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## DEFINITION OF THE ESSENCE AND STRUCTURE OF THE LAW ENFORCEMENT SYSTEM

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### SUMMARY

The condition of scientific development of the problem of functioning of the law enforcement system is considered in the article. A number of scientific approaches to understanding and interpreting the concept of the law enforcement system are investigated. Taking into account the opinions expressed in the modern scientific literature about law enforcement system its features and structural elements are indicated.

**Key words:** system, law enforcement bodies, law enforcement activity, human rights activity.

### ОПРЕДЕЛЕНИЕ СУЩНОСТИ И СТРУКТУРЫ ПРАВООХРАНИТЕЛЬНОЙ СИСТЕМЫ

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### АННОТАЦИЯ

Статья посвящена исследованию состояния научной разработки проблем относительно функционирования правоохранительной системы. Изучены имеющиеся в юридической науке подходы к пониманию и толкованию понятия «правоохранительная система». С учетом высказанных в современной научной литературе мнений относительно правоохранительной системы указаны ее особенности и структурные элементы.

**Ключевые слова:** система, правоохранительные органы, правоохранительная деятельность, правозащитная деятельность.

An analysis of the scientific literature in the field of law shows that a range of law enforcement issues have already formed in jurisprudence. However, today, there is no basis for claiming that research in this area is out of date. On the contrary, without further specialized and basic research into law enforcement theory, it is not possible to overcome the problems and contradictions in law enforcement practice.

One of the urgent scientific and practical tasks has been and remains the formation of an effective law enforcement system in modern Ukraine. In theoretical terms, its solution involves, first of all, the development and refinement of the appropriate categorical apparatus, the analysis of structural and functional features of the law enforcement system, the identification of its natural relations with other elements of the political and legal system of modern society and the state.

In view of the above, the purpose of the article is to conduct a theoretical analysis of the concept of “law enforcement system”, to clarify the nature and definition of the content of this concept, the disclosure of its structural elements and highlight the main features.

Most of the scientific approaches to the law enforcement system can be divid-

ed into two groups: the first are the views of researchers who view the law enforcement system as a collection of bodies which carry out law enforcement activities, the second, researchers who consider the law enforcement system as a complex phenomenon that structurally includes other elements alongside law enforcement agencies, with law enforcement and other elements.

Representative of the first approach S.V. Tereshko in his work “Current problems and directions of reforming the law enforcement bodies of Ukraine” repeatedly uses the concept of “law enforcement system”, but its definition does not provide, while the scientist emphasizes the need to improve the system of law enforcement bodies of Ukraine [1]. Consonant abovementioned is the position of V.P. Pivnenko, who refers the court to the state law enforcement bodies in his work, as well as other state bodies that created specifically to support the rule of law in Ukraine. The researcher does not provide the author’s definition of the law enforcement system, but characterizes it as a system of law enforcement bodies, which are spread throughout all branches of state power, and emphasizes that it should not be identified with criminal justice [2, p. 39–42]. O.I. Hizhak [3], O.O. Kotlyanets, O.D. Markeeva [4],

O.K. Mikheyeva [5], M.M. Saturina [6] and other scientists have similar positions about understanding of law enforcement system in their research.

Therefore, it can be stated that the first approach is a complete identification of the concepts of “law enforcement bodies” and “law enforcement system”, with which agree fully impossible, because to use these concepts as identical is not entirely correct from a methodological point of view. This is confirmed by the development of scientists who follow to the second approach.

A.G. Bratko describes the conception of the law enforcement system as a broader concept than system of law enforcement bodies. The scientist notes that the law enforcement system includes not only special law enforcement bodies, but also other law enforcement agencies, as well as legal means and methods of legal protection and legal norms [7, p. 48]. It should be noted that given the diverse social relations that arise in the law enforcement field, it is more appropriate to analyze legal norms (as the regulatory subsystem of the law enforcement system) not only as protective but also regulatory norms – as they act as the legal basis for law enforcement bodies and their enforcement activities.



V.N. Kartashov agrees with the opinion about law enforcement system as a complex organized phenomenon, that emphasizes in the proposed by him definition of the law enforcement system: the law enforcement system should be understood as a single complex of connected governmental and non-governmental organizations and individuals (human rights defenders) and legal phenomena (law, justice, legal culture, various types of legal practice, etc.), by means of which the protection (protection) of rights and legitimate interests of citizens and their associations is efficiently and efficiently implemented [8, p. 12].

T.A. Plugatar combines the proposed elements of the law enforcement system, and notes that the law enforcement system is a holistic complex of delimited, interconnected and interacting elements, which form a certain unity based on relevant principles and norms. Protective legal norms, purpose, principles, functions, tasks, subjects, objects of law enforcement, law enforcement activities, as well as law enforcement relations are the main components of the law enforcement system [9, p. 26].

In our opinion A.L. Sokolenko's approach is a very successful; she defines the law enforcement system as a social system that reflects the unity and interconnectedness of legal regulation in the field of law enforcement, the organization of a system of law enforcement bodies and other law enforcement bodies, and the law enforcement activity itself, aimed at protecting and defending the foundations of the constitutional order. including the rights, freedoms and legitimate interests of the individual and the citizen, law and order. A.L. Sokolenko notes that the system of law enforcement bodies is a subsystem of the institutional system of law enforcement activity, which is a subsystem of the law enforcement system, which in turn is a subsystem in relation to the system of higher order – the legal system.

The researcher indicates that the system of law enforcement bodies primarily reflects the institutional aspect of law enforcement activity, the functioning and existence of which is impossible outside of other elements of the organization of law enforcement, including normative and legal support for the construction of a system of such law enforcement bodies and their implementation of relevant law enforcement activities. As only the unity and coherence of the legal regulation of public relations in the field

of law enforcement, the organization of law enforcement bodies and their law enforcement activities in a legal, social and democratic state can be considered as the only acceptable way of organizing law enforcement [10, p. 92, 95–96].

Thus, representatives of the second approach reach a common conclusion regarding the law enforcement system. They point out that this concept cannot be disclosed solely through the system of law enforcement bodies, but should be characterized from a broad-based perspective as a multidimensional complex phenomenon. In our opinion, we should agree with this position. It should also be noted that a deficit of researches into the scientific background of the law enforcement system, both in the writings of domestic scientists and in foreign scientific sources, requires further thorough analysis and generalization of the available approaches. Such a need is conditioned by the qualities of the law enforcement system as internally heterogeneous, complex formation.

Therefore, we can conclude that the law enforcement system is a totality of elements that closely interconnected, interacting and forming certain integrity that is based on appropriate principles. Institutional and normative subsystems should be considered as its main components. Objects of law enforcement influence and law enforcement bodies whose main task is law enforcement activity form the institutional Subsystem. The regulatory subsystem consists of legal principles and norms that regulate relations between law enforcement subjects; they find expression in normative acts that regulate law enforcement activity. It is absolutely necessary to emphasize on the principles that include: scientific; systemic; publicity; democracy; legality; equality of all before the law; justice and morality; prioritizing the interests of the individual over the interests of the state; the activities of law enforcement bodies only on the basis and within the powers, as well as in the method provided by the Constitution and laws of Ukraine, etc.

It is possible to formulate the concept of law enforcement system, which reveals its essence that based on the above analysis of existing scientific approaches to understanding the law enforcement system, namely: law enforcement system is a multilevel social system that exists in the state and unites the bodies and institutions that are based on and within the limits

of legal norms carry out law enforcement and human rights activities for the purpose of ensuring the legality in the state.

The law enforcement system has a complicated, complex nature. This feature is also noted by almost all authors who have investigated the law enforcement system. However, there is no consensus in the scientific literature about concrete understanding of the structure of this system, its elemental composition. However, there is no unity in understanding the structure of the legal system, which has received much more groundbreaking research for today.

The study of the organizational and legal foundations of the functioning of the law enforcement system requires the need to determine its structure. The structure reflects the ordering of the internal and external relationships of the object, ensuring its stability, constancy, qualitative certainty. Structural interconnections of all kinds permeate all processes occurring in system objects. An object acts as a system if it can be divided into interacting and interrelated elements or parts. These parts usually have their own structure and can therefore be represented as a subsystem of a larger, original system. The subsystems that distinguished in such way may be divided into interconnected subsystems of the second and subsequent levels. With regard to the law enforcement system, this means, first of all, the identification of the criterion by which such separation can be made. It should be noted that the opinions on this matter is differed greatly. In M. A. Buganova's opinion, the construction of the law enforcement system consists of two components: a) normative subsystem which consists of security standards which is primary to b) institutional subsystem, law enforcement activities of relevant organizations and bodies [12, p. 18]. This approach is a consequence of M.A. Buganova's approach to the law enforcement system as an element of the legal system. However, it should be noted that this approach does not include law enforcement bodies in the structure of the law enforcement system. Turning to the definitions of the law enforcement system that contained in scientific sources, it can be concluded that the presence of specially authorized state bodies is an integral part of the law enforcement system. So, A. F. Skakun interprets the legal system as a complex of coherent and interdependent legal means intended to regulate public relations and legal phenomena arising from such regulation (legal principles, legal norms,



legal relations, legal culture, legislation, legal consciousness, legal technique, legal institutions, law and order, the state of lawfulness and the state of its deformation, etc.) [13, p. 237]. This is a point of view is widespread in educational and scientific literature and requires no further justification. Therefore, if the structure of the law enforcement system is deprived of such an element as law enforcement agencies (when this system consists only of law enforcement activity and legal norms) it gives the false impression that this activity is carried out by itself and for its implementation it is only necessary to adopt the relevant legal norm.

Law enforcement system, like any system can be seen as a totality of other systems. Thus, in our opinion, the structure of the law enforcement system, as a stable unity of its elements, as well as their relationships and integrity, can be represented as the following subsystems: a) the normative and legal subsystem acts as a totality of different rules of law and other means of regulating the relationships between law enforcement subjects (morals, customs, historical and national traditions, laws, constitution); b) an institutional subsystem consists of law enforcement bodies that specially created and authorized by the state to carry out a law enforcement function in its narrow sense, and this activity is the sole or dominant one for this bodies; c) functional-practical subsystem combines ways of carrying out law enforcement activities to ensure the observance of freedoms and rights of citizens, their implementation, law and order, as well as a variety of legal practice that representing the activities of law enforcement subjects, taken in unison with the accumulated social and legal experience; d) the communication subsystem is a totality of principles of interaction and relations that are formed both within the law enforcement system itself and between its subsystems. Other elements are included in the structure of the law enforcement system with those that listed above also, for example, objects and purpose of the law enforcement system, law enforcement relations, etc. However, despite the fact that these categories occupy a really important place in the organization and functioning of the law enforcement system, in our view, they cannot be considered separately outside the context of regulatory, institutional, functional and communicative subsystems. Although these categories occupy

a really important place in the organization and operation of the law enforcement system, in our view, they cannot be considered separately outside the context of regulatory, institutional, functional and communicative subsystems.

We can define parts of law enforcement system considering dominant in the modern theoretical and legal science of the imagination and our definition of it and the structure of its subsystems, which, in our view, can be represented by the following interrelated and interacting elements:

1. Law enforcement ideology. This phenomenon acts as the ideological basis of the law enforcement system and concentrates the dominant ideas, opinions, theories, doctrines on the essence, goals, principles, ideals, human rights remedies, evaluating the effectiveness of law enforcement, the prospects for its development and so on.

2. Law enforcement politics is another important component of the law enforcement system. Unfortunately, this phenomenon is not distinguished as an independent in the majority of works that devoted to the law enforcement system. In our opinion, it indicates a certain underestimation of the importance of the scientific community. Meanwhile, law enforcement politics determines the official course of the state in the sphere of protection of the rights and freedoms of the individual, shapes its strategy and tactics and thus sets the general orientation in the activity of the entire state human rights mechanism.

3. Law enforcement institutions (organizations) are a system of governmental and non-governmental bodies, institutions, organizations that perform the functions of freedoms and rights protection of the individual. Currently, a multi-level system of legal protection of freedoms and rights of citizens is formed in society, a sufficiently developed infrastructure of government bodies and officials, non-governmental organizations and bodies empowered to protect human rights are established and functioning.

4. Law enforcement norms and legislation are the normative basis of the law enforcement system. We refer to both the initial rules (norms-principles of the norm-purpose, etc.) that determine the starting point in the field of law enforcement, as well as norms of direct action, capable of fixing the specific rights and duties of participants in law enforcement relations, condi-

tions of their occurrence, measures of legal responsibility, etc., which have been formally and legally enshrined in the Constitution of Ukraine, relevant international legal acts, national legislation and other sources of law.

5. Law enforcement relations are social relations that governed by the rules of law enforcement law, participants of which are endowed with mutual subjective rights and responsibilities. The peculiar types of legal relations that arise in the field of the realization of the right to legal protection are talking about. Subjects of the right to legal protection (holders of all generations of human rights), on the one hand, and, on the other, individuals and organizations, obliged to respect human rights and freedoms and to ensure their legal protection are the participants in these relations. Law enforcement relations are a broad integrative category that includes all legal relationships that take place or are made in the law enforcement field including legal relations regarding the organization and functioning of the law enforcement system.

6. Law enforcement practice is a type of legal practice and it is the activities of subjects of law enforcement relations that is taken in unity with the accumulated social and legal experience. Based on the proposed definition, we can distinguish, for example, the practice of self-defense of the right (i.e., the practice of exercising the subjective right of the individual to carry out independent actions to protect their rights and freedoms); judicial law enforcement practice (interpretation and law enforcement); prosecutorial law enforcement practice; law enforcement practice of advocacy and other varieties.

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## ДОСТАТОЧНОСТЬ ДОКАЗАТЕЛЬСТВ КАК УСЛОВИЕ ОБЕСПЕЧЕНИЯ ОБОСНОВАННОСТИ СУДЕБНЫХ РЕШЕНИЙ В УГОЛОВНОМ ПРОЦЕССЕ УКРАИНЫ

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#### АННОТАЦИЯ

Статья посвящена исследованию достаточности доказательств как необходимого условия обеспечения обоснованности окончательных судебных решений в уголовном процессе Украины. Раскрывается совокупность признаков, характеризующих обоснованность судебного решения, и определяется ее понятие. Характеризуется содержание достаточности доказательств в контексте постановления обвинительного и оправдательного приговора, определения о применении принудительных мер воспитательного или медицинского характера, определения о прекращении уголовного производства и освобождении лица от уголовной ответственности, определения о прекращении уголовного производства. Определяется содержание обоснованности каждого из указанных судебных решений с учетом требований к достаточности доказательств, необходимых для его постановления.

**Ключевые слова:** достаточность доказательств, оценка доказательств, судебные решения, суд первой инстанции, уголовный процесс.

## THE SUFFICIENCY OF EVIDENCES AS A CONDITION FOR ENSURING OF JUSTIFICATIONS OF JUDICIAL DECISIONS IN THE CRIMINAL PROCEDURE OF UKRAINE

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#### SUMMARY

The article is devoted to the research of the sufficiency of evidences as a necessary condition for ensuring the justifications of final judicial decisions in the criminal procedure of Ukraine. The totality of the signs characterizing the justifications of the judicial decision is revealed and its concept is determined. The content of the sufficiency of evidences in the context of the decree of a guilty or acquittal verdict, a decision about the application of compulsory measures of medical or educational character, a decision about the close of criminal proceedings and the release of a person from criminal liability, a decision about the close of criminal proceedings is characterized. The content of the justifications of each of these judicial decisions is determined considering the requirements for the sufficiency of evidences necessary for its decree.

**Key words:** sufficiency of evidences, assessment of evidences, judicial decisions, court of first instance, criminal proceedings.

**Постановка проблемы.** Принятие судебного решения представляет собой завершающий этап судебного производства в первой инстанции, на котором суд осуществляет оценку исследованных им доказательств и постановляет на ее основе судебное решение, окончательное для указанной стадии уголовного производства. Осуществляя оценку

доказательств, суд, руководствуясь ч. 1 ст. 94 УПК Украины, устанавливает относимость, допустимость и достоверность каждого из них и достаточность их совокупности для принятия соответствующего судебного решения [5]. Оценка доказательств обеспечивает установление обстоятельств, подлежащих доказыванию в уголовном производстве и, как