

UDC 340

DOI 10.32755/sjlaw.2023.02.106

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LAW ENFORCEMENT IN THE ACTIVITIES OF BODIES AND INSTITUTIONS OF THE STATE CRIMINAL AND EXECUTIVE SERVICE OF UKRAINE

The article examines the issue of one of the forms of implementation of legal norms of law enforcement in the system of the State Criminal and Executive Service of Ukraine. Theoretical and practical problems of application of legal norms, cases and conditions of this activity are analyzed. It is emphasized that the application of legal norms by employees of bodies and institutions of the State Criminal and Executive Service of Ukraine is a creative activity that stems from the legal status of the service, duties and rights of the rank and file.

High-quality implementation of this form of realization of legal norms requires perfect legal training and substantial knowledge of law enforcement officers.

Key words: *implementation of the law, application of the law, State Criminal and Executive Service of Ukraine, rank and file, law enforcement activity, cases of law enforcement.*

Target setting. Law, as a social regulator, fulfills its function only when it is carried out in real practical reality. In fact, the life of legal norms is not in their presence, but in their functioning, implementation, in their ability to influence reality.

In the implementation of legal prescriptions in the actions of officials and state bodies, their purpose is manifested and their effectiveness is reflected.

Law as a whole is a transforming force not in itself, but in the process of its influence on the development and regulation of social relations, which is its essence and social value.

Along with the active law-making activity during the years of Ukraine's independence, a wide range of measures aimed at the implementation of the adopted laws are carried out, although their goal is not always achieved, especially in the field of protection of the rights and freedoms of citizens.

The application of legal norms is one of the most important forms of its implementation.

It acts as a kind of organizational and legal method of carrying out state-authority activities: executive-administrative, control-supervisory, law-enforcement. The application of legal norms is a complex of procedural, organizational, material, informational and other components, connections and relations. The State Criminal and Executive Service of Ukraine (hereinafter referred to as the State Criminal and Executive Service of Ukraine), both a law enforcement and an executive administrative agency, actively engages in law enforcement activities in various areas determined by tasks and functions.

In the scientific literature, there are many theoretical studies in the direction of researching this form of legal norms implementation. But there are no special studies dedicated to the law enforcement activities of the SCES of Ukraine and probation authorities. In this regard, the theoretical understanding of the set of problems of law enforcement activity, and in particular those related to the organizational and legal mechanism of its implementation, is of significant importance.

Actual scientific researches and issues analysis. As our analysis shows, Soviet and Ukrainian scientists, in particular S. S. Alekseev, D. M. Bakhrakh, I. L. Bachylo, M. V. Vitruk, M. Voplenko, I. Diuriahin, M. S. Kelman, O. P. Koreniev, V. Lazariev, O. Murashyn, P. Nedbailo, V. M. Popovych, P. M. Rabinovych, O. F. Skakun, A. V. Starostiuk, Yu. A. Tykhomyrov, V. A. Yusupov have actively researched the problem in question.

These scientists have made a significant contribution to solving the problems of the implementation of legal norms, in particular the application of the law, but for some time, the issue of law enforcement activities of individual state bodies remains insufficiently developed.

The purpose of the article is to analyze the main aspects of law enforcement, its basis and place in the implementation of tasks and functions of bodies and institutions for the execution of criminal punishments.

The statement of basic materials. The SCES of Ukraine is an integral part of the state mechanism and, occupying an appropriate place in the system of state bodies, can carry out its activities only within the limits of those tasks and functions provided for by the legislation of Ukraine.

Bodies and institutions of the SCES of Ukraine participate in the implementation of virtually every function of the state. Their activity is determined by economic, political, legal, cultural, ideological-educational, social and other directions.

At the same time, the SCES of Ukraine, as a part of law enforcement agencies, has an impact on the state of combating crime, protecting the rights and legitimate interests of citizens.

The following assessment of their relation to the law should be applied to officials of this service, as well as to other subjects of law enforcement. Their performance of the duties stipulated by the law, implementation of the requirements addressed to them is covered by the limits of legal behavior. Failure to comply with the law or deviation from it, ignoring it, etc. is illegal behavior.

The efforts of the law enforcer, aimed at ensuring the implementation of the right and actions that are taken in addition to what is provided for by job instructions and other legal acts, will testify to active lawful behavior [1, pp. 283–285].

The analysis of the concept of the application of legal norms indicates the difference and commonality of views of scientists on this legal category. Thus, in the textbook "Theory of State and Law", prepared under the guidance of Professor Yu. A. Vediernikov, it is indicated that "The application of legal norms is a procedurally-procedural, authoritative-organizing, creative activity of competent state bodies, public associations and officials authorized by the state, aimed at solving specific cases by issuing individual legal prescriptions [2, p. 277].

Professor V. V. Kopeichykov gives the following definition: "This is the state-authority, creative-organizational activity of state

bodies and public bodies authorized by the state regarding the adoption of individual and specific legal prescriptions for the purpose of solving a specific case, aimed at the implementation of legal norms and carried out in specially established forms [3, p. 179].

Worthy of attention is the opinion of P. M. Rabinovych: "The application of legal norms is an organizational and legal activity carried out by competent state bodies, authorized public associations or their officials, the results of which are the establishment of sub-normative, formally binding individual rules of behavior of personified subjects" [4, p. 96].

This analysis shows that subjectivity is common to all definitions, that application is a power-organizing activity, and a mandatory feature is the issuance of personalized individual legal acts.

In accordance with Part 1 of Art. 1 of the Law of Ukraine "On the State Criminal and Executive Service of Ukraine", "The State Criminal and Executive Service of Ukraine is entrusted with the task of implementing state policy in the field of execution of punishments" [5].

In the development of this provision in Art. 6, Part 1 states: "The State Criminal and Executive Service of Ukraine, in accordance with the law, performs law enforcement and law enforcement functions and consists of a central body of executive power that implements state policy in the field of execution of criminal punishments, its territorial management bodies, criminal enforcement inspection, institutions execution of punishments, detention centers, paramilitary formations, educational institutions, health care institutions, enterprises, institutions for the execution of punishments, other enterprises, institutions and organizations, creation to ensure the fulfillment of tasks of the State Criminal and Executive Service of Ukraine.

Thus, it can be seen from the above that the law enforcement and law enforcement functions of the State Security Service of Ukraine are the main ones and apply to all components of the service. But law enforcement activities can only take place under certain conditions. The theory of law has developed various groups of cases, their number varies from three to nine in various scientific

studies. Yes, already in the mentioned textbook by Yu. A. Vediernikov indicates the following cases:

1) when other participants in social relations cannot have subjective rights and legal obligations without the state-authority activity of competent bodies;

2) when resolving a dispute about the right - if there are certain obstacles regarding the possibility of the participants of social relations using their subjective rights, as well as when the legal obligations assigned to them are not fulfilled voluntarily;

3) if there is a need to officially confirm certain actions or check their legality;

4) when obligations are not fulfilled or there are obstacles in the exercise of the right, which makes it necessary to resort to coercive measures;

5) if the legal order begins to operate taking into account certain circumstances that require special establishment or control;

6) if official establishment of legally specified facts or specific documents is required;

7) in case of executive and administrative activities of state bodies and local self-government bodies, resolution of personnel issues;

8) when there is a need to implement the sanction of the legal norm – determination of the degree of legal responsibility of the offender;

9) there are gaps in the law and it is necessary to apply the analogy of law or international acts officially ratified by the state authorities [2, p. 278].

Application of law is the most complex form of its implementation. At the same time, it can also include other forms of exercising the right, such as compliance with certain norms, performance of assigned duties, as well as the use of rights, which in this context belong to the bodies and institutions of the criminal enforcement service. All this indicates the complex nature of the law enforcement form.

But, in addition to what distinguishes this form is its authoritative, organizing character, and its control function in relation to other subjects.

Among the many empowering and binding norms of the Law of Ukraine "On the State Criminal and Executive Service of Ukraine", there are many that cannot be implemented by specific entities without special control and assistance from relevant bodies and managers who are officials of this service. For example, admission to service in the SCES, dismissal from service, formation and reorganization of units, registration of various official cases, exposure to various types of legal responsibility, etc.

Subjects of law enforcement in the course of this activity on the basis of current regulations:

- a) establish the existence of subjective rights and obligations of persons;
- b) determine the moment of action or the fact of termination of subjective rights and obligations;
- c) exercise control over the correctness of obtaining rights and assigning duties.

The system of the criminal enforcement service is extensive and multi-level, so it cannot function without one link being controlled by another, so that the higher bodies, according to their level, do not contribute to the activities of the lower links. The essence of this always lies in determining the limits of such control or practical assistance in order to exclude unjustified interference in the affairs of the grassroots, the organization of managerial relations.

The application of legal norms differs from other forms of law enforcement (observance, execution, use) by its purpose, the nature of the activity and the form in which it takes place.

To provide assistance, to force the implementation of legal norms, to impose responsibility in case of violation of the requirements of the law, and so on - the task of law enforcement entities.

Article 18 of Section IV "Rights and duties of officials and employees of bodies and institutions for the execution of punishments, remand detention centers", of the Law of Ukraine "On the State Criminal and Executive Service of Ukraine", establishes the list of rights and duties of this service. Obligations are normatively established in 22 clauses, and rights in 14 clauses and 4 subsections of the Law. Penal bodies and institutions are not only

law enforcement, but also perform the function of state administration.

The rights and obligations enshrined in the Law are implemented in the process of performing law enforcement and management functions. This shows that the application of law by these bodies and institutions is a creative activity. This is due to a large number of life circumstances that arise from specific norms of the law and life situations that have to be investigated.

The creative side of this activity is related to the specification of law. The fact is that the legislator specifies many evaluative concepts that must be disclosed in legal practice.

The creative nature of law enforcement activity requires a professional, competent approach, and this is connected with the need to train competent, legally experienced personnel, which can be graduates of the relevant educational institutions. Solving these issues is impossible without effective personnel policy, which is related to the professional training of future and current employees of the SCES, aimed at obtaining and constantly improving the professional knowledge, skills, and abilities necessary for the successful performance of the tasks assigned to the Criminal and Executive Service.

The Academy of the State Penitentiary Service and vocational training schools are capable of solving the tasks.

According to O. A. Mukhtarova, the main areas of personnel training and improvement can become:

- development of a multi-level system of personnel training, the use of modern methods of organizing the educational process, effective control of the knowledge of cadets, students and trainees;
- improvement of training technologies, approach to practical activities of the bodies and institutions of the SCES;
- improvement of special, combat and physical training of rank-and-file and senior staff due to intensification and maximum approximation of the content of training to the real conditions of operational and service activity, improvement of methodical support;

– implementation of the principle of training scientific and pedagogical personnel who have practical experience in law enforcement agencies [6, p. 183].

Conclusions. Summarizing the above, the following conclusions can be drawn:

The State Criminal and Executive Service is both an executive and law enforcement body of the state;

According to the current legislation, the SCES of Ukraine is entrusted with the implementation of law enforcement and law enforcement functions, the realization of rights and duties by rank-and-file and senior staff is carried out by applying the norms of the current legislation.

The application of legal norms is the power-organizing activity of state bodies, officials and public organizations authorized by the state with the aim of solving a specific case by issuing individual legal acts.

The qualitative application of legal norms can be carried out by competent, legally experienced employees of the criminal enforcement service within the limits of their powers.

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ПРАВОЗАСТОСУВАННЯ В ДІЯЛЬНОСТІ ОРГАНІВ І УСТАНОВ КРИМІНАЛЬНО-ВИКОНАВЧОЇ СЛУЖБИ УКРАЇНИ

У статті розглядаються питання однієї із форм реалізації норм права – правозастосовної діяльності в системі кримінально-виконавчої служби.

Підкреслюється, що право як соціальний регулятор виконує свою функцію лише тоді, коли воно здійснюється в реальній практичній дійсності. У втіленні правових приписів, у діях посадових осіб і органів держави проявляється їх призначення та відображається ефективність.

Обґрунтовується, що право є перетворювальною силою не само по собі, а в процесі його впливу на розвиток і регулювання суспільних відносин. У цьому полягає його сутність і соціальна цінність.

У статті підкреслюється, що застосування норм права є однією з найважливіших форм його реалізації. Воно виступає своєрідним організаційно-правовим методом здійснення державно-владної діяльності: виконавчо-розпорядчої, контрольної-наглядової, правоохоронної.

Аналізуються різні визначення поняття застосування норм права, обґрунтовані вченими-юристами. Констатується, що Державна кримінально-виконавча служба України є складовою частиною державного механізму і здійснює свою діяльність тільки в межах тих завдань і функцій, які передбачені законодавством України. Органи й установи служби беруть участь у реалізації фактично кожної функції держави.

Державна кримінально-виконавча служба України як частина правоохоронних органів має вплив на стан боротьби зі злочинністю, захист прав і свобод громадян.

У статті 6 частини 1 Закону України «Про Державну кримінально-виконавчу службу України» йдеться: «Державна криміналь-

но-виконавча служба України відповідно до закону здійснює правозастосовні та правоохоронні функції...».

Підкреслюючи, що ці функції стосуються всіх складових ДКВС, вказуються науково обгрунтовані випадки й умови, коли відбувається правозастосовна діяльність, а також те, що ця діяльність може охоплювати й інші форми реалізації права. Правозастосовна діяльність суб'єктів ДКВС є творчою діяльністю і потребує професійного, компетентного підходу. Автори стверджують, що для цього повинна бути досконала, глибока підготовка професійного грамотних, юридично освічених кадрів, які здатні випускати Академія ДПтС та інші навчальні заклади.

Ключові слова: реалізація права, застосування права, кримінально-виконавча служба, рядовий і начальницький склад, правозастосовна діяльність, випадки правозастосування.