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ADMINISTRATIVE AND LEGAL FRAMEWORK FOR ORGANISATION AND FUNCTIONING OF LAW ENFORCEMENT AGENCIES: EUROPEAN EXPERIENCE AND NATIONAL SPECIFICITIES

Abstract. Purpose. The purpose of the article is to analyse the foreign experience of administrative and legal framework for the organisation and functioning of law enforcement agencies and the possibility of its adaptation to the national law enforcement system. **Results.** The effective operation of law enforcement bodies is extremely relevant and important for the state. Given certain problems in the functioning of law enforcement institutions, as well as the low level of effective exercise of powers by the relevant entities defined by law, it is particularly relevant to study foreign practice in this regard. Therefore, it seems appropriate to study the procedure for administrative and legal support of the organisation and functioning of law enforcement agencies in foreign countries. The experience of organisation and functioning of law enforcement agencies in France enables to identify the need for judicial police in Ukraine, which would be responsible for pre-trial investigation of criminal offences. Therefore, in case of creation and functioning of this institution in Ukraine, the pace of pre-trial investigation and court proceedings in criminal cases would be much faster. Germany's experience in the context of administrative and legal framework for the organisation and functioning of law enforcement agencies is useful in the context of establishing rules for the selection of and requirements for persons wishing to hold positions in law enforcement agencies. It should be noted that German legislation in this context is clear and does not allow for double interpretation. Therefore, Ukraine should analyse the experience of its foreign colleagues and make appropriate changes to its national legislation. **Conclusions.** It is concluded that in the course of transformation of state institutions and relevant processes to the standards existing abroad, one should have due regard to the level and standards of legal culture existing in Ukraine. It is the legal culture which is a factor and an indicator of the readiness of the legal system itself for relevant transformations and reforms. In addition, legal culture is a factor that undoubtedly affects the quality of reforms in a particular area. Therefore, when borrowing the experience of foreign countries within the administrative and legal framework for the organisation and operation of law enforcement agencies, it is appropriate to analyse not only the effectiveness of a particular procedure abroad, but also the readiness of Ukraine's legal culture to adopt it.

Key words: law enforcement agencies, state bodies, firearms, law enforcement functions, state policy, employee, legality.

1. Introduction

European integration processes have contributed to the transformation of the state apparatus and the reform of a whole range of public administrators. Both latent and high levels of crime among high-ranking officials raised the issue of the need for a new body for Ukraine, a body that would focus on investigating and solving crimes committed by persons vested with state power. The effective operation of law enforcement bodies is extremely relevant and important for the state. Given certain problems in the functioning

of law enforcement institutions, as well as the low level of effective exercise of powers by the relevant entities defined by law, it is particularly relevant to study foreign practice in this regard. Therefore, it seems appropriate to study the procedure for administrative and legal support of the organisation and functioning of law enforcement agencies in foreign countries.

2. Definitions of 'law enforcement agency' and 'law enforcement body'

Primarily, it should be noted that within the legal doctrine there is no definition of the legal category 'law enforcement

agency', since scholars pay special attention to the analysis of the concept of 'law enforcement body', which, in their opinion, should be identified with the category mentioned above. Therefore, within the legal doctrine, there are differentiated approaches to defining the essence of this concept. Therefore, we propose to focus on the main approaches that have found justification and support within the legal community. First of all, it should be noted that according to P. Khamula, law enforcement bodies are 'bodies for which the law enforcement function is the main one, they exercise powers aimed at protecting human rights and freedoms and maintaining law and order, are endowed with state powers, in particular, have the right to legally use coercion, which determines the peculiarities of their status, imposes special requirements on employees of these bodies in terms of professional training, psychological and moral qualities' (Khamula, 2016, p. 16).

We believe that the definition proposed above is a good one. However, it can be supplemented and at the same time detailed by identifying a number of features that characterise law enforcement agencies. Thus, we can establish that law enforcement agencies are characterised by the following features:

- The main function of a law enforcement agency, implemented through the powers of a law enforcement agency, is law enforcement, that is, maintaining and ensuring law and order in society in general, and ensuring the observance and exercise of human rights and freedoms, in particular;

- law enforcement agencies include paramilitary units and are empowered to use legal coercion against offenders;

The law establishes specific features of personnel, social and economic support of law enforcement officers.

In addition, law enforcement agencies have been studied in the works by V. Boniak, who studied the content of the legal category under review and decided to analyse it through the prism of correlation with related legal categories. The researcher argues that since law enforcement bodies of Ukraine are law enforcement agencies, and law enforcement agencies are state bodies, they have the same essential features as the above categories. At the same time, among these features, the scientist distinguishes the following features: the presence of armed units; the right of employees to use legal coercion (including firearms); they are entrusted by law with the performance of the law enforcement function, which is the main and everyday function (the activities of the law enforcement body of Ukraine are aimed at implementing

public policy on the protection of human rights, freedoms and legitimate interests, ensuring law and order in society) (Boniak, 2015, p. 86). Therefore, the author proposes to consider the category of law enforcement agency through the prism of the legal concepts of 'law enforcement agency' and 'law enforcement body', which is rather rational, given the similarity of these legal categories and their certain identity.

Therefore, the analysis of the doctrinal approaches to understanding the category of 'law enforcement agency' and the identification of the features that the latter should meet, enables to provide a definition of what should be understood as the legal category of law enforcement agency. Therefore, a law enforcement agency is a law enforcement body whose activities are aimed at implementing the law enforcement function by using legal coercion, if necessary, to maintain law and order in society and ensure the exercise of human and civil rights and freedoms, and whose employees are provided with special social and material guarantees.

With regard to administrative and legal framework for the organisation and functioning of law enforcement agencies, it should be noted that this legal framework is a process of streamlining social relations through the functioning of an integral mechanism, which consists of the relevant administrative law provisions, administrative law principles, methods of interpreting administrative regulations, administrative legal relations, and acts of implementing administrative law provisions. Analysis of the content of the procedure (mechanism) for administrative and legal framework for law enforcement agencies reveals that the relevant mechanism can be considered as an important part of ensuring the efficiency and effectiveness of the relevant institutions. Therefore, given a number of problematic aspects in the context of law enforcement in Ukraine today and the European integration processes underway in the state mechanism, it is appropriate to consider the foreign experience of administrative and legal support for the organisation and functioning of law enforcement agencies.

To begin with, it should be noted that law enforcement agencies in foreign countries have differentiated names. Therefore, it is impossible to formulate a certain consistency within this aspect. Moreover, similar names – police, guards, gendarmerie, constables, marshals, sheriffs – in different countries can be associated with different law enforcement functions (Miedviediev, 2014, p. 143). Therefore,

the analysis of each law enforcement agency should be comprehensive and multidimensional. It should also be noted that the system of law enforcement agencies in Europe is characterised by a number of features that are common to all law enforcement agencies of foreign European institutions. These features are as follows:

- Branched and diverse police systems, the presence of police agencies in different ministries and departments, and their independence from each other;

- Division of police structures by sources of funding into state (federal), municipal (local government), and private (firms, concerns, syndicates, etc.) with close cooperation between them;

- Social orientation of police work, which is primarily focused on protecting the rights and freedoms of citizens;

- High professionalism of the police, which is achieved not only through in-depth professional training in specialised police educational institutions;

- Nonpartisanship in the work of the police, which imposes certain restrictions on the manifestation of political and party beliefs, ensures impartiality in the work of police officers, awareness and belief that the police serve the people and the state, not individual parties, clans or groups;

- Active work of voluntary associations aimed at supporting and assisting the police;

- Openness, publicity, constant appeal to public opinion in solving difficult situations arising in law enforcement practice ensure the police trust and support of the population (Subbot, 2014).

3. Functioning of law enforcement agencies of the Federal Republic of Germany

Given that Ukraine belongs to the Romano-Germanic legal system, it seems appropriate to begin our consideration of the issues we have chosen with an analysis of the Federal Republic of Germany. First of all, it should be noted that the law enforcement system of Germany can be considered a two-tier system, which is divided into the law enforcement system of the federation and the law enforcement system of the federal states, respectively. The main law enforcement agency in Germany is the police, which is vested with a number of powers. It should be noted that today the main act establishing the basic principles of police organisation and activity is the 'Model Draft Unanimous Police Law (Law on Police)', adopted by the Conference of Ministers of the Interior of the Länder in 1975. According to this legal act, the German police consists of the Federal Criminal Police; the National Police; the Federal Border Police; and the Federal Office for the Protection

of the Constitution. The structure of the police is built in accordance with the federal structure of Germany and its administrative and territorial division. For example, the Federal Police includes the Federal Border Guard, the German Bundestag Police Service, the Federal Criminal Police Office (Grundgesetz für die Bundesrepublik Deutschland, 1949). It should be noted that the Federal Criminal Police Office plays a key role in the context of ensuring law and order in society. It should be emphasised that the Federal Criminal Police Office (Bundeskriminalamt) is the central body responsible for coordinating the actions of federal and state structures on all matters related to police activities, in addition, it acts as the main intelligence agency and repository of information on the activities of the German police and is the founder of the National Central Bureau of the International Criminal Police Organisation (Interpol) of the Federal Republic of Germany (Raevskiy, Parkhomenko, 2021). It should be noted that the Federal Criminal Police Office of Germany was created on the basis of the US experience. Therefore, the administrative and legal status of the latter, as well as the specific features of its organisation and activities, are very similar to those of the US FBI. In sum, the police in Germany is differentiated according to the internal and external areas of its activity, that is, it can be considered to consist of a number of institutions that perform differentiated powers, but are united in a single system. In addition to the structure, it should be noted that one of the constituent elements of administrative and legal support for the organisation and functioning of the police in Germany is the principles on the basis of which the institution under analysis functions. The main purpose of police activity in a modern democratic society was formulated by a well-known German law enforcement expert Schulte, who, based on the analysis of a wide range of regulations, identifies the following basic principles of police activities (Schulte, 1996, p. 10). First, the scholar notes the need to comply with the principle of efficiency, which means that the police should not only ensure law and order in the event of an offence, but also take a number of preventive measures aimed at preventing the commission of unlawful acts. Second, the activities shall be in line with the law. German legislation is clear, it sets out the rules for the activities of German officials and employees in the most common situations, thus minimising the situation of administrative discretion, which, if it arises, is resolved on the basis of the principle of the greatest benefit to the individual. Third, in exercising its powers, the police shall adhere to the principle

of transparency. Moreover, transparency in the context of police activities in Germany is mostly considered in the context of civic transparency, which means that the activities of law enforcement agencies should be as open as possible to the public. To sum up, the activities of the police in Germany shall be subject to a number of principles designed to ensure the effectiveness of the latter. As for the functions entrusted to the police in Germany, it should be noted that the latter is responsible for the following functions: ensuring public order and security on the territory of the state and on its borders; detection and investigation of crimes; support of internal security; prevention of crime; promotion of legal knowledge among the population and security measures; protection and assistance to the population in emergency situations (natural disasters, catastrophes, military operations); participation in civil defence measures (Zommermann, 1999, p. 123). Therefore, police structures in Germany perform the classic functions of this institution, which have been interpreted above. In addition to the functions and principles of operation, the administrative and legal framework for the organisation and functioning of the police in Germany can be analysed from the perspective of the requirements for persons wishing to serve in the German police, which are set in accordance with German law and based on special selection rules. Training is provided at regional training centres and at the Federal Police Academy. Applicants for training shall be citizens of Germany or one of the European Union countries, have no criminal record, no tattoos or piercings on visible parts of the body, and shall have a swimming certificate and a category B driver's licence. Otherwise, the future police officer undertakes to obtain them by the end of the training period (Guidelines for the Selection and Selection of Bewerberinnen and Bewerber nach § 12 BPolLV for the Mittelren Polizeivollzugsdienst in der Bundespolizei, 2007). Furthermore, Germany provides for the so-called standards to be met by the knowledge of persons holding police positions. This knowledge is called competences and can be divided into three types, such as professional competences, special competences and methodological competences. The professional competences of future police officers have been identified as follows: professional knowledge, skills and abilities; didactic and methodological knowledge, skills and abilities; knowledge, skills and abilities required for recording protocols, examining the scene of an incident; ability to handle a case from the beginning to the moment of its transfer to the court and understanding the degree

of personal responsibility for it; ability to give clear orders and ensure their implementation; conduct interviews and interrogations; competent response to requests from other departments or bodies, making appropriate decisions; performance of duties of the head in case of his/her temporary absence; ability to manage a small unit, such as a department or group; ability to communicate with foreigners in English during daily duties and in special situations (participation in missions abroad). Special competencies and qualities include communication skills, ability to get to the heart of the matter, tolerance, respect for others, ability to cooperate, conflict resolution, teamwork, leadership skills, ability to lead employees, high intellectual development, and ability to behave in accordance with generally accepted ethical principles and beliefs. Methodological competences referred to the following: the ability to effectively organise work, rationally allocate time, reasonably apply stress management techniques, the ability to learn, correctly apply the methodology of presenting information, conducting a class (Diplomstudiengang (Diplomverwaltungswirt). Modulhandbuch, 2010).

Therefore, in Germany, a special system of functioning of the police as a law enforcement agency exists, which is indirectly determined by the specific features of administrative and legal framework for the activities, organisation and functioning of this institution.

4. Functioning of law enforcement agencies in France

In addition to the experience of Germany, the experience of France in the context of the organisation and functioning of law enforcement institutions, in particular the police, is also worth considering, given that this institution is one of the oldest. We can establish that law enforcement agencies in France can be analysed from the perspective of a number of features, such as:

- First, law enforcement agencies in France are part of the executive branch of government;
- Second, the law enforcement agencies in France are structurally divided into subdivisions, including national police, municipal police, and gendarmerie;
- Third, the law enforcement system in France is characterised by detailed regulatory framework both at the level of laws and bylaws.

Considering the above features, it should be noted that today the French law enforcement system has moved away from the approach established over a long period of time, according to which it was considered centralised and hierarchical. Nowadays, using a modern approach to the construction

and functioning of the law enforcement system, including the system of law enforcement agencies, the police in France is characterised by a combination of centralisation and decentralisation. It should be noted that the French law enforcement system is quite unusual when compared to existing global trends and standards (Dammer, 2013, p. 106). Therefore, for a complete and detailed analysis of the administrative and legal framework for the organisation and functioning of law enforcement agencies in France, it seems appropriate to study the specifics of each of them. Analysis of the National Gendarmerie in France reveals that it is a specialised law enforcement institution empowered to ensure law and order in the context of crimes against national security. In particular, the Gendarmerie is entitled to prevent and eliminate crimes such as terrorism, hostage-taking, prison riots, as well as crimes on air and sea transport and crimes committed by or against high-ranking officials. Further analysing the French National Gendarmerie, it is important to note that according to French law, the gendarmerie also performs law enforcement functions in rural areas with a population of less than 10,000 people (Terrill, 2009, p. 139). With regard to the selection procedure and criteria for persons wishing to hold positions in this structural unit, it should be established that, in addition to professional and moral qualities, the relevant candidates shall meet the appropriate level of physical fitness. Therefore, the analysis of the National Gendarmerie of France enables to establish that this institution is characterised by a broad and somewhat dispersed scope of powers, which does not diminish its importance in the system of state and law enforcement apparatus of France. In addition to the National Gendarmerie, France also has the National Police, whose powers are more general than those of the institutions analysed above. Moreover, the French legislation is structured in such a way as to ensure a clear delineation of powers of the above institutions. For example, the National Police in France is authorised to ensure law and order in cities, on the roads, and to investigate administrative offences and crimes. A special institution of the French law enforcement system is the municipal police. It should be noted that the existence of this institution makes the law enforcement system of France unique. An interesting fact is that the municipal police in this country is created and operates in accordance with national laws, and special powers are granted to this organisation by local mayors (Terrill, 2009, p. 141). Therefore, the powers of the municipal police in France

are differentiated in each city, however, it can be established that most often this institution is vested with the authority to patrol the streets, regulate traffic, but in no case has the authority to prosecute and investigate criminal offences. On the other hand, it should be noted that the municipal police is quite extensive in terms of its structure. The municipal police system includes: first, the traffic police, tasked with ensuring road safety and regulating the continuity and safety of traffic on the roads; second, the spectacle police, which is designed to ensure the safety of citizens during public events; third, the police of buildings, whose main task is to intervene to prevent danger if a building in danger of collapse is located near a road or square and threatens passers-by and persons; fourth, the fire prevention police, which is authorised to prevent, prevent and provide necessary assistance in accidents and disasters related to fires) (The Serious Organized Crime Agency, 2020).

Therefore, the police in France has a number of specific features in terms of both its structure and functioning that can be undoubtedly adopted by Ukraine.

The analysis of the experience of administrative and legal framework for the organisation and functioning of law enforcement agencies and police in European countries provides an opportunity to formulate proposals for the adaptation of international institutions and specific aspects of their functioning to the national law enforcement system.

First, it should be noted that in all of the countries analysed above, the principle of 'presumption of correctness' of the police officer exists at the legislative level and is applied in practice. This principle is an integral part of the functioning of law enforcement agencies in foreign countries. However, in Ukraine, there are still discussions about the appropriateness of providing for the latter at the legislative level. Given the importance of this principle, it seems appropriate to focus on a detailed analysis of the latter. According to the academic dictionary, 'presumption' in the legal sense means an assumption of the existence of a certain fact enshrined in law, the reality of which is considered true and does not require proof, and 'rightness' means the correctness of thoughts, judgements, deeds, actions (Dictionary of the Ukrainian language, 1970). Therefore, based on the analysis of basic legal categories, we can establish that the presumption of police officers' rightness is a basic legal principle of law enforcement agencies, the essence of which is that the actions of a police officer are known to be lawful, that

is, in accordance with the law. However, the presumption of rightness of a police officer should not be equated with the legally established arbitrariness of law enforcement agencies, since the former is intended to ensure that the lawful actions of a police officer are undoubtedly lawful. In addition, today the legal doctrine establishes a provision on the conflict between the principle of innocence of a citizen and the principle of presumption of rightness of a police officer. However, in our opinion, the provision on the conflict of these principles is largely debatable, due to the specific vectors of implementation of these legal provisions. Therefore, we will assume that the implementation of these legal principles in practice should not affect each other. In this regard, it seems appropriate to supplement domestic legislation with the principle of presumption of rightness of a police officer.

Second, the analysis of the French experience enables to identify the need for creation of municipal police in Ukraine. We can agree with V. Orlov that in case of introduction of the municipal police in Ukraine, it should consist of civilians – municipal employees. The latter should be financed from the respective local budgets, and the municipal police should be accountable to the respective territorial communities (Orlov, 2013, pp. 442–447). In our opinion, the introduction of this institution in Ukraine is of particular relevance today, as the activities of municipal police should relieve the internal affairs bodies of the large amount of powers they currently have, thus increasing the efficiency of the law enforcement system.

Third, the experience of organisation and functioning of law enforcement agencies in France enables to identify the need for judicial police in Ukraine, which would carry out pre-trial investigation of criminal offences. Therefore, in case of creation and functioning of this institution in Ukraine, the pace of pre-trial investigation and court proceedings in criminal cases would be much faster.

Forth, Germany's experience in the context of administrative and legal framework for the organisation and functioning of law enforcement agencies is useful in the context of establishing rules for the selection of and requirements for persons wishing to hold positions in law enforcement agencies. It should be noted that German legislation in this context is clear and does not allow for double interpretation. Therefore, Ukraine should analyse the experience of its foreign colleagues and make appropriate changes to its national legislation.

Fifthly, the activities of all law enforcement agencies without exception should be

effective and meet the requirements of civil society. Despite the principle of effectiveness enshrined in national legislation, which should be implemented within the framework of the activities of the relevant institutions, this criterion remains one of the most vague and difficult to assess. Therefore, it seems appropriate to use the experience of the United States, since this country has developed and successfully uses the Compstat system for assessing the effectiveness of law enforcement agencies, which, in our opinion, can and should be adopted by Ukraine.

Moreover, before making any foreign borrowings, it is advisable to remember that the process of borrowing foreign experience can be divided into several stages:

- 1) Collect information on the experience of a particular state or group of states;
- 2) Analyse in order to identify the positive and negative aspects of a particular model used in another country (countries);
- 3) Determine the degree of acceptability of such a model for Ukraine;
- 4) Develop scientific principles and methodological recommendations for the implementation of such experience in Ukraine;
- 5) Implement the model in practice with constant scientific support and monitoring of the state of 'taking root' of innovations in the domestic field;
- 6) Adjust plans and programmes (Kobzar, 2015, p. 48).

5. Conclusions

In our opinion, in the course of transformation of state institutions and relevant processes to the standards existing abroad, one should have due regard to the level and standards of legal culture existing in Ukraine. It is the legal culture which is a factor and an indicator of the readiness of the legal system itself for relevant transformations and reforms. In addition, legal culture is a factor that undoubtedly affects the quality of reforms in a particular area. Therefore, when borrowing the experience of foreign countries within the administrative and legal framework for the organisation and operation of law enforcement agencies, it is appropriate to analyse not only the effectiveness of a particular procedure abroad, but also the readiness of Ukraine's legal culture to adopt it.

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АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ОРГАНІЗАЦІЇ ТА ФУНКЦІОНУВАННЯ ОРГАНІВ ПРАВОПОРЯДКУ: ЄВРОПЕЙСЬКИЙ ДОСВІД ТА НАЦІОНАЛЬНІ ОСОБЛИВОСТІ

Анотація. Мета. Метою статті аналіз зарубіжного досвіду адміністративно-правового забезпечення організації та функціонування органів правопорядку та можливості його адаптації до національної правоохоронної системи. **Результати.** Ефективна діяльність правоохоронних органів є вкрай актуальною та важливою для держави. Враховуючи певну проблематику функціонування правоохоронних інституцій, а також невисокий рівень ефективності реалізації відповідними суб'єктами повноважень, визначених законодавством, на сьогодні, особливо актуальним видається дослідження зарубіжної практики у даному аспекті. Відтак, доречним видається дослідження процедури адміністративно-правового забезпечення організації та функціонування органів правопорядку у зарубіжних державах. Досвід організації та функціонування органів правопорядку у Франції надає можливість встановити необхідність створення в Україні судової поліції, котра б здійснювала досудове розслідування кримінальних правопорушень. Відтак, у разі створення та функціонування даної інституції в Україні темп здійснення досудового розслідування та судового провадження по кримінальних справах став би набагато швидшим. Досвід Німеччини у контексті адміністратив-

но-правового забезпечення організації та функціонування органів правопорядку є корисним у контексті встановлення правил добору та вимог до осіб, які мають бажання займати посади в правоохоронних органах. Можемо відзначити, що законодавство Німеччини у даному контексті є чітким та таким, що не передбачає подвійного тлумачення. Відтак, Україні слід проаналізувати досвід іноземних колег та внести відповідні зміни до національного законодавства. **Висновки.** Зроблено висновок, що при трансформації державницьких інституцій та відповідних процесів, до стандартів, що існують закордоном, необхідним видається враховувати рівень та стандарти правової культури, які існують в Україні. Саме правова культура є чинником та показником готовності самої правової системи до відповідних трансформацій та реформування. Окрім того, правова культура є чинником, котрий безперечно впливає на якість реформування тої чи іншої сфери. Відтак, при проведенні запозичення досвіду іноземних держав у межах адміністративно-правового забезпечення організації та діяльності органів правопорядку доречно аналізувати не лише ефективність тієї чи іншої процедури закордоном, але і готовність правової культури України, до її прийняття.

Ключові слова: правоохоронні органи, державні органи, вогнепальна зброя, правоохоронні функції, державна політика, службовець, законність.