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ARGUMENTATION IN LAW ENFORCEMENT ACTIVITIES

Abstract. The analysis of foreign and domestic literature, sources of law and legal practice made it possible to state that in modern conditions the theory of law enforcement needs to be clarified, and a number of its provisions need to be updated. ***The purpose*** of the study is to identify patterns of argumentation and objectification of the results of law enforcement activities. To achieve the goal, the following tasks were solved: characterizing law enforcement activities, law enforcement acts; individual legal prescription, legal argumentation and its relationship with proof; the main problems of argumentation in law enforcement activities are identified, and methods of their solution are proposed. ***Research methods***. This study is based on the activity approach, which allowed us to characterize law enforcement and argumentation as the activity of the relevant subjects and clarify the concept of law enforcement activity. Thanks to the general theoretical method, the nature of law enforcement activity, its results – law enforcement acts, their primary element – individual legal prescription was revealed; the definition of their concepts is formulated. Sociological methodology (in particular, document analysis) served to collect and study empirical facts necessary for general theoretical analysis. Technical and legal analysis (in particular, legal constructions) contributed to the characteristics of the process of law enforcement activities and argumentation. ***The results***. In the article, for the first time in Ukraine, the process of objectification of the results of law enforcement activities from the point of view of argumentation at its main stages is holistically reflected. ***Conclusions***. The study of law enforcement made it possible to characterize law enforcement activity as the actions of authorized subjects regarding the creation and objectification of individual legal prescriptions in law enforcement acts. The entire process of law enforcement is accompanied by legal argumentation, which is a broader concept than proof. The method of argumentation at each stage of law enforcement activity is proposed. Identified problems of law enforcement activities and arguments in domestic practice. It is proposed to form the rules of law enforcement activity and argumentation and enshrine them in law sources of Ukraine or regulatory acts. This could contribute to the expansion of the scope of legal argumentation, the application of a broader concept of «legal argumentation» using not only legal but also other arguments to which law enforcement subjects should give legal significance; creation of high-quality law enforcement acts; creation of appropriate conditions for direct implementation of the rights and obligations of participants in public life, development of law in general.

Key words: law enforcement activity, law enforcement acts, individual legal prescription, law enforcement precedent, legal argumentation.

1. Introduction

Research relevance. Global changes, which are generally characteristic of the world order, are also inherent in the modern legal system of Ukraine. They occur in all spheres following any kind of legal activity, including law enforcement. It especially applies to the shift in emphasis to its purpose and mission – to ensure proper conditions for the immediate enjoyment of the rights and obligations of participants in public life. The mentioned fact necessitates an in-depth analysis of law enforcement activity, its results, and individual legal instructions. There is an actualization of studies on argumentation in law enforcement, determination of its purpose, as well as the purpose and tasks at each stage, its capabilities for drafting high-quality law enforcement acts, finding ways to overcome deformations in law enforcement and its outcomes, and expanding the boundaries and scope of legal argumentation.

All these things should contribute to laying the groundwork for improving the effectiveness of law enforcement activities in Ukraine, elab-

orating and formalizing argumentation rules and methods necessary for adopting consistent law enforcement acts, which would contribute to a due exercise of the rights and obligations of participants in public life and the development of law in general.

Analysis of research sources assisted in clarifying the state of scientific developments on law enforcement activity, its results, and argumentation options during its implementation. In legal literature, scientific attention is paid to law enforcement issues, and a set of provisions on the concept of law enforcement, its nature, stages, and law-enforcement acts are covered in the works by Bocharov D., Vitruk S., Holovatyi V., Husariev S., Malyshev B., Moskaliuk O., Nedbail P., Petryshyn O., Rabinovych P., Serdiuk I., Uvarova O., et al.

The contributions by Burhin M., Habermas Yu., Dvorkin R., Karamysheva N., Converskyi A., Titov V., Tulmina S., Shcherbyna O., Yurkevych O., and others deal with logic and argumentation in the context of their concept, structure, and means of argumentation (proving).

The following authors devoted their works to legal, involving juridical, argumentation: Alexi R., Bella D., Borys M., Dudash T., Kystianyk V., Kaziubra M., Kryvytskyi Yu, Luts L., Perelman H., Savenko M., and others.

Significant scientific progress in branch jurisprudence in terms of argumentation and proving is marked in the works by Babenko V., Pohoretskyi M., Stefan M., et al.

However, the next aspects need in-depth analysis: the nature and concept of law enforcement, law enforcement acts in modern conditions, individual legal instructions as an element of such acts, argumentation options at the main stages of law enforcement for elaborating high-quality law enforcement acts, identification of law enforcement and argumentation problems, and finding ways to solve them.

The purpose of the article is to elucidate essential features of law enforcement activity, law enforcement acts, and individual legal instructions, and formulate their concepts; to define a goal of law enforcement activity and legal argumentation as a whole and at its main stages; to identify the possibilities of legal argumentation during law enforcement activities, problems in domestic legal practice generating deformations in the relevant field, and find ways to solve them, which will ensure the elaboration of high-quality law enforcement acts and proper conditions for the direct enjoyment of rights and obligations by participants in public life.

2. Modern theory of law enforcement

Although the theory of law enforcement is currently developed, some issues still require scientific attention, especially amidst the transformation of modern legal reality.

Legal literature interprets law enforcement as follows: a legal form of activities of entities authorized to exercise the rules of law towards specific life cases by adopting individual legal decisions (Petryshyn (Eds.), 2015. 265); a concrete form of law enforcement related to the exercise of powers by relevant participants in legal regulation to specify and individualize the content of legal norms and principles in subjective rights and obligations and guarantee actual implementation (Bocharov, 2017. 262-268); activities of competent entities aimed at individualizing regulatory instructions and creating prerequisites for their implementation (Luts, 2015. 283), etc.

At the same time, one should always pay attention to the fact that in the Ukrainian language the word "zastosovuvaty (to apply)" means to use something, to introduce into use, to adjust to something (Novyy tlumachnyy slovnyk ukrayins'koyi movy, 1998. p.101) and "zastosuvannia (application)" means an action (Slovnyk ukrayins'koyi movy, 1972. p. 322) and to the fact that it is carried out through the activities of authorized entities aimed at achieving the goal.

Analysis of such a legal phenomenon as law enforcement activity allowed for distinguishing a range of characteristic features: it is a kind of legal activity; it is carried out by authorized subjects following a regulated procedure; it consists of several main stages; it shall meet the basic requirements of lawfulness; a promising goal is to ensure proper conditions for direct law enforcement, and a short-term one is to formulate an individual legal instruction and objectify it in the law enforcement act. Thus, law enforcement activities are the actions of authorized entities to formulate individual legal instructions and objectify them in law enforcement acts to ensure proper conditions for direct enforcement.

It is customary for the theory of law to outline three successive fundamental stages of law enforcement conducted under a statutory procedure (Koziubra, 2015, p. 237), namely: the establishment of the factual circumstances of the case, the choice of the legal instruction to be applied; the decision on the case and its documentation (Luts, 2015, p. 288); or: the establishment of the factual circumstances of the case, the legal basis and its resolution (Uvarova, 2012). Therefore, the main stages of law enforcement activity entail the establishment of the factual circumstances of the case, the choice and specification of a regulatory instruction, the formulation of an individual legal instruction, and its objectification

in the appropriate legal form – a law enforcement act.

Thus, the relevant activity results in a law enforcement act, which is interpreted in legal literature as the external manifestation of a formally binding rule of conduct of an individual nature, which confirms, establishes, or abolishes the subjective legal rights and obligations of personalized entities in a particular life situation (Rabinovych, 2017. 552); a legal act which enshrines an individual decision of a law enforcement entity on a particular case (Koziubra, 2015. 240), a state-supported formally mandatory will (authoritative order) of the authorized party of managerial legal relations (public authorities, their officials and officers, and, in cases provided by law, representatives of civil society) which exercises a regulatory or protective influence on the behavior of individually determined legal entities by confirming, changing, or canceling their legal rights and obligations in a particular life situation and causes legal effects meeting the principle of legal capacity (Seruk, 2016. 49).

Professional literature also covers the legal nature of law enforcement acts, in particular, that they are issued by state bodies or officials; aimed at implementing the requirements of legal norms, are personalized, have no retroactive effect, and their effect is exhausted by the fact of use (Tsvik, Petryshyn, Avramenko, 2009. 414–415); are one of the types of legal acts issued by authorized personalized entity; are a written document that has a specific form (Koziubra, 2015, p. 240), etc. Such acts are legal facts for the emergence, change, and termination of legal relations, are aimed at achieving legal consequences, and create proper conditions for direct law enforcement and ensuring the interests of participants in social relations (Luts, 2015. 19).

Legal literature boasts a diversity of law enforcement acts under the classification criteria used: by the status of authorized entities, a legal form, a subject of legal regulation, the nature of legal consequences, etc. Such lists are long but necessary since they allow for deepening awareness of their features which is essential for legal science and practice (Serdyuk, 2013. 177–190).

Analysis of law enforcement acts made it possible to name their main features: they are acts-documents (sometimes acts-actions); are drafted by authorized entities under a regulated procedure; have a written, oral or conclusive external form of expression and applicability; objectify an individual legal instruction in the appropriate legal form; are designed to achieve legal consequences; regulate a specific life situation; are a legal fact for the emergence, change, or termination of legal relations; are a necessary prerequisite for direct law enforcement. Thus, law enforcement acts are acts-documents (or acts-actions) drafted by authorized entities which objectify individual legal instructions designed to achieve legal consequences and are a necessary prerequisite for direct law enforcement and ensuring the interests of participants in social relations. As already noted, among the immediate goals of law enforcement, there is a focus on formulating an individual legal prescription and its objectification.

Individual legal prescriptions have received insufficient attention in legal literature, and, as a rule, the relevant legal phenomenon is only referred to in the context of the characteristics of law enforcement acts or law enforcement activity as a whole, namely: it focuses on formulating individual legal prescriptions, and a law enforcement act contains an individual formally binding rule of conduct that is designed for personalized entities; it regulates specific cases; their validity is exhausted by the fact of application; it is available in the operative part of a law enforcement act (Luts, 2015.287–290); or the issuance of individual-specific instructions granting rights to some participants in legal relations and entrusting responsibilities to others (Malyshev, Moskalyuk, 2010, p. 10).

In addition, some authors understand the enforcement process as a kind of syllogism: the establishment of the case's factual circumstances and the legal basis for its resolution and rendering a decision (Uvarova, 2012. p.157-158), which allows interpreting the individual legal order as an appropriate judgment.

The law enforcement process involves specifying a regulatory prescription, which is regarded as a logically and grammatically completed judgment of a universally binding nature. Thus, the individual legal prescription, which contributes to its implementation into in a particular life situation, should also be a judgment containing two foundations: the factual and legal basis of the case as well as a conclusion (a formally binding rule of conduct regarding personalized entities in a particular situation).

All the above requires clarifying the nature of an individual legal prescription. Analysis of the relevant legal phenomenon allows the author to distinguish its main features: it is a logically and grammatically completed judgment formulated in the process of legal qualification; it is a formally binding rule of conduct for personalized entities; it must correspond to the content of a statutory prescription; it has established limits and direct effect; its validity is exhausted by the fact of application; it is objectified in the specific legal form; its structure must consist of the factual basis (legally relevant facts the occurrence of legal consequences

is associated with), the legal basis (assessment of the compliance of the factual circumstances with the content of the regulatory prescription), and conclusion (the way to achieve legal consequences by exercising the rights and obligations of participants to the public life, ensuring their interests); it is aimed at creating proper preconditions for direct law enforcement.

Thus, an individual legal prescription is a formally binding rule of conduct of personalized entities, which is a logically and grammatically completed judgment that is formed while specifying a regulatory prescription regarding a real-life situation.

Such a vision necessitates the formalization of both content and formal requirements not only with regard to law enforcement activities and legal acts but also individual legal prescriptions and their reasoning.

And these requirements become particularly relevant in the context of legal competition, collisions or gaps.

3. Correlation between legal argumentation and proving

Treating argumentation as intellectual activity on justifying or refuting some provisions or positions which is carried out using appropriate methods and means of persuasion (Luts, 2016. 27–30), it should also be noted that it has a well-defined structure which is characterized by the interrelations between its elements. Such elements are the subjects – the argumentator and the addressee; thesis – the provision, the truth of which must be argued; arguments – the means by which the truth is proved or refuted; demonstration – the sequence of thinking from arguments to the thesis, that is, the process of argumentation (Luts, 2020. 170).

Although legal argumentation, including juridical, is considered an interdisciplinary study area (Borys, 2009), it is always associated with a specific type of legal activity. It is an intellectual activity aimed at substantiating or refuting the authenticity of provisions using both legal and other arguments, and juridical argumentation uses only juridical arguments for occurrence of legal consequences. Therefore, juridical arguments are the means provided by the current sources of law used in the process of legal argumentation, and the process of legal argumentation implies the use of legal arguments and other means (which can become juridical arguments under specific circumstances) (Luts, 2016. 29-30).

At the same time, juridical argumentation is a process that consists of corresponding rules for the formation of legal judgments, finding and bringing legal arguments to the addressees' notice to obtain the desired legal consequences (Luts, 2020. 170).

In addition, it is necessary to characterize the interrelations between the logical and legal concepts of "argumentation", "proving", "proof", "argument", "reason", and "evidence", which are often equated both in legal literature and in practice.

In logic, argumentation is interpreted as the way of thinking which entails proving and refuting in the course of which the author and the opponents shape the conviction of a true or false statement Konverskyy, 2004. p. 283).

Logical operation that ascertains the truth of a certain point (thesis) using provisions, the veracity of which is already established, is understood as proving, and the process of establishing falsehood – as refutation (Konverskyy, 2004. 283–302); or: proving is a logical procedure for substantiating the veracity of a thesis using provisions the veracity of which has either been established or accepted without evidence (Yurkevych (Eds.), 2012. 97).

In jurisprudence, logical terminology acquires some specificity. Thus, argumentation (justification and refutation) is designated by the term of proving. Proving is usually governed by and must comply with procedural laws, that is, it is conducted in accordance with the requirements of juridical reasoning. For example, part 2 of art. 91 of the Criminal Procedure Code (hereinafter referred to as the CPC) of Ukraine states that proving comprises the collection, verification, and evaluation of evidence to establish circumstances relevant to criminal proceedings (Kryminalnyi protsesualnyi kodeks Ukrainy).

In legal literature, proving in criminal proceedings means a criminal-procedural activity of pre-trial investigation bodies, the prosecutor's office, and the court which has legal and logical forms. It entails suggesting potential versions of the system of legally significant circumstances of criminal proceedings in the collection, verification and evaluation of evidence following these versions, as well as substantiating a reliable conclusion on the pre-trial investigation about the proven guilty of a person and its further advocacy at the judicial stages (Kobzar (Eds.), 2017. p. 139).

There is also a standpoint that proving is an indissoluble integral process, which involves obtaining evidence (search and detection, collection of factual data and their sources, procedural registration (consolidation) and granting factual data and their sources the value of evidence in criminal proceedings) and using it to establish facts and circumstances that are of importance to criminal proceedings in substantiating legal position by the parties to criminal proceedings (Pohoretskyy, 2014. p. 22).

The Code of Administrative Procedure (hereinafter referred to as CAP) of Ukraine

lacks a definition of "proving", but Art. 77 determines the entities vested with the obligation of proving, and Art. 78 – grounds for relief of proving (Kodeks administratyvnoho sudochynstva Ukrainy).

Art. 81 of the Civil Procedure Code of Ukraine (hereinafter – the CPCU) also specifies entities of proving, but it does not define the concept. However, Art. 82 names the grounds for exemption from proving, and Art. 89 refers to the evaluation of evidence (Tsyvilnyi protsesualnyi kodeks Ukrainy). Identical provisions are also available in the Code of Commercial Procedure of Ukraine (hereinafter referred to the CCP) of Ukraine, namely: Art. 74 provides for the obligation of proving; art. 75 – grounds for exemption from proof, and Art. 86 – evaluation of evidence (Hospodarskyi protsesualnyi kodeks Ukrainy).

The legislator enshrined the process of proving within all procedural codes of Ukraine in separate chapters "Evidence and proof". Although this process is generally similar under the basic parameters, each of them has inherent characteristics conditioned by the subject of a specific branch of law.

Therefore, civil law literature conveys proving as the procedural and mental activity of the entities of proving which is carried out in a legally regulated civil procedure and is aimed at clarifying the actual circumstances of the case, the rights and obligations of the parties, establishing certain circumstances by confirming legal facts, reference to evidence, as well as the submission, acceptance, collection and evaluation of evidence (Shtefan, Drizhchana, 1994. 149).

Commercial procedure literature states that proving in business proceedings are the logical and practical activity of the economic court and other persons involved to establish the presence or lack of the factual circumstances of the case, which are important for the just decision on the case using means determined by law (Babenko, 2007, p. 5); and judicial proving as a whole is the activity of the court and other participants in proceedings to provide and examine evidence as the facts sought, which is intended to ascertain the truth and is carried out following the rules prescribed by the legislator (Babenko, 2007. p. 6).

At the same time, logic refers to evidence as arguments (reasons), which are understood as true statements naturally resulting in a thesis (Karamysheva, 1998, p.184).

In legal science, evidence means factual data which is information about facts and events under consideration (in exceptional cases, the facts themselves are evidence) (Yurkevych, Tytov, Kutsepal, 2012).

According to p. 1 of art. 84 of the CPC of Ukraine, evidence in criminal proceedings is the factual data obtained in the manner prescribed by the Code, based on which the investigator, the prosecutor, the investigating judge and the court establish the presence or lack of facts and circumstances that are relevant to criminal proceedings and subject to proof (Kryminalnyi protsesualnyi kodeks Ukrainy). Following p. 1 of art. 73 of the CCP of Ukraine and p. 1 of Art.76 of the CPCU, evidence is any piece of data based on which the court ascertains the existence or lack of circumstances (facts) that justify the claims and objections of the parties to the case and other circumstances, which are crucial for solving the case (Hospodarskyi protsesualnyi kodeks Ukrainy; Tsyvilnyi protsesualnyi kodeks Ukrainy). Part 1 of art. 72 of the CAP of Ukraine envisages identical provisions, but it additionally specifies circumstances that are important for the just solution of the case (Kodeks administratyvnoho sudochynstva Ukrainy).

Commercial law literature interprets evidence in business proceedings as information about the facts which confirms the existence or lack of circumstances that the party uses as the ground for its claims and objections, which are crucial for the just solution of the case via the means provided by law (Babenko, 2007. p. 6).

Analysis of the literature and procedural laws contributes to confirming the following viewpoint: any type of proving is argumentation, but not vice versa since the concept of "argumentation" is broader than the concept of "proving". Thus, the purpose of proving is only to establish the truth of the thesis (fact in proof), and the purpose of argumentation is to justify or refute the expediency of rendering a decision and its importance in a particular situation. Evidence is the provisions which prove the truth of the thesis; in argumentation – those that, in addition to the above, prove expediency and advantages over other arguments (their types are more diverse).

In proving inductive, deductive conclusions, or conclusions are made by analogy; in argumentation, they can merge, as well as justification and refutation can do so.

Therefore, argumentation allows for drafting a more solid and high-quality individual legal prescription meeting the basic requirements of the validity of enforcement acts (legality, practicability, and justification). It is the key to ensuring proper conditions for direct law enforcement and the interests of participants in public life.

4. Law enforcement and argumentation

As already noted, the long-term purpose of law enforcement is to create proper condi-

tions for direct implementation, and the short-term one is to create an individual legal prescription and objectify it in a law enforcement act. Similar goals are inherent in argumentation.

In addition, each stage of law enforcement, and hence argumentation, has its own objectives.

Thus, the purpose of argumentation at the stage of establishing the factual circumstances of the case is to substantiate or refute the legal significance of the facts associated with the occurrence of legal consequences. The tasks facilitating the achievement of the relevant goal are as follows: proving reliability and sufficiency of legally significant facts; assessing them from the standpoint of probability and objective truth; verification of evidence. The actual design is formed at this stage (elements of the model of logical judgment necessary for the formulation of an individual legal prescription).

The procedural codes of Ukraine devote separate chapters to the procedure of proving: "Evidence and proving", namely: chapter 5 of CPCU (Art. 76 – Art. 119); chapter 5 of the CAP of Ukraine (Art. 72 – Art. 117); chapter 5 of the CCP of Ukraine (Art. 73 – Art. 112); chapter 4 of the CPC of Ukraine (Art. 84 – Art. 102) (Tsyvilnyi protsesualnyi kodeks Ukrainy, Kodeks administratyvnoho sudochynstva Ukrainy, Hospodarskyi protsesualnyi kodeks Ukrainy, Kryminalnyi protsesualnyi kodeks Ukrainy).

Essential procedural requirements for solving problems at this stage comprise belonging, admissibility, reliability, and probability of evidence (Art. 76 – Art. 79 of CPCU). Thus, evidence included in the subject of proof is appropriate – circumstances which confirm the stated claims or objections or have other significance for the case's consideration and are subject to verification when making a court decision (art. 76); the means of proof set outlined in the law are admissible (art. 77); evidence is regarded as reliable if it is obtained without influence intended to shape a misconception of circumstances of the case, which are of importance (art. 78); evidence provided in support of the circumstance than those provided in support of its refutation is more conceivable (art. 79), and therefore the presence of the circumstance is considered proven. Para. 2 of art. 79 notes that the issue of evidential probability is decided by the court following its internal conviction (Tsyvilnyi protsesualnyi kodeks Ukrainy). Art. 94 of the CPC of Ukraine provides that entities of proving examine all the circumstances of criminal proceedings comprehensively, fully and impartially following the law and evaluate every piece of evidence in terms of belonging, admissibility, reliability, and totality of the collected evidence – sufficiency and interrelation for the adoption of the relevant procedural decision (Kryminalnyi protsesualnyi kodeks Ukrainy).

Art. 73 – art. 76 of the CAP of Ukraine convey the requirements of belonging, admissibility, reliability, and sufficiency of the evidence in the same manner. In particular, art. 75 states that the evidence contributing to the establishment of the actual circumstances of the case is considered reliable, and the evidence is sufficient, which in its totality makes it possible to conclude about the existence or lack of circumstances of the case which are part of the fact in proof (Kodeks administratyvnoho sudochynstva Ukrainy).

All procedural codes of Ukraine hold that the court or other entities of proving evaluate the evidence in the case following an internal conviction based on its direct, comprehensive, complete and objective examination (Art. 89 of CPCU, Art. 90 of the CAP of Ukraine, Art. 86 of the CCP of Ukraine, Art. 94 of the CPC of Ukraine (Tsyvilnyi protsesualnyi kodeks Ukrainy, Kodeks administratyvnoho sudochynstva Ukrainy, Hospodarskyi protsesualnyi kodeks Ukrainy, Kryminalnyi protsesualnyi kodeks Ukrainy).

The above provision should be clarified in terms of the expediency of using arguments and their significance for solving a specific legal case. After all, not the entire decision is prejudicial, but only a particular provision containing legal arguments, or can be a legal argument.

Therefore, it is worth paying attention to the opinion of J. Bell, who argues that even citing foreign legal sources in court decisions is not independent and reasonable. It provides additional support for such arguments as national legal sources because they illustrate principles or values shared by a specific legal system (Bell, 2012, pp.8–19).

Art. 78 of the CPC of Ukraine renders the provisions on prejudicial decisions in detail, namely, the circumstances established by a court decision in an economic, civil, or administrative case, which has entered into force, are not proved when considering another case involving the same persons or a person in respect of whom these circumstances are established unless otherwise established by law. It is also noted that the circumstances qualified by the court as generally known are not subject to proof (Kodeks administratyvnoho sudochynstva Ukrainy).

Attention should also be paid to para. 7. of art. 82 of the CPCU– the legal assessment provided by the court for a particular fact when considering another case is not binding on the court, and the circumstances established by the decision of the arbitration court or inter-

national commercial arbitration are subject to proof on general terms when considering the case by the court (para. 8 of Art. 82) (Tsyvilnyi protsesualnyi kodeks Ukrainy).

In the proof theory, provisions that do not require proof include legal axioms, presumptions, principles of law, etc. However, in this regard, it is advisable to know the views of law experts. Procedural legislation allows submitting to the court such a conclusion only about the analogy of legislation and the analogy of law; the content of foreign law norms under their official or generally accepted interpretation and the doctrine of the relevant foreign state (art. 108 of the CCP of Ukraine). But according to art. 109 of the Code, such a conclusion is not evidence: it is of an auxiliary (advisory) nature and is not binding on the court. The court should draw an independent conclusion on specific issues (Hospodarskyi protsesualnyi kodeks Ukrainy).

Analysis of the procedural legislation of Ukraine shows that it pays the most attention to the stage of formation of the case's factual basis and establishing the legal significance of the facts.

As for the second stage of law enforcement (selection and specification of the regulatory instruction to be applied) and the formation of the case's legal basis, it aims to assess the compliance of the circumstances of the case with the content of the regulatory prescription to be applied. In other words, it identifies compliance of the factual basis with the legal basis, exercises legal qualification, and ascertains legal consequences.

The main tasks of this stage of law enforcement and argumentation as well are the choice of a regulatory instruction and clarification of its content; assessment of the compliance of the actual circumstances with the content of the regulatory instruction; determination of opportunities for the occurrence of legally relevant results provided by it; formulation of a logical judgment that conveys the compliance of the case's factual and legal basis; creation of a model of an individual legal instruction.

In procedural legislation, these provisions are represented in the sections on the consideration of the case under proceedings. Thus, the chapter "Consideration of the case on the merits" indicates that it considers and resolves the dispute by relying on the collected materials (art. 92) (Kodeks administratyvnoho sudochynstva Ukrainy).

Analysis of procedural legislation allows concluding that it mainly envisages the actions that are usually inherent in the first stage of law enforcement, and few provisions provide for actions on legal qualification and assessment of the compliance of the factual basis of the case with the legal one. Art. 244 of the CAP of Ukraine specifies the following among the issues the court deals with when making decisions: a legal norm which should be applied to legal relations; or what decision is legal if made by the court under the rules of substantive law in compliance with the rules of procedural law (art. 242). Art. 245 of the Code provides for court powers in resolving the case, in particular, issues to be decided if the claim is satisfied. Only Art. 246, which deals with the content of the decision, including its motivational part, enshrines a set of provisions on argumentation, namely: circumstances established by the court with reference to the evidence it relies on; the reasons for rejecting the evidence; the grounded assessment of each argument in the context of satisfying the claim; the reasons for violation of rights and interests; reasons for the application of the rules of law (or non-application) (Kodeks administratyvnoho sudochynstva Ukrainy).

The provisions of para. 3 of art. 242 of the CAP of Ukraine are of importance – the court decision based on fully and comprehensively clarified circumstances in the administrative case, confirmed by the evidence that was examined in the court session with an assessment of all the arguments of the participants in the case, is considered reasoned (Kodeks administratyvnoho sudochynstva Ukrainy) is reasonable.

These provisions cover the actions of the entities of law enforcement and their effects in the context of the first and second stages, which are difficult to separate in actual practice, since the initial comparison of the factual and legal basis occurs at the first stage, and the legal qualification is completed at the second stage. However, some issues on argumentation, especially at the second stage, are not elucidated in procedural laws, involving, drafting of an individual regulatory instruction, which is initiated at the second stage and is finally completed and objectified at the third stage.

Procedural legislation defines the types of court decisions (law enforcement acts): rulings, decisions, resolutions (art. 241 of the CAP of Ukraine), rulings, decisions, resolutions, court orders (art. 252 of the CPCU), verdict, decision, resolution (Art. 369 of the CPC of Ukraine). Procedural laws also specify the decision's content (art. 246 of the CAP of Ukraine, art. 238 of the CCP of Ukraine, Art. 374 of the CPC of Ukraine, art. 265 of the CPCU) (Kodeks administratyvnoho sudochynstva Ukrainy, Hospodarskyi protsesualnyi kodeks Ukrainy, Kryminalnyi protsesualnyi kodeks Ukrainy, Tsyvilnyi protsesualnyi kodeks Ukrainy).

Thus, Art. 374 of the CPC of Ukraine states that the court decision consists of introductory, descriptive, motivational and operative parts; lists structural and attributive requirements, which each of them should elucidate.

The procedural legislation of Ukraine envisages the basic requirements for law enforcement acts. However, the analysis of the provisions on the operative part, e.g., para. 5 of art. 246 of the CAP of Ukraine, indicates that it lacks requirements for individual regulatory instruction, namely: such a paragraph enshrines the court's finding on the satisfaction of the claim or refusal; the distribution of court costs, the term and procedure for entering into force of the court decision and its appeal (Kodeks administratyvnoho sudochynstva Ukrainy).

Consequently, such an element of judgment as a finding is noted in the operative part of the decision. But the law enforcement actions and arguments taken at the third stage should be aimed not only at the drafting of a law enforcement act but also the formulation of an individual regulatory instruction and its objectification in the law enforcement act.

An individual regulatory instruction should be recorded in the operative part and have the form of a logically and grammatically completed judgment, that is, a formally binding rule of conduct for personalized entities.

Unfortunately, there are neither content-related nor formal requirements for an individual regulatory prescription and its formulation and reasoning in the procedural legislation of Ukraine. As for the opinions about juridical argumentation, in particular, judicial argumentation, available in legal literature, they represent its capabilities, primarily related to the first stage – the formation of the case's factual basis. For example, juridical argumentation is a process and result of substantiating the truth (validity) of facts and/or beliefs about the acceptability of a set of arguments regarding a legally significant issue arising during legal activity (Husaryev (Eds.), 2020. p. 50).

Sometimes it is not only about the activity but also a law enforcement act, namely: judicial argumentation is a set of means, methods, and techniques used by participants in the trial during position presentation, which is evidenced in a specific type of a court decision (Kistyanyk, 2015. 52). There are also considerations that deductive argumentation is used in administrative proceedings and inductive – in constitutional proceedings (Kistyanyk, 2016).

Some authors resort to cognitive imitation: in the characteristics of ECtHR judgements from the perspective of those types of legal argumentation (dialectical and rhetorical) that it scarcely uses (Dudash, 2017).

The above is dissonant both with art. 17 of the Law of Ukraine "On Execution of Decisions and Application of the Practice of the European Court of Human Rights" regarding the practice of the Court as a source of law (Zakon Ukrayiny "Pro vykonannya rishen' ta zastosuvannya praktyky Yevropeys'koho sudu z prav lyudyny") and official documents of the Council of Europe.

Pursuant to the procedural requirements, the ECtHR (as well as any other court instance) shall establish the legal significance of the factual circumstances, that is, to carry out juridical argumentation through the relevant laws of logic using legal arguments. If it is not enough, then the ECtHR shall use other arguments which are given legal significance (that is, they can be used as law enforcement, law interpretation precedents – legal arguments in similar cases) during argumentation and after their consolidation in the court decision.

At the same time, as noted in legal literature, it is unacceptable to misinterpret or manipulate the considerations of the European Court of Human Rights and one's own in previous judgments, that is, a conscious and deliberate attempt to recognize certain legal judgments and benchmarks that have nothing to do with the case as arguments to create an illusion of credibility of the Court's opinion (Savenko, 2013, pp. 12–17). As for the constitutional procedure of Ukraine, there are considerations that "rhetorical" evidence is of doubtful importance (if any) for the decision making and its justification (Kozyubra, 2016. 167–180).

The above-mentioned practices make it necessary to eliminate the discrepancy between the concepts of "judicial practice", "judicial precedent", which are vested with legal force of the law source by some authors that is a substitution of concepts and can lay the groundwork for errors in law-enforcement. It should be noted that the enforceable judicial precedent has no legal force of the legal source since the courts do not have law-making powers. Thus, its concept is closer to the concept of "judicial practice" – as a set of various models of law qualification objectified in judicial acts; "unified judicial practice" – as a system of typical models of law qualification objectified in judicial acts and ensuring the sustainability and uniformity of judicial practice, the effectiveness of justice and law enforcement in general (Holovatyi, 2017. 10). Law enforcement unification results in a precedent (court decision), which contains a typical model of law qualification, as a model reflected in the legal positions of judges and objectified the judicial act, which comprises the most generalized indicators of assessment and compliance of the actual cir-

cumstances with the content of specific regulatory prescriptions and the possibility of legally relevant effects in a certain category of cases and ensures assimilation of law enforcement (Holovatyi, 2017. 7).

In the legislation of Ukraine, there are provisions on law enforcement precedents in demand, which are designated by the term "judicial practice". Thus, the Law of Ukraine "On the Judiciary and the Status of Judges", including art. 27, names the following powers of the appellate court: studying and generalization of judicial practice, informing about the results of the generalization of judicial practice of local courts, as well as superior courts; the chairman of the appellate court is conferred with the powers to generalize judicial practice; art. 32 indicates that the High Specialized Court provides lower courts with methodological assistance for the same application of constitutional provisions and the laws of Ukraine in judicial practice based on its generalization, etc. (Zakon Ukrayiny "Pro sudoustriy i status suddiv"). Thus, it would be expedient to determine objectification outcomes of the generalization of judicial practice in details.

The foregoing encourages scientific analysis, which results in the identification of the nature of the law enforcement precedent and its significance during argumentation.

First of all, attention should be paid to the fact that law enforcement activities are legal in content and are carried out by specific entities in charge (of both national and international law). If such entities are not granted law-making powers in accordance with the established procedure, they do not have the right to go beyond the powers and carry out another type of legal activity in a procedure which is not prescribed by law sources.

At his time, A. Simpson marked in his works that the alteration of the provisions of legal sources requires a rule which allows the authorized body to act respectively, and rendering a case-law decision needs a different procedure than rendering an ordinary court decision (Simpson, 1958. p. 155-160).

Consequently, law enforcement precedent differs in nature from a regulatory one (law source), as it should differ from ordinary court decisions. Regulatory judicial precedent is created by the subjects of law enforcement, which are endowed with law-making powers.

The analysis of law enforcement precedent allows for specifying its characteristic features, as follows: it is a written act-document; it is formulated by the subject authorized for law enforcement; it is designed to ensure uniform law enforcement; it contributes to eliminating deformations in law enforcement; it fixes the model (pattern) of law qualification, which is aimed at solving the case and the occurrence of legal consequences, in an individual legal prescription which is objectified in a law enforcement act; it fixes in a law enforcement act argumentation about its possible application in similar cases; it is a means of argumentation (reasoning) during the consideration of similar cases.

A law enforcement precedent (in particular, the court one) is a written act-document of the law enforcement entity, which ensures the uniform law application due to the typical model of law qualification in a certain category of cases and is a pattern for solving other similar cases.

Unlike the case law one, a legal interpretation precedent is characterized by the following features: it is a written act-document; it is drafted by a subject authorized to interpret the law; it is aimed at uniform legal understanding; it fixes a model of law clarification in the interpretative legal prescription; it contains a pattern of a uniform rule-understanding of the norm or the principle of law; it fixes in the interpretative act the argumentation about the options of its application in similar cases, which is conveyed in legal positions; it is a means of arguing (motivating) when considering similar cases.

Thus, the legal interpretation precedent (in particular, a judicial one) is a written act-document of the legal interpretation subject, which maintains uniform legal understanding thanks to a typical model of interpretation of norms or principles of law; provides similar law enforcement; is a model for solving similar cases.

Such a vision of a law-enforcement (and also legal interpretative) precedent promotes its effective use at any stage of argumentation in law-enforcement activities. However, law sources are highly demanded legal arguments in law enforcement.

As J. Bell states, the source of law, as an argument, is based on authority, since it appeals to its correctness for the collective decision, and the arguments of other subjects (lawyers, judges, scientists, etc.) are evaluated by relying on it (Bell, 2018. pp. 40–41).

At the same time, R. Alexy emphasized that the system of norms, which does not aspire (directly or indirectly) to be correct, is not legal, since the requirement for correctness is of classification importance. In addition, the argument of correctness is the ground for other arguments, in particular, the arguments of injustice and principles (Aleksi, 2011. 41–49).

R. Dvorkin also marked that no statement can be considered true if there is no procedure –at least, to show its correctness in such

a way that any intelligent person has to recognize it as true (Dvorkin, 2000. p. 16).

The analysis of law enforcement activity and its results and legal literature in terms of the grounds for law enforcement and argumentation during its implementation confirms the lack of requirements recorded in legislative or other official documents, both regarding argumentation as a whole and the formulation of an individual legal prescription and its objectification.

In the context of the short-term goal and objectives towards the stages of law enforcement and argumentation, it is worth noting that the basic legislative provisions are focused on completing the first-stage tasks. However, at this stage, a set of questions arise. Thus, in logic and jurisprudence, there is an opinion that all stages are characterized by deductive thinking of law enforcement subjects, which is aimed at creating a factual basis (small foundation) under the framework of legal construction, which will allow making an appropriate conclusion. At the same time, the analysis of law enforcement acts indicates the potential application of the logical techniques only at the first stage. As for the second stage, and partly the first, the "analogy of relations" is applied in both the operation of proving and refuting.

The legislation lacks the concept of an individual legal prescription, which should be based on an enforceable and logically and grammatically completed judgment (a formally binding rule of conduct for personalized subjects).

The structure of the law enforcement act meets formal requirements, but does not meet content-related ones, in particular, regarding the application of the necessary logical techniques, rules of argumentation and formulation of an individual legal prescription.

Legal arguments are basic in the process of law enforcement. The use of other arguments that could acquire legal significance is next to nothing (except for international legal practice and national practice of other legal systems). Such a practice of argumentation should be applied in Ukraine, in particular, in the activities of the Constitutional Court of Ukraine and the Supreme Court when drafting individual legal prescriptions and judicial law enforcement precedents. However, they are also obliged to justify the legal significance of the relevant provisions, even when using court decisions of other national legal systems or international courts.

The formulation of rules for the implementation of law enforcement activities and argumentation methodology would facilitate overcoming various deformations and drawing up high-quality legal acts (Luts, Nastasiak, Karmazina, Kovbasiuk, 2021. 233–243).

5. Conclusions

The above allows us to state that the theory of law enforcement needs to be specified, updated, and reconsidered in the context of modern realities. This applies, first of all, to the clarification of the nature and concept of law enforcement activity. It is characterized by the following main features: it is a kind of legal activity; it is carried out by authorized subjects following a regulated procedure; it consists of some main stages; it shall meet the basic requirements of lawfulness; its long-term goal is to ensure proper conditions for direct law enforcement, and the short-term one is to draw up an individual legal prescription and objectify it in a law enforcement act.

Thus, law enforcement activities are the actions of entities authorized to draft individual legal prescriptions and objectify them in law enforcement acts to ensure proper conditions for law enforcement. At the same time, attention should be paid to the fact that law enforcement activities are carried out not for own needs but to create proper conditions for direct law enforcement and ensuring the interests of participants in public relations. Hence, the law enforcement act, which becomes a legal fact for the emergence, change, and termination of legal relations, should be such as to fully ensure the interests of participants in public life.

The main stages of law-enforcement activity involve establishing the factual circumstances of the case and granting them legal significance; choosing and specifying the regulatory prescription to be applied; formulating an individual legal prescription and objectifying it in a law-enforcement act.

Law-enforcement acts are characterized by the following features: they are acts-documents (sometimes acts-actions); are drawn up by authorized subjects following a regulated procedure; have a written, oral or conclusive external form of expression and applicability; objectify an individual regulatory prescription in the appropriate legal form; focus on achieving legal consequences; regulate a specific life situation; are legal facts for the emergence, change, and termination of legal relations; are a necessary prerequisite for direct law enforcement.

Therefore, law enforcement acts are acts-documents (or acts-actions) drawn up by authorized subjects objectifying individual legal requirements aimed at achieving legal consequences and are a necessary prerequisite for direct law enforcement and ensuring the interests of participants in social relations.

There is a good deal of varieties of law enforcement acts under the classification cri-

teria and its purpose. However, the short-term goal of the activity on their adoption always includes the formulation of an individual legal prescription, which has the following features: it is a logically and grammatically completed judgment formed in the process of legal qualification; a formally binding rule of conduct for personalized entities; it shall correspond to the content of the legal order; it has established limits and direct effect; its validity is exhausted by the fact of application; it is objectified in the established legal form; its structure shall consist of a factual basis (legally relevant facts which are associated with the occurrence of legal consequences), a legal basis (assessment of the compliance of the actual circumstances with the content of a statutory prescription), a conclusion (the way to achieve legal consequences by exercising the rights and obligations of participants in public life and creating proper conditions for direct law enforcement).

Thus, an individual legal prescription is a formally binding rule of conduct for personalized entities, which is a logically and grammatically completed judgment that is formed in specifying a regulatory prescription regarding a life situation.

Such a vision requires the formalization of both content-related and formal technical and process requirements for law enforcement activities and law enforcement acts, in particular, individual legal prescriptions and their argumentation.

Juridical argumentation is an intellectual activity aimed at substantiating or refuting the truth of provisions using legal arguments to produce legal effects. It is related to a specific type of legal activity. However, under specific conditions, some types of legal activity require the application of not only legal but also other arguments (moral, ideological, political, etc.), which may become legal arguments in other life situations.

At the same time, juridical argumentation is carried out in compliance with the relevant rules for the formation of legal judgments, search and conveying of legal arguments to the addressees to obtain legal consequences.

It is important to identify the correlation between the concepts of "argumentation" and "proof", "argument" and "evidence". As you know, logical terminology acquires a certain specificity in legal science. Thus, arguing is usually designated by the term "proving".

The concept of "argumentation" is broader than the concept of "proving", and "argument" is broader than the concept of "proof", as well as the types of arguments are more diverse. In other words, any proving is argumentation, and proof is an argument, not vice versa.

Juridical argumentation complements the entire law enforcement process. The long-term goal – creation of proper conditions for direct law enforcement, as well as the short-term one – creation and objectification of an individual legal prescription, is essential for both law enforcement and argumentation. However, each stage has its own goals.

Therefore, the stage of establishing factual circumstances aims to substantiate or refute the legal significance of the facts associated with the occurrence of legal consequences. The tasks assisting in achieving the goal are as follows: proving the reliability and sufficiency of legally relevant facts and assessing them from the standpoint of probability, objective truth, and evidence verification.

In general, the legislation of Ukraine, including procedural, consolidates the basic requirements for both law enforcement and proving at the stage under consideration. However, the rules of use of other arguments and those that the legislator equated with evidence, involving the decisions of foreign or international courts, need to be specified and formalized. Although the foreign legal literature states that such arguments are not independent evidence, and their application requires additional justification.

The conclusion of a law expert should also be crucial, as it can contribute to expending the limits and scope of arguing. In addition, the court should assess the doctrinal provisions of such a conclusion and the option of its use as evidence. This will be the transference of law enforcement beyond juridical arguing into a wider space of legal argumentation. It is essential for the highest judicial authorities of Ukraine in the context of the development of law.

The second stage (selection and specification of the regulatory prescription) aims to assess the compliance of circumstances of the case with the content of the regulatory prescription, implement legal qualification, and establishing the basis for the occurrence of legal consequences. The main tasks of the stage are as follows: selection of the regulatory prescription and clarification of its content; assessment of the compliance of the actual circumstances of the case with the content of the regulatory prescription; identification of opportunities for the occurrence of legally relevant results provided by it; formulation of a logical judgment that conveys the compliance of the case's factual and legal basis; creation of a model of the individual regulatory prescription.

In the legislation of Ukraine, the formalization of law enforcement and arguing is somewhat limited to the issues of examining evi-

dence in the case, the implementation of legal qualification, and the issues of forming a model of logically and grammatically completed judgment, which will be the basis for the future individual regulatory prescription, are not covered.

The third stage aims to formulate an individual regulatory prescription and objectify it in a law enforcement act. The legislation of Ukraine, as a rule, fixes formal requirements for law enforcement acts: their types, legal form, and structural and essential parameters. But there are no content-related requirements for them, as well as formal ones for an individual regulatory prescription, namely: the rules of formulation and its argumentation, structural requirements; full fixation of a logical judgment in the operative part of the law enforcement act, not only of the conclusion, etc.

All the above leads to conclusions about the need to enshrine in law of the relevant provisions both on law enforcement and argumentation of law-enforcement acts, which would eliminate deformations, determine their significance for law enforcement in terms of reasoning, expand the limits of argumentation for some types of law enforcement activities due to those arguments, the legal significance of which should be ensured by law-enforcement entities.

However, this requires proper scientific analysis, which will contribute to avoiding divergence in the understanding of relevant legal phenomena; substitution of concepts; manipulation of methodological constructions, which are means of scientific knowledge in other sciences.

This would prevent the substitution of the concepts "regulatory precedent", "legal interpretation precedent", and "law enforcement precedent", which play an important role in the argumentation process when realizing any type of legal activity. In legal literature and practical activities, law-enforcement precedents are often identified with the sources of law that contradicts their legal nature. First of all, it is worth mentioning that in Ukraine neither the entity of legal interpretation nor the law-enforcement one is endowed with law-making powers, and thus cannot create sources of law, but can create law interpretative and law-enforcement precedents.

The following features are characteristic of a law-enforcement precedent: it is a written act-document; it is created by the subject authorized for law enforcement; it is aimed at ensuring uniform law enforcement; it allows eliminating law-enforcement deformations (collisions, gaps, differences in law enforcement); in terms of the individual legal prescription, which is objectified in the law-enforcement act, it consolidates a typical model (pattern) of law qualification, which focuses on solving a legal case and the occurrence of legal consequences; in the law-enforcement act, it enshrines the argumentation about the options of its application in similar cases; it is a means of arguing (reasoning) during the consideration of similar cases.

Consequently, the law-enforcement precedent is a written act-document of the law-enforcement entity, which ensures the uniform application of law using the uniform model of law qualification in a certain category of cases and is a pattern for solving similar cases.

Unlike the law-enforcement one, the legal interpretation precedent is a written act-document of an entity of legal interpretation, which provides the uniform legal understanding thanks to a typical model of interpretation of norms or principles of law, maintains similar law enforcement and is a model for solving similar cases.

The above and other provisions should contribute to the expansion of the scope and limits of legal argumentation, the transition to a broader concept of legal argumentation, and the formulation of high-quality law enforcement acts. However, these and other issues require in-depth scientific analysis and further interpretation both from the standpoint of branch legal sciences and practical activities and the general theory of law.

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АРГУМЕНТАЦІЯ У ПРАВОЗАСТОСОВНІЙ ДІЯЛЬНОСТІ

Анотація. Аналіз зарубіжної та вітчизняної літератури, джерел права та юридичної практики дав змогу констатувати, що в сучасних умовах теорія правозастосування потребує уточнення, а низка її положень – оновлення. ***Метою*** дослідження є виявлення закономірностей аргументації та об'єктивації результатів правозастосовної діяльності. Для досягнення мети розв'язані такі завдання: охарактеризовано правозастосовну діяльність, правозастосовні акти; індивідуально-правовий припис, юридичну аргументацію та її співвідношення з доказуванням; виявлено основні проблеми аргументації в правозастосовній діяльності та запропоновано способи їх розв'язання. ***Методи дослідження***. Підгрунтям цього дослідження є діяльнісний підхід, що дозволило охарактеризувати правозастосування та аргументацію як діяльність відповідних суб'єктів та уточнити поняття правозастосовної діяльності. Завдяки загальнотеоретичному методу було виявлено природу правозастосовної діяльності, її результатів – правозастосовних актів, їх первинного елементу – індивідуаль-

но-правового припису; сформульовано визначення їх понять. Соціологічна методологія (зокрема, аналіз документів) слугувала збиранню та вивченню емпіричних фактів, необхідних для загальнотеоретичного аналізу. Техніко-юридичний аналіз (зокрема юридичні конструкції) сприяв характеристиці процесу здійснення правозастосовної діяльності та аргументації. ***Результати.*** У статті вперше в Україні цілісно відображено процес об'єктивації результатів правозастосовної діяльності під кутом зору аргументації на основних її стадіях. ***Висновки***. Дослідження правозастосування дозволило охарактеризувати правозастосовну діяльність як дії уповноважених суб'єктів щодо створення та об'єктивації індивідуально-правових приписів у правозастосовних актах. Весь процес правозастосування супроводжує юридична аргументація, яка є ширшим поняттям, ніж доказування. Запропонована методика здійснення аргументації на кожній стадії правозастосовної діяльності. Виявлені проблеми здійснення правозастосовної діяльності та аргументації у вітчизняній практиці. Запропоновано сформувати правила правозастосовної діяльності та аргументації і закріпити їх у джерелах права України чи регламентарних актах. Це могло б сприяти розширенню сфер та меж юридичної аргументації, застосуванню більш ширшого поняття «правова аргументація» з використанням не лише юридичних, а й інших аргументів, яким суб'єкти правозастосування мають надати юридичної значимості; створенню якісних правозастосовних актів; створенню належних умов для безпосередньої реалізації прав та обов'язків учасників суспільного життя, розвитку права загалом.

Ключові слова: правозастосовна діяльність, правозастосовні акти, індивідуально-правовий припис, правозастосовний прецедент, юридична аргументація.

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