

# FUNCTIONAL PURPOSE OF LOCAL SELF-GOVERNMENT BODIES AS A SUBJECT OF ENSURING THE LAW ENFORCEMENT FUNCTION OF THE STATE

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**Annotation.** The article is dedicated to the scientific substantiation of the need for the participation of local self-government bodies in the implementation of law enforcement function, the study of legal forms of implementation of law enforcement function by local self-government bodies in Ukraine, and the development of proposals for their improvement.

It has been established that the law enforcement function of local self-government is mostly forgotten in the legal literature, following the Soviet habit of attributing this function to the prerogatives of the state. In this regard, the study of the law enforcement function of local self-government is an important theoretical and practical task of modern administrative and legal science.

It has been argued that in administrative and legal science, insufficient attention has been paid to the problems of: administrative and legal mechanism of activity to ensure public order and public safety; participation of local self-government bodies in the implementation of the law enforcement function; legal forms of implementation of the law enforcement function by local self-government bodies; interaction of local self-government institutions with law enforcement bodies regarding the implementation of the law enforcement function.

It has been established that the modern system of public administration does not fully use the capabilities of local self-governments in the field of protecting public law and order and ensuring public safety. This is due to the fact that the process of establishing their legal status at the current stage of development of Ukraine remains incomplete, and the constitutional and legislative norms establishing their competence are not mutually coherent, clear and certain. As a result, the implementation of the powers of local self-government bodies enshrined in the Constitution of Ukraine in the field of law and order and ensuring public safety is quite limited.

It has been proven that at this stage of municipal development, the implementation of law enforcement function by local self-government bodies in Ukraine is carried out in four legal forms of activity: establishing, rule-making, law enforcement and control. In turn, the relevant local self-government bodies with law enforcement powers can be considered as institutional forms of implementing the law enforcement function of local self-government.

**Key words:** law enforcement function, local self-government bodies, establishing form, rule-making form, law enforcement form, control form, public law and order, public safety.

## 1. Introduction.

The law and order in Ukraine, along with clear achievements in the democratization of public life and the liberalization of the economy, is characterized by the presence of destructive phenomena that significantly inhibit the implementation of social and economic reforms and endanger the legitimate

rights and interests of citizens, society, and the state. Therefore, it is no coincidence that modern science has increased its attention to the problem of ensuring legal order and public safety [7, p. 194–201].

Reforming the system of local self-government in Ukraine stipulates the need for study of problems related to the implementation of purposeful activities of local self-government institutions to ensure law and order, protection of the rights and freedoms of citizens, guaranteeing the safety and protection of the population, material and cultural values, the environment from the negative consequences of emergency situations in peaceful and special periods, which is one of the main functions assigned to local self-government bodies [10, p. 202–205].

During the years of independence in Ukraine, there have been significant changes in the organization and activities of local self-government. Today, it is considered not only as one of the foundations of the constitutional system or a form of implementation of people's power, but also as one of the important directions of democratization and humanization of public power, bringing it closer to the population. Under these conditions, the steady expansion of the functions of local self-government and their filling with ever deeper content seems quite natural. The autonomy of local self-government bodies presupposes their real ability to independently determine with the help of what forms, methods, and means they should solve the issues they face [6, p. 70–75].

At the same time, the development of local self-government in Ukraine is restrained by the lack of an appropriate regulatory and legal framework, which complicates the functioning of local self-government bodies and gives rise to negative consequences in local self-government itself. The existing gaps in the legal regulation of the activities of local self-government bodies create many serious problems in practice, one of which is the determination of the forms and powers of local self-government bodies to implement the law enforcement function [7, p. 194–201].

Unfortunately, the law enforcement function of local self-government is mostly forgotten in the legal literature, following the Soviet habit of attributing this function to the prerogatives of the state [6, p. 70–75]. In this regard, the study of the law enforcement function of local self-government is an important theoretical and practical task of modern administrative and legal science.

## 2. Analysis of scientific publications.

Domestic administrative and legal science has accumulated a significant amount of knowledge on the nature, content, forms and subjects of the implementation of the law enforcement function. Various aspects and forms of participation of local self-government bodies in ensuring the law enforcement function have been, to one degree or another, highlighted in the works of many leading scientists, in particular: L. Arkusha, H. Atamanchuk, L. Baieva, Yu. Bytiak, V. Hryshchenko, S. Yesimov, R. Kaliuzhnyi, M. Kovaliov, V. Kolpakov, T. Kolomoiets, T. Kravtsov, O. Kuzmenko, K. Luhovyi, Yu. Nazar, A. Onuprienko, O. Ostapenko, V. Pavlichenko, M. Pukhtynskyi, V. Sereda, S. Serohin, O. Slipushko, A. Sobakar, A. Shelekhov and others.

However, despite significant knowledge in this field, when studying the processes of formation of local self-government in Ukraine and the tasks set before it in the field of law enforcement, there is a whole series of problems waiting to be solved. In particular, we believe that in administrative and legal science, insufficient attention is paid to the problems of: the administrative and legal mechanism of activity to ensure public order and public safety; participation of local self-government bodies in the implementation of the law enforcement function; legal forms of implementation of the law enforcement function by local self-government bodies; interaction of local self-government institutions with law enforcement bodies regarding the implementation of the law enforcement function.

The specified factors determine the relevance of the research topic, its significance for domestic administrative and legal theory and practice.

### 3. The aim of the work.

The aim of the study is to substantiate, based on the generalization of the practice of implementation of the current legislation of Ukraine and the peculiarities of the implementation of the economic and legal foundations of the functioning of the law enforcement system, the need for the participation of local self-government bodies in the implementation of the law enforcement function, to study the legal forms of implementation of the law enforcement function by local self-government bodies in Ukraine and to develop proposals for their improvement.

### 4. Review and discussion.

Protecting public order and ensuring public safety (implementation of the law enforcement function) is a constitutional condition for the stable existence and progressive development of society, the creation of decent conditions and quality of life for individuals [7, p. 194–201]. This is an extremely important object of public administration, which is an indispensable condition for the normal existence of civil society and the functioning of all its structural elements. The weakening of this function is quickly reflected by an increase in crimes, a sharp decline in the culture of human communication, damage to state and municipal property, and violation of sanitary and environmental rules [7, p. 194–201].

The law enforcement function is one of the main internal functions of the state. For its implementation, a system of special (law enforcement) bodies is created in the structure of public administration institutes. At the same time, due to the multidimensional and multifaceted nature of the problem of implementing the law enforcement function, we consider it appropriate to highlight a set of less studied issues relating to the competence and forms of participation of local self-government institutions in the implementation of this function [7, p. 194–201], in particular:

- the objective conditionality of the participation of local self-government institutions in the implementation of the law enforcement function;
- forms of participation of local self-government institutions in the implementation of the law enforcement function;
- interaction and cooperation of local self-government institutions and the law enforcement system as a whole.

One of the indispensable conditions for Ukraine's integration into the European community and European civilization is ensuring the ability of territorial communities to fulfill their powers. Decentralization of public power, formation of institutions of local self-government and expansion of powers of local self-government bodies provide for improvement of the organization of ensuring public law and order and public safety at the local level. The issue of ensuring public law and order and public safety in the form of a special direction (normative and law enforcement activities of local self-government institutions), aimed at solving social and economic tasks and ensuring the protection of all spheres of citizens' life activities on the territory of specific local entities, should become a priority here.

We believe that the institutions of local self-government have significant resources and powers to implement the law enforcement function. The Constitution of Ukraine and the Law of Ukraine "On Local Self-Government in Ukraine" laid the legal prerequisites for the implementation of the law enforcement function by local self-government bodies. The Basic Law of Ukraine (Articles 140, 143) enshrines the right of local self-government bodies to independently resolve issues of local significance, assigned by law to their competence, within the Constitution and laws of Ukraine [1]. The Law of Ukraine "On Local Self-Government in Ukraine" (Article 38) interprets "ensuring legality, law and order, protection of the rights, freedoms and legitimate interests of citizens" as a matter of local significance and refers it to the subjects of local self-government competence [3].

One of the urgent problems of reforming local self-government is the development of adequate and effective forms of participation of its institutions in the implementation of the law enforcement function [9, p. 135–138].

The category of “form” is actively used by domestic jurisprudence. In relation to institutions of public administration, this term is mainly used as part of the phrase “form of activity” and is understood as the external side of the functioning of institutions of public administration, that is, a set of homogeneous actions performed within a certain organizational framework defined by law [8, p. 97–101].

In the opinion of T. I. Hudz, which we fully support, among the legal forms of implementation of the law enforcement function by local self-government institutions, it is necessary to distinguish establishing, rule-making, law enforcement and control forms [6, p. 70–75].

The establishing form of activity is aimed at structural / institutional changes and transformations in the system of municipal administration. This form of activity is characteristic of local councils and their executive committees. In terms of the research topic, the creation of those municipal institutions and structures that directly ensure law and order, perform jurisdictional activities, etc., is of particular interest.

The Law of Ukraine “On Local Self-Government in Ukraine” (Article 51) provides for the formation of executive bodies of local councils [3], which according to Art. 219 of the Code of Ukraine on Administrative Offenses (hereinafter referred to as the Code of Ukraine on Administrative Offenses) is empowered to consider cases of some administrative offenses [2]. In addition, specialized bodies (departments, administrations, divisions) are formed as a rule, to deal with law enforcement or ensuring public safety, within the structure of the executive bodies of local councils.

Part 1 of Art. 38 of the Law “On Local Self-Government in Ukraine” includes the creation of administrative boards and crime-fighting boards, and the direction of their activities, to the delegated powers of executive bodies of local councils. According to Art. 215 of the Code on Administrative Offenses, administrative boards are formed by relevant local self-government bodies, consisting of a chairman, deputy chairman, executive secretary, as well as board members. The procedure of activity of these boards is established by the Code on Administrative Offenses and other legislative acts of Ukraine.

It is also worth noting that the law enforcement function of local self-government as a special subsystem of public power can be implemented not only through local self-government bodies and their officials, but also in another way – through the public formations or directly by the members of territorial communities. Therefore, local self-government bodies and their structural subdivisions can be considered as special, institutional forms of implementation of relevant functions. In this aspect, the following should be considered institutional forms of implementation of the law enforcement function of local self-government: a) local councils and their permanent boards; b) executive committees of local councils; c) departments, administrations and divisions of local councils; d) administrative board [6, p. 70–75].

The rule-making form of implementation of the law enforcement function by local self-government bodies consists of a set of actions and procedures regarding the adoption, change or cancellation of relevant decisions of a normative nature. The rule-making activity of local self-government bodies in this area is implemented by the adoption of acts aimed at ensuring legality, law and order, protection of the rights, freedoms, and legitimate interests of citizens.

The rule-making activity of local councils in the area of ensuring legality, law and order and public safety is quite clearly defined by the current legislation. In particular, clause 44, part 1 of Art. 26 of the Law “On Local Self-Government in Ukraine” includes to the exclusive competence of local councils to establish, in accordance with the legislation, rules on the improvement of the territory of the settlement, ensuring cleanliness and order in it, trade in the markets, maintaining silence in public places, for the violation whereof administrative responsibility is stipulated [2].

The development and adoption of various types of local programs and plans is closely related to the rule-making form of activity. These documents are declarative normative acts, since they define the goals and objectives of local self-government bodies for a certain period, the achievement of which becomes the legal responsibility of these bodies.

The law enforcement form of implementation of the law enforcement function by local self-government bodies is most vividly traced when executive committees and administrative boards consider cases on administrative offenses. Having considered a case on an administrative offense, the relevant collegial body of local self-government (executive committee or administrative board) makes a decision on the case.

The control form of the implementation of the law enforcement function by local self-government bodies is a set of actions and procedures regarding the verification and supervision of compliance, implementation and application of legal prescriptions by subjects of public relations. Thus, according to Art. 38 of the Law "On Local Self-Government in Ukraine" the powers of the executive bodies of local councils include control over ensuring public order during meetings, rallies, manifestations and demonstrations, sports, entertainment and other public events. In addition, the control form of activity may consist in hearing reports from the heads of internal affairs bodies about their activities to protect public order in the relevant territory and raising before the relevant higher-level bodies the issue of dismissing the heads of these bodies if their activities have been recognized as unsatisfactory.

Based on the results of control activities, local councils can cancel acts of executive bodies of the council that contradict the legislation or decisions of the council, may apply to the court to recognize the illegality of acts of executive authorities, other local self-government bodies, enterprises, institutions and organizations that limit the rights of the territorial community, as well as the powers of local self-government bodies and officials.

The control form in the activity of executive committees is manifested in the control over the effectiveness of the activities of enterprises, institutions, organizations that are in communal ownership, as well as in the control by the executive committee itself over the legality of acts of departments, divisions and their heads with the right to change or cancel them. The state of public order and legality is under the special control of local self-government bodies. Information from prosecutors and heads of national police bodies about the state of law, fighting crime, protection of public safety and order, and the results of activities in the relevant territory is regularly heard at meetings of local councils [6, p. 70–75].

Effective performance by the state of its functions to protect the rights and legitimate interests of citizens is impossible without high-quality and comprehensive interaction of local self-government bodies with the law enforcement system [5, p. 81–86]. Therefore, for more effective protection and safeguarding of social relations, we consider it necessary to study the issue of interaction and cooperation of local self-government bodies with law enforcement bodies in the implementation of the law enforcement function (as a manifestation of the independent "illegal form of activity" [4] of local self-government institutions in the implementation of the law enforcement function).

Certain issues of cooperation between local self-government bodies and institutions of the law enforcement system have been highlighted in the works of scientists, but only fragmentarily, although it has important scientific and practical significance [11, p. 71–74].

We believe that the interaction of local self-government bodies with law enforcement institutions should be understood as the cooperation of these bodies based on the current legislation of Ukraine, which is aimed at ensuring public order and public safety, as well as solving other issues of a local nature.

Let us note that, like any activity, the interaction between local self-government bodies and law enforcement institutions pursues corresponding goals and objectives. We believe that the goal of the interaction of local self-government bodies and law enforcement bodies is to solve the tasks of a social, economic and political nature faced by these bodies [5, p. 81–86]. The analysis of the current legislation makes it possible to formulate the objectives of interaction between local self-government bodies and institutions of the law enforcement system:

- strengthening the foundations of the constitutional system of Ukraine;
- ensuring public order and public safety;
- solving certain issues related to the fight against crime;

- taking the necessary measures in case of emergency situations to ensure public safety and order, vital activities of enterprises, institutions and organizations, saving people's lives, protecting their health, preserving material values;
- preparation and implementation of joint projects, programs and measures to meet the needs of the population and improve the effectiveness of the tasks assigned to the specified bodies;
- exercising control over ensuring public safety and order during meetings, rallies, manifestations and demonstrations, sports, entertainment and other public events;
- implementation of measures regarding organizational, personnel and financial support of institutions of the law enforcement system.

## 5. Conclusions.

Based on the above, the author comes to the following conclusions:

1. Protection of the natural rights and freedoms of the individual is a constitutional duty of the state and a priority area of activity of all its institutions. It is impossible to ensure such protection without effective implementation of the law enforcement function, with the help whereof institutions of public administration protect law and order, applying legal measures of influence in accordance with the laws of Ukraine. In the last few years, a whole series of socio-political changes have been taking place in our country, as a result of which the issue of ensuring public order and public safety in local areas has become particularly acute.
2. The modern legislative framework does not allow to solve the problem of clearly distinguishing the powers of different levels of government, which prevents the effective solution of a number of the most important issues of the activities of local self-government, in particular, the issue of implementation of the constitutional norm on the possibility of vesting local self-government bodies with certain state powers. The specified disadvantage most significantly affects the ability of local self-government institutions to implement the law enforcement function.
3. Local self-government bodies occupy a special place in the system of ensuring legal order and public safety. They form a non-state system of public order and public security, and are called upon to ensure local security and create proper living conditions for their community. At the same time, the implementation of the powers of local self-government bodies enshrined in the Constitution of Ukraine in the sphere of law enforcement and public safety is quite limited, because by virtue of their constitutional and legal position, they are not endowed with state-authority powers, which enables the independent implementation of this function.
4. At this stage of municipal development, the implementation of the law enforcement function by local self-government bodies in Ukraine is carried out in four legal forms of activity: establishing, rule-making, law enforcement and control. In turn, the relevant local self-government bodies with law enforcement powers can be considered as institutional forms of implementing the law enforcement function of local self-government.
6. The modern system of public administration does not fully use the capabilities of local self-governments in the field of protecting public law and order and ensuring public safety. This is due to the fact that the process of establishing their legal status at the current stage of development of Ukraine remains incomplete, and the constitutional and legislative norms establishing their competence are not mutually coherent, clear and certain. As a result, the implementation of the powers of local self-government bodies enshrined in the Constitution of Ukraine in the field of law and order and ensuring public safety is quite limited.

## References:

1. The Constitution of Ukraine adopted at the fifth session of the Verkhovna Rada of Ukraine on June 28, 1996. *Holos Ukrainy (Voice of Ukraine) from July 13, 1996. No. 128.* URL: <https://zakon.rada.gov.ua/laws/show/254к/96-бп/print> (date of reference: 03.02.2024).



2. Code of Ukraine on Administrative Offenses dated 07.12.1984 No. 8073-X. *Information of the Verkhovna Rada of the Ukrainian SSR dated 18.12.1984*. URL: <https://zakon.rada.gov.ua/laws/show/80731-10> (date of reference: 03.02.2024).
3. Law of Ukraine dated May 21, 1997 No. 280/97-VR "On Local Self-Government in Ukraine". *Holos Ukrainy (Voice of Ukraine) from June 12, 1997*. URL: <https://zakon.rada.gov.ua/laws/show/280/97-bp/print> (date of reference: 03.02.2024).
4. Baklan O.V. To the question of the legal nature and structure of non-legal forms of state administration (on the example of the field of entrepreneurship). *Public law. #1 (33). 2019*. URL: [https://www.publichne-pravo.com.ua/index.php?option=com\\_content&view=article&id=168;pp-2019-33-06&catid=101&Itemid=483&lang=uk](https://www.publichne-pravo.com.ua/index.php?option=com_content&view=article&id=168;pp-2019-33-06&catid=101&Itemid=483&lang=uk) (date of reference: 03.02.2024).
5. Burbyka V.O. The purpose and task of interaction between local self-government bodies and law enforcement agencies. *European perspectives. 2017. Issue 1*. P. 81–86. URL: [http://nbuv.gov.ua/UJRN/evpe\\_2017\\_1\\_15](http://nbuv.gov.ua/UJRN/evpe_2017_1_15) (date of reference: 03.02.2024).
6. Hudz T.I. Forms of implementation of the law enforcement function of local self-government. *Law and society. 2011. No. 3*. P. 70–75. URL: [http://nbuv.gov.ua/UJRN/Pis\\_2011\\_3\\_16](http://nbuv.gov.ua/UJRN/Pis_2011_3_16) (date of reference: 03.02.2024).
7. Kovaliv M.V. Ensuring the protection of public order by the bodies of local executive power and local self-government. *Scientific Bulletin of the Lviv State University of Internal Affairs. legal series. 2017. Issue 2*. P. 194–201. URL: [http://nbuv.gov.ua/UJRN/Nvlduvs\\_2017\\_2\\_22](http://nbuv.gov.ua/UJRN/Nvlduvs_2017_2_22) (date of reference: 03.02.2024).
8. Kovbas I.V. Provision of public-authority services as the main form of life activity of a democratic, social legal state. *Scientific Bulletin of Chernivtsi University. Science of law. 2011. Issue 559*. P. 97–101.
9. Kovbas I.V. Regarding the functions of local self-government bodies as subjects of administrative law. *Legal scientific electronic journal. 2015. No. 2*. P. 135–138. URL: [http://lsej.org.ua/2\\_2015/37.pdf](http://lsej.org.ua/2_2015/37.pdf) (date of reference: 03.02.2024).
10. Sychuk O.Y. Economic and legal aspects of the activities of local self-government bodies in the field of civil protection and interaction with law enforcement agencies. *South Ukrainian legal journal. 2013. No. 4*. P. 202–205. URL: [http://nbuv.gov.ua/UJRN/Pupch\\_2013\\_4\\_73](http://nbuv.gov.ua/UJRN/Pupch_2013_4_73) (date of reference: 03.02.2024).
11. Sheremet O.S. The role of local self-government bodies in staffing law enforcement agencies and crime prevention. *State and regions. Series: Law. 2015. No. 1*. P. 71–74. URL: [http://nbuv.gov.ua/UJRN/drp\\_2015\\_1\\_16](http://nbuv.gov.ua/UJRN/drp_2015_1_16) (date of reference: 03.02.2024).

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