 2015). Instead, K. Malyshev proposed a more detailed definition, focusing on the system of State authorities whose activities are related to realizing law enforcement function. Thus, the scholar conventionally divided the totality of the specified bodies into several subsystems, namely: the managing (regulation, development of state-management decisions and other measures regarding the State administration of law enforcement activities) and managed (specially authorized State management actors performing law enforcement activities through the application preventive, coercive, legal, force and other measures of influence on social relations, which are governed by relevant rules), the functioning of which is connected with implementing state security, public order protection, prevention and counteraction of crime as the basis of protection of public, public and private interests legalized in the legal system (Malyshev, 2020). The representatives of the second approach are, for example, A. Bilas, T. Pikulya, and A. Kulish. The latter claims that the law enforcement system is a comprehensive social system characterized by integrity, interdependence of the system and the environment, hierarchy, and emergency. The author formulated the term of the law enforcement system as a multi-layered social system, consisted of legal tools, technics and guarantees that ensure the defense of social relations from illegal encroachments, and State agencies implementing law enforcement functions (Kulish, 2009).

Other components are cited by A. Bilas and T. Pikul. Thus, A. Bilas claims that the law enforcement system contains six aspects: law enforcement objective, actors, objects, protective legal rules, operation, and relations (Bilas, 2016). In turn, T. Pikulya notes that law enforcement activities are performed by law enforcement actors within security legal relations grounded on law enforcement system principles, in particular: legality; everything that is not allowed is forbidden; the inevitability of punishment; reconciliation of private and public interests; democracy; systematicity; multiple options for solving problems of legal protection of social relations; respect for human dignity, rights, liberties and interests (Pikulia, 2004).

Some authors reveal the legal system through objects of influence/defense. For example, A. Movchan believes that the concept of “human rights protection system” is the most crucial element of the notion of “law enforcement system”, where the object of protection is not only human rights, but also the law itself, as well as other components of the legal scheme, but always human rights remain one of the main objects of protection (Dudchenko, 2019). According to V. Hrytsenko, the protection of human rights is a task, not a characteristic feature of the legal system. Among these, the author includes: 1) protection of the constitutional order, sovereignty and territorial integrity of the state; 2) defense of rights, liberties and interests of individuals, legal entities, society and the state in general; 3) combating crime; 4) purposeful improvement of the law enforcement system. This enabled to divide the law enforcement system of Ukraine roles into: a) crucial ones: protective (law enforcement); operative and investigative; prophylactic; investigation of crimes; executive; administrative; b) auxiliary: organizational and managerial; coordination; control; informational and analytical (Hrytsenko, 2015). Consequently, the aim of the law enforcement system is to provide the maximum possible level of law and order in society. In this context, the scholar stresses that common principles of the law enforcement system are: 1) the principle of social justice; 2) the principle of democracy; 3) the principle of humanism and equality; 4) the principle of the rule of law; 5) the principle of legality. Specific concepts of the law enforcement structure include the following: 1) the principle of publicity; 2) the principle of interaction with state authorities; 3) normativity; 4) obligation; 5) complexity (Hrytsenko, 2015).

The analysis of the given opinions indicates the diversity of methods to defining the law enforcement system, which indicates its complexity and multifacetedness, in particular from a social point of view. Researchers such as V. Hrytsenko, K. Malyshev and others believe that the law enforcement system as a set of agencies protecting social relations providing the defense of the citizens’ rights and freedoms. At the same time, the authors, in particular A. Kulish and T. Pikulya, emphasize the systemic character and interrelatedness of the law enforcement system components, stressing the relevance of legal rules, institutions and functions that ensure its functioning. Another important aspect is that scholars pay attention to different elements of the law enforcement system. This actualizes the expediency of conducting a systematic analysis of scientific views on the nature of the law enforcement system as a social phenomenon that will allow not only to better understand its structure, but also to identify key problems and prospects for development.

MATERIALS AND METHODS

In order to ensure obtaining relevant and reliable data during the conduct of this research, a combination of various scientific methods is necessary, which will contribute to the disclosure of the raised issues comprehensively and comprehensively. First, the method of analysis and synthe-

sis will allow considering the components of the law enforcement system both separately and in their interaction, which will contribute to a deeper understanding of its social nature, structure and principles of functioning. Secondly, the method of induction and deduction should ensure the formation of theoretical generalizations on the basis of conducted scientific investigations, which will allow to move from the study of specific facts to general conclusions and vice versa. The combination of these two methods implies a multi-level research, because it organically highlights the aspects of the specific, which turns into the general and the general, which becomes specific. Thirdly, the method of generalization will contribute to the formulation of conclusions confirmed by empirical data and analysis of scientific sources, because it ensures the systematization and integration of information collected during the research, which, in turn, will allow the formation of well-founded conclusions. Fourthly, the system analysis method will form a comprehensive view of the law enforcement system operation as a social phenomenon in general, which allows to assess its complexity and relationships with other components of the legal system. Fifth, the method of explanation will provide an opportunity to reveal the essence of the studied phenomena in detail, which is critically important for a deeper understanding of the complex aspects of the law enforcement system. Sixth, the formal-legal method and the method of legal rules explanation will be useful in the analysis of legislative doctrine, as they allow a detailed study of the structure and essence of legal rules, and application in real conditions. Seventh, the axiomatic method will allow not to reveal the self-evident processes and principles that form the basis of law enforcement system operation.

Accordingly, both quantitative and qualitative approaches should be applicable in order to cover the multifaceted nature of the studied phenomena. The legislative doctrine of Ukraine, scientific publications revealing the foundations and concepts of law enforcement system operation, as well as analytical data explaining individual processes in the context of law enforcement agencies activities and the course of social processes within its limits should serve as materials for analysis.

RESEARCH RESULTS

It should be agreed that the law enforcement system by its characteristics is a mechanical scheme, but, serving as a component of the state-legal system, it is part of an organic network. Considering this, evolution of the law enforcement system takes on a contradictory nature, and its behavior in the conditions of reform is difficult to predict. For the same reason, the consequences of restructuring the law enforcement system for operating and development of the state legal system in general and its individual elements organically related to law enforcement are not always predictable (Kovaliv, Yesimov & Lozynskyi, 2018).

We assume that its crucial structural components are: 1) law enforcement bodies; 2) law enforcement operation; 3) law enforcement role; 4) law enforcement affairs.

Considering this, we can say that law enforcement bodies are one of the key aspects of the law enforcement network. However, regarding their definition and the state structures that belong to them, there is currently no unequivocal answer.

Based on the analysis of monographic studies, it is possible to single out the main features describing law enforcement bodies, namely:

- jurisdictional - the ability to resolve disputes out of court, for example, to bring to administrative responsibility. Yes, according to Article 255 of the Code of Ukraine on Administrative Offenses, the State Bureau of Investigation has the right to draw up protocols for the commission of administrative offenses provided for in Article 184-3 (in terms of illegal use of the name and signs of belonging to the State Bureau of Investigation) and Article 185-13 (in terms of failure to comply with legal requirements of officials of the State Bureau of Investigation);
- functional - includes a wide range of tasks (from protecting law and order to defending the citizens' rights and state security. So, for example, the functions of the prosecutor's office include monitoring the development of laws, supporting the state's prosecution in court, judicial representation; State Bureau of Investigation - prevention, detection, cessation, revealing and investigation of crimes that fall within its competence; judicial authorities - judicial protection of breached and contested rights of individuals in the way of administration of justice;
- institutional independence means personal autonomy, which is ensured by the power through a system of guarantees of non-interference in its activities. The Law of Ukraine "On the State Bureau of Investigation" under Article 4 securing guarantees of the independence of this body, establishing that: "the illegal transfer of state bodies, local self-government bodies, their local and service individuals, political parties, and public bodies is protected data on other physical or legal characteristics of the activities of the State Investigation Bureau" (Verkhovna Rada of Ukraine, 2015). A similar norm has also been established for the activities of judicial authorities. In particular, Article 6 of the Law of Ukraine "On the Judiciary and the Status of Judges" prohibits interfering with the justice administration, influencing the court or judges in any way, disrespecting the court or judges, collecting, storing, using and disseminating information in any form with the aim of causing harming the authority of judges or affecting the impartiality of the court (Verkhovna Rada of Ukraine, 2016).

We are impressed by the idea that law enforcement agencies are jurisdictional bodies, which, according to the current legislation, are authorized to provide law and order, defend the rights and liberties of people and citizens, to prevent and stop crimes, as well as to apply state coercion to the perpetrators, and the system of law enforcement agencies is a set of specialized State bodies, united by functional criteria, which in cooperation carry out the protection and defense of main individuals' rights, freedoms and interests, combating crime and other offenses (Yusupov, 2015).

Thus, the legal discourse determines that law enforcement bodies as a component of the law enforcement system, on the one hand, are endowed with autonomy, which is guaranteed by the state by establishing a ban on interference in their functioning, and on the other one, law enforcement bodies are functionally united, because they all perform law enforcement tasks, interacting both among themselves and with other institutions. From a social standpoint, they represent the institutional structures, which appeals to or respond to the facts of deviations in the course of social processes are a guarantee of the practical effectiveness of the established standards for ensuring law and order.

IN. Makarchuk stresses that law enforcement bodies should have the inherent ability to effectively influence various aspects of the country's security from the standpoint of functional unity, which will allow them to strategically and functionally solve issues of national security and defense of Ukraine (Makarchuk, 2023). However, there is also another position, according to which law enforcement bodies can be not only state, but also non-state agencies.

In particular, according to the authors of the textbook “Jurisprudence”, law enforcement operation is activity by competent actors of state and non-state organizations and their officials in the consideration of legal cases, protection and defense of social relations from offenses and adoption of special acts of implementation of material legal norms in order to ensure legality and protection of law and order (Kopyeychikov, 2003).

An example of this is the activity of private detective agencies that work successfully in many democratic countries. In Ukraine, a discussion regarding the legalization of such activities has been going on for a long time. Thus, in 2020, draft law No. 3562-IX “On private detective activity” was adopted. In it, the authors proposed to establish that private detective activity is aimed at defending individuals’ and legal entities’ rights and interests by providing private detective services (Verkhovna Rada of Ukraine, 2020). It is also necessary to emphasize that non-state actors of law enforcement activities can be included in the law enforcement system of the state, but cannot belong to the system of law enforcement bodies, since they do not have a jurisdictional sign and institutional independence.

Therefore, as A. Tyurina rightly pointed out, the system-forming factor in this case is law enforcement operation, for which the State creates law enforcement agencies (Tyurina, 2006). Consequently, the next component that needs consideration is law enforcement.

A fairly common term of law enforcement operation is as follows: it is a state activity performed for defending law by empowered agencies through specific tools of influence according to law and in compliance with the established procedures (Bandurka, 1999). The central categories that reflect its essence are: the object of protection and the actor of law enforcement activity. Thus, the object of protection is social relations, which are regulated by law and which can potentially or actually be harmed. Instead, law enforcement activities actor is illegal acts (misdemeanors and crimes), and also indirectly there may be other legal and social phenomena that determine them or connected with them (for example, identifying the causes of offenses or prevention of offenses) (Tyurina, 2006).

Law enforcement activities are mainly implemented in different types of law enforcement actions, namely law-establishing, law-enforcing, law-compulsory and law-restoring. Structurally, the system of law enforcement activities covers: 1) operation of state bodies for organizational support of the activities of judicial authorities; 2) activities of the prosecutor’s office in the performance of the tasks assigned to them (maintenance of the State prosecution in court, the function of representation and supervisory functions); 3) activities to detect, prevent and investigate criminal offenses; 4) actions for protecting State security, the State border, law and order (National Academy of Internal Affairs, 2024).

Thus, law enforcement activity as a multi-component operation is directed by various state means of a political and administrative nature with the aim of preventing and countering the commission of offenses consisting of the object and subject of this activity. Its social context presupposes the existence of a system of such means, which are perceived by society either as a measure of necessary intervention in the private life of a person to secure collective security (protecting public good), or as a set of repressive measures (mostly precisely such), the need for which is significantly exaggerated. We believe that this component of the law enforcement system demonstrates the necessity to ensure a proper balance between the effectiveness of law enforcement and the observance of human rights in its incorporation.

To highlight the subject of the research, it is necessary to find out which law enforcement structures are directly related to the provision of adequate functioning of the law enforcement system. As V. Makarchuk rightly pointed out, there are State agencies that do not belong to law enforcement, but are endowed with law enforcement functions and directly influence establishing and incorporating of State policy in the sphere of providing national security and defense of our country (Makarchuk, 2023). Therefore, in order to answer the question which State bodies belong to law enforcement, perform law enforcement tasks, and, consequently, belong to the law enforcement network, let's examine the next component - the law enforcement function.

The law enforcement function is the leading one in the system of internal functions of the State and provides guaranteed defense of the citizens' rights and freedoms through the establishment of an effective legal order, ensuring legality, protection of sovereignty, territorial integrity, national security and the State border (Kolomiets, 2017). According to S. Ostrovskii, it is a purposeful activity of the State, performed by the empowered agencies using legal tools of influence to solve law enforcement concerns (Ostrovskii, 2017). O. Bezpaloa notes that the specified function is the direction of the state's activity, which is implemented by the system of state authorities authorized to do so (mainly law enforcement agencies), local self-government, and the public, authorized exclusively within powers granted by law to implement legal measures of influence (including coercive measures) to provide legality and law and order (Bezpalova, 2014).

Thus, the given definitions enable to summarize that the law enforcement function as a key area of law enforcement agencies operation has certain features. In our opinion, the most relevant are those formulated by V. Skindyuk. It is about the fact that it: 1) is the direction of state policy, which is manifested in the state's activities; 2) designed to defending individuals' and legal entities' rights and freedoms, the security of society and, accordingly, the security of the State, the purpose of which is to establish and ensure law and order; 3) incorporation actors are specially authorized state authorities; 4) implemented using the forms and methods defined by administrative and legal regulations; 5) includes the possibility of using means of coercion in the procedural forms enshrined in the law in the presence of grounds enshrined by it (Shkindyuk, 2021).

In common, law enforcement function as a component of the law enforcement structure is a complete network of legal and administrative measures aimed at ensuring law and order and defending the citizens' and society interests, the provision of which is the prerogative of law enforcement bodies. Its influence on social relations and citizens' expectations of the quality of implementation of the system of such measures are factors in the formation of the social vision of justice, legality and the level of "guardianship" of the state in matters of its internal security.

The last component of the law enforcement system that requires analysis in the context of the issues of this study, is law enforcement legal relations.

It is worth noting that some domestic scientists distinguish between such concepts as "protective legal relations" and "defense legal relations". For example, G. Nakonechna, researching protective administrative-legal relations involving courts, comes to the conclusion that such relations arise in proceedings to bring judges to disciplinary responsibility (Nakonechna, 2014). However, in our opinion, the specified legal relationship can also be characterized as protective, since the prosecution of unscrupulous judges is not only a protective function, but also an important component of defending citizen's rights and freedoms in the event that the judge's actions have caused negative consequences for an individual. In addition, the judge himself can be a participant in protective

and defense legal relations, albeit procedural ones. In this context, the investigation of phenomena is self-sufficient, because they perform different tasks. However, scientists to a greater extent justify the absorption of one category of features by another, thus forming one category of compatible content. We are supporters of the opinion that theoretically the differentiation of law enforcement and human rights protection legal relations is rational, but in practical discourse it is not functional enough, and therefore we join the position of those scientists who consider security as a phenomenon that absorbs protection. More specifically, it refers to the fact that protection is carried out constantly, and protection becomes necessary under exceptional conditions.

Therefore, in our opinion, the nature of law enforcement relations should not be limited exclusively to functional meaning. For example, there is a view that they are a legal form of social interaction between legal and capable subjects, which has an authoritative nature, is determined by the fact of committing an offense and aims to restore the violated right, bring the offender to a certain type of legal responsibility and enables enforcement it is a subjective legal obligation enshrined in law or contract and mediated by a law enforcement act (Serdiuk, 2008). The peculiarity of the direction of law enforcement activities is that most legal relations in this area are implemented on the basis of legal norms that prohibit the commission of illegal actions (norms of a special part of the Criminal Code of Ukraine, legal norms that determine the composition of administrative offenses, disciplinary offenses) (Korneliuk, 2020).

Consequently, law enforcement legal relations have the following characteristics: 1) they arise on the basis of legal norms; 2) they are related to the violation of legal prescriptions, that is, offenses; 3) they are formed between individual natural persons (citizens, foreigners, stateless persons) and legal entities, on the one hand, and of the law enforcement operation actors, on the other (Korneliuk, 2020); 4) they are volitional relations, as they arise on the basis of state coercion and are applied on behalf of the state.

In view of the above, it is worth emphasizing several important theses regarding the character of law enforcement relations. First, the concept of “legal protection” is covered by the concept of “legal defense” (Legenchenko, 2014); secondly, they should not be limited solely to the fact of committing an offense, because they also include preventive measures and may arise due to the need to counteract potential threats of committing offenses; thirdly, the above-defined characteristics of law enforcement legal relations need to be clarified.

In contrast the nature of law enforcement relations, the social aspect, in our opinion, is quite clear. In particular, as a form of regulation of social relations, law enforcement relations have a clear ideological and substantive structure, which is manifested by the community’s awareness of the need for their emergence and development.

CONCLUSIONS

It is worth noting that the conducted research revealed the lack of due attention by scientists to the social context of the law enforcement system of Ukraine, because their main scientific interest is focused on the identification of its legal nature.

In general, the law enforcement system as an object of scientific research in a social context is characterized by complexity, but at the same time it is quite understandable. Its main social purpose is objectified through procedures for the protection of both a certain range of values and public

goods in general. The leading feature of the law enforcement system is the possibility of a logical and smooth transition of protective legal relations directly into protective ones, which provide an opportunity for a normatively defined circle of persons to implement a law enforcement function, which is not only legally significant, because it serves as a closing link in the chain “establishment - provision - implementation - protection”. but also socially necessary, as it guarantees the maintenance of law and order.

The study of the law enforcement system elements indicates its static structure, which reflects a certain orderliness. However, the dynamic context of this issue consists in the constant change of the legislative provision of its functionality, which, in turn, indicates its flexibility in the conditions of rapid social changes.

It is worth noting that reformation of the law enforcement system of Ukraine is still relevant, because the development of a truly legal social state involves a number of optimization changes of a long-term nature. Under modern conditions, the range of law enforcement agencies powers has significantly expanded, which is due to security factors, but it is extremely important to ensure a balance between the measures of “necessity” and “necessary” restrictions in the future.

Accordingly, the creation of an adaptive, effective and operational law enforcement system that will meet the modern challenges and needs of society is an issue of the present that has a long-term perspective of development.

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