

# Law Enforcement as Discretion and Legal Process

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**Abstract:** Coercive authority is central to the law enforcement, and the discretionary use of police authority is a decision-making process, as officers evaluate the situations in which they intervene and choose a course of action from among a set of alternatives. This article investigates the analytical and synthesis aspects of a wide range of sources, considering law enforcement from a dual perspective: as legal discretion and as a kind of legal process. This research applied the classical methodology of qualitative analysis of systems and processes, in particular, a system-analytical approach to the study of research objects. In conclusion, the role of law enforcement in the modern state-legal reality and the place of mandatory features of the legal process in the law enforcement structure is presented. Based on the study, it can be stated that The role of the procedural form is primarily that following its requirements will guarantee the objectivity and efficiency of law enforcement.

**Keywords:** Discretion, law enforcement, legal process, public power, state power.

## INTRODUCTION

A law enforcement officer has a significant amount of authority to carry out his or her duties. In many cases, the officer expects to be obeyed when exercising his or her authority and that expectation is justified for the most part. That authority includes the discretion to make decisions as to the manner and method(s) used to assert that authority (Ivanova, Chalykh, Makogon, Rasskazov, and Vasekina 2019).

The amount of discretion used by line officers depends on the amount of leeway they are given. The fewer procedural or legal rules imposed upon the line officer, the more leeway he or she has to exercise discretion. This discretion involves either action or inaction. Discretion cannot be avoided due to complicated law enforcement and community caretaker situations faced by the police officer daily (Bowling 2015).

Discretion is an ideal procedure that accompanies all logical stages of law enforcement (and, in our case, the legal process). Since logical stages (simple logical stages) involve the solution of a simple logical

syllogism such as establishing the actual basis of the case, the legal basis of the case, deciding on the case, law enforcement can be considered from a dual point perspective: in a broad sense, as a legal process, and in a highly specialized sense - as the activities of authorized entities at legal discretion in resolving legally significant cases (Worden and Mclea 2014; Denisov 1983).

Overall, the primary objective of the research is to investigate the role of law enforcement in the modern state-legal reality and the place of mandatory features of the legal process in the law enforcement structure. Besides, it has been attempted to devise some recommendations in order to ensure the objectivity and efficiency of law enforcement.

## METHODOLOGY

The research methodology is represented by modern tools. The study was conducted on the basis of the dialectical, as well as the widely used general scientific (analysis, synthesis, induction, deduction, analogy) and particular scientific methods of cognition of reality. The application of general scientific methods allowed the authors to comprehend scientific ideas about law enforcement, to determine the factors influencing the content of the declared subject, to

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formulate provisions relating to the subject, and meet the requirements of modern conditions (Ivanova *et al.* 2019; (Marchenko 2012).

The application of private, scientific methods has contributed to the study of the subject in order to systematize the source array in relation to the understanding of law enforcement.

The use of unique methods such as a comparative legal method, a method of legal forecasting allowed to holistically and comprehensively comprehend and disclose the subject of research.

## RESULTS AND DISCUSSION

In the current survey, we investigated the analytical and synthesis features of a broad range of sources, considering law enforcement from a dual perspective: as legal discretion and as a kind of legal process. Furthermore, we utilized the classical methodology of qualitative analysis of systems and processes. However, there are lots of studies carried out in this sphere; this issue is still open to debate. Therefore, we decided to inspect this matter from a different angle and reach practical proposals.

In the state-legal regulation of public relations, along with lawmaking, law enforcement also plays an important role in minimizing human rights risks (Korniyushkina, Markhgeym, Novikova, Doronina, and Zajcev 2017). This is powerful, organizing activity of the competent state bodies and their officials, which ensures the translation of the general rules of conduct of various entities that are present in regulatory legal acts into the plane of their individually-specific actions (Markhgeym, Novikova, Rosenko, Katorgina, and Tonkov 2019).

Law enforcement is the most important component of the activity not only of the executive authorities, but also of the judiciary, the stability of the entire socio-state system depends on the quality of its functioning (Kuksin, Markhgeym, Novikova, Tonkov, 2016).

The essence, content, and characteristics of law enforcement directly affect legal awareness in relation to general and special subjects (Nesmeyanova, Ryabova, Tkhabisimova, Tsapko, and Makogon 2018). Lack of actualization of law enforcement can result in systemic corruption in the state-inter-confessional interaction (Ivanova *et al.* 2019), which, again, creates risks in the state-building process.

The general theory of law typically defines law enforcement as a type of legal implementation, which is the process of competent authorities and officials strictly within the framework of the powers granted to them by law to influence public relations entities aimed at establishing or exercising their rights and obligations (Marchenko 2012).

As a result, based on the adoption of individual legal acts, participants in public relations have specific subjective rights and obligations.

The main distinguishing feature of law enforcement is its authoritative and organizing nature, which implies specially authorized state bodies and their officials as subjects of implementation. The declared activity is denounced in legislatively established forms and ends with the issuance of individual legal acts with binding instructions for the addressees. Compliance with these requirements is guaranteed by a number of organizational and material measures, as well as legal means (for example, the possibility of applying public enforcement) (Terrill, Paoline, and Ingram 2011).

Law enforcement takes place in the presence of an authoritative decision of a competent public authority regarding a specific life situation that has legal significance in the stipulated legal norm. Law enforcement means a unilateral expression of the will of a body vested with authority; categorical order contained in such an act; the binding nature of the powerful decision for the performer, the subordination of his will; and security and protection of these decisions through the coercive power of the state.

Of course, the power criterion ensures coordinated actions of law enforcement participants and helps maintain discipline. On its basis, enforcement acts become mandatory and are guaranteed by a combination of special means provided for by a democratic state of law (Iusupov 1979).

Let us clarify that the application of the law is of substatory, individual nature. This is due to the fact that the immediate object of application of the law is a separate specific case, and the requirements of the enforcement act relate to certain persons.

In its most abstract form, the need for law enforcement arises in the following situations: when subjective rights and legal obligations cannot arise for persons without the power activities of competent state bodies; in the presence of certain obstacles to the implementation of subjective law or the lack of

voluntary performance of a legal obligation; when legal sanctions are required based on legal requirements.

The key criterion that distinguishes this form of implementation of the legislation is its organizing, imperious character. The fact is that among the binding and authorizing norms there are those that cannot be implemented by their addressees without special assistance and organization by state bodies. In the course of law enforcement, considering the provisions of regulatory acts, the competent subjects determine the subjective rights, obligations and their measure, establish the moment of action or the fact that terminates the subjective rights and obligations, and carry out control over the correct acquisition of rights and assignment of duties.

Due to the fact that the requirements of the rules of law and their permissions are addressed mainly to citizens, their behavior becomes a focus of state control; law enforcement affects legal relations to which citizens are parties.

Law enforcement is also carried out in relation to the norms that apply to government bodies. An extensive and multi-stage system of public authorities does not seem possible to function without the control of one link over another, without the assistance to the work of subordinate bodies by higher ones.

In this aspect, the essence is to determine the measures of such control or support in order to prevent unjustified interference in the affairs of lower authorities, and to exclude the irresponsibility of the direct executors.

Summarizing the thesis-like characteristics of law enforcement, we note that it is distinguished from other forms of enforcement by their own goals, the nature of the activities carried out and the form. The objectives of the subjects of law enforcement are to assist, enforce the implementation of legal norms, and impose responsibility in case of violation of legal requirements.

Due to the specifics of the presence of a certain freedom for the law enforcer, as well as given the content, these tasks are very difficult. For this reason, all stages of law enforcement are mediated by legislative requirements.

Law enforcement is a creative activity, which is due to a variety of life circumstances that must be investigated before the law is applied.

The creative aspect of law enforcement is also associated with the specification of law. The legislation

contains quite a lot of evaluative concepts ("reasonable time", "speed", "mutual relationship", "data sufficiency", "sufficient term", etc.) requiring clarification of their content in legal practice. The law without this often turns out to be inoperative, and the legislator preliminary focuses the law enforcer on its specification.

Concretization of concepts, carried out in the framework of law enforcement, must be distinguished from the specification of the requirements of the law during by-law rulemaking. In the first case, everything is in the plane of the law, expressed in activities related to the implementation of its requirements and in the framework of the implementation of the law. The second case involves the process of creating law. Both of these processes are united by a circumstance that ensures the standard functioning of the law.

In general, relations in law enforcement are a special form of social relations, with their inherent awareness, normative and evaluative nature and organizational form. The constituent elements of the structure of each law enforcement relations are: subjects, an object, directly the activity that makes up the content of the relations, and the norm (Denisov, 1983). It is advisable to consider the declared relations through the prism of legal personality, since the legal content of law enforcement relations are the rights and obligations of the parties, and the material is their actual actions to use the rights and fulfill obligations. Legal personality determines the limits of the subjective rights and obligations of participants in the legal implementation process both in relation to each other and to the state.

All the signs of the legal process are immanent to law enforcement (the imperious activity; implementation by authorized entities; mediation by procedural rules; focus on legal decisions of a general (regulatory acts) or individual (law enforcement acts) nature).

Of course, this activity is characterized by a beginning and an end; it consists of a number of successive stages. As the classical stages, the theory of law recognizes the establishment of the factual circumstances of the case; the establishment of the legal circumstances of the case; and decision-making on the case and its documentation.

## CONCLUSIONS

Thus, the essence of law enforcement in the external aspect is its procedural form. The role of the

procedural form is primarily that following its requirements will guarantee the objectivity and efficiency of law enforcement, as well as the fairness and soundness of the adopted enforcement acts.

Procedural rules help order the process of making and implementing power decisions, because specific rules are established for the implementation by state bodies and their officials of the vested powers. This minimizes possible deviations from the set goals of the activity for subjective reasons and helps to increase the effectiveness of management in general.

In the course of such a time, all the subjects of the Federation take a strong hit in relation to all three traditional spheres of power. This is a sign of a crisis transition period in state-legal development, which overcoming is seen as a priority area of public-power policy.

On the whole, the law enforcement should undertake to include objectives, measures and tabulations, and other analyses of results from the community in each officer's personnel record. Once the process was underway, the police might also undertake to limit information about the officer's performance included in the file to (a) that provided by the community, and (b) information from the police department only on disciplinary action and citizen complaints. That is, community indices of performance would supersede traditional performance measures such as arrest figures.

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