



## Principles of Law Enforcement in the Rule of Law

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**Abstract:** The rule of law is one of the fundamental values on which a modern, civilised society is based and is essential to its very functioning. The rule of law is also fundamental to the enforcement of national and international law, aiming to protect citizens and to establish the basic conditions necessary for a well-functioning and competitive economic system. The rule of law requires that everyone - as a subject of law - enjoys equal protection under the law and also prevents arbitrary and discretionary use of power by executive bodies. At the same time, it ensures the protection and respect of exclusively political rights - to elect and to be elected - as well as the fundamental rights and freedoms of citizens, values on which any society is based. The legal system, as a whole, must be an essential and contextual factor, through the legal rules adopted and implicitly through the guarantees of legal security, even if its contextual elements sometimes tend to go beyond the legal dimensions.

**Keywords:** rule of law; fundamental rights; justice; legal system; concept of law

Throughout history, the issue of the enforcement of the law and the implementation of the law has been a constant concern of judicial practice and of doctrine, because the way in which this basic pillar of any state based on the rule of law operates is a defining factor in determining the way forward for the entire state system, setting the parameters within which individuals operate as subjects of law.

Starting from this guiding principle, the primary purpose of which has been to eliminate dictatorial practice and guarantee a minimum social order, in which the presumed arbitrary will of the rulers is removed *ab initio*, it has been established as a principle that the law is addressed equally to all individuals, irrespective of their position in society, and applies equally to all.

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However, in order to properly understand how law enforcement and the achievement of law work (Gurvitch, 1960, pp. 180-181), it is necessary to consider a number of nuances and to provide specific explanations of both the concept of law enforcement and the notion of justice as a state organ vested with the state prerogative of judicial power for the purpose of law enforcement and the achievement of law.

Thus, starting with the conceptual term of justice, it has several meanings (Brimo, 1968, p.21), two of which are directly related to the study of judicial organisation and law enforcement:

- in a first sense, justice is a function, the function of judging, of deciding on conflicts arising between different subjects of law by applying the law.
- in a second, narrower sense, justice means all the institutions through which the judicial function can be exercised: courts, magistrates, auxiliaries or partners of justice, etc. From this point of view, justice is a public service of the State because it corresponds to an activity which is organised, financed, regulated and the results of which are assumed by the State through law enforcement and the achievement of the law.

Then, with regard to the concept of law enforcement, the slightest temptation to reduce the law enforcement to a simple automatism of enactment and rigid enforcement, without seeking and interpreting its deeper meanings, has been one of the decisive factors in the emergence of historical and especially legal catastrophes. The law is the law - is the principle that the law that is in force must be followed regardless of its content, out of respect for its authority and respect for its purpose, which is to ensure legal certainty for the litigant.

First of all, it should be made clear that there are a number of defining and imperative elements of the law which are necessary and mandatory in order to balance the potentially impetuous mode of action of its supremacy. The law must prescribe a certain social conduct, a certain behaviour, with the aim of showing individuals, as genuine subjects of law, what they are allowed or forbidden to do or to refrain from doing, and what they are allowed or forbidden to do any act that has legal consequences, having a binding, impersonal and general character. The law thus establishes a commandment which seeks to protect a series of values fundamental to society. Its general and impersonal character refers to the ability of the law to apply to an indefinite number of legal situations, but also to be equal for all, not to exclude a certain category of individuals from its enforcement, and its binding character implies the obligation to comply with the provisions of the law by volitional means or otherwise through the coercive force of the state. However, such reasoning does not exclude the adoption of special rules specific to exceptional situations - but the general character of the law does not disappear in this

hypothesis, and even in these situations, the law will have unlimited applicability, but only to a certain number of individuals, defined by a certain criterion specific to the conduct prescribed in the applicable law.

It is therefore the binding nature of laws that grants them the power to direct the conduct of individuals. The effect of this feature of laws is the existence of the sanction that arises if they are violated.

The Declaration of Human Rights states the principle that the law is the expression of the general will. This postulate of the general will is thus considered to be more of an approximate concept, because in reality and naturally there can be no unanimity when it comes to adopting a law. Therefore, the law will rather be the expression of the will of a majority, harnessing its interests to the detriment of less significant minorities.

It is necessary and useful to point out at this stage that the law has the highest legal force precisely because it is the result of the expression of the general will of the people expressed through the legislature as an exercise of the sovereignty of the people.

However, it is not only the legislature that is capable of issuing legal rules, but also the executive branch, which, by issuing ministerial orders, simple ordinances or emergency ordinances, acts of the executive branch, which have as their attribute and purpose (Deleanu, 1992, p. 15) the very enforcement of the law and of legislation in general.

It is the exclusive attribute of the legislator to create law, and the judge is not free in its enforcement in the sense that the judge's decisions cannot be motivated by political arguments, but by arguments of principle establishing the subjective rights of the parties at the time of the facts.

However, the relationship that is established between the law in general and these specific normative acts is that the normative acts of the executive do not have the ability to amend, supplement or abrogate a law, because they must exclusively comply with the law and facilitate its implementation through specific specifications. It is therefore argued that the rule of law includes the imperative to comply with the law alongside the imperative to comply with these quasi-legal normative acts, whose role is to enable interpretation and enforcement of the law and to give concrete expression to what the law enacts at an abstract level. This is why, in any state governed by the rule of law, the law and its enforcement becomes the main criterion for assessing the activity of both institutions and individuals, the main factor that governs the workings of a society, of a state governed by the rule of law.

The practical application of the provisions contained in normative acts is not possible without the participation of all the subjects of law: citizens, state bodies, non-state organisations, and without ensuring an organisational framework conducive to the use of their legal prerogatives.

The enforcement of the law with a view to the achievement of the law implies the impact of the model of conduct (Badescu, 2013, p. 71) in the system of rules elaborated by the lawmaker on living reality and the analysis of this achievement would be oriented towards: the way in which normative acts are implemented in the fabric of social relations; the way in which the content of normative acts captures and coincides with the interests and ideals of the individual and of the community and finally in the transformation of the meaning of the legal rule from its state of external obligation to one that is internal to the consciousness of the subjects of these norms.

The enforcement of the law (Del Vecchio, 1953, p. 166) for the achievement of the law takes place through the execution and observance of the provisions of legal norms, without necessarily requiring the creation of specific legal relationships. The enforcement of the law is conditional on the creation and development of legal relationships in which a subject of law is always a state body invested with this task.

The act of enforcing the law (Micu, 2012, p. 46), performed based on its provisions, has a special and specific significance because it creates, modifies or extinguishes legal relationships, establishing the rights and obligations of the persons to whom it refers. Law enforcement must ensure the establishment of the truth at the time of the enactment of these laws, the protection of the rights and freedoms of the persons concerned.

The phases of law enforcement are essential and necessary stages, and therefore involve both generalisation and abstraction operations, as well as technical activities and procedures for enacting legal provisions. (Popescu, 2000, p.10)

Coercive force expressed through the law, should not be approached as force in the raw sense, but only as a means of prevention and protection of the individual, but also as a method of ensuring and enforcing the effectiveness of the law. In this respect, a new approach to the concept of submission to state power is emerging in the sense that if citizens submit to the law of their own free will, they will benefit from its prevention and protection, since state mechanisms of coercion are subject exclusively to the law, which in turn enjoys a very strict legal organisation.

Freely following and enforcing the law must be based on the application of three rules: autonomy of will, the defence of public order and the public interest, and the achievement of a fair balance between private interests in any potential opposition. (Gény, 1899, pp.114-120)

The limits imposed by the enforcement of the law are matched by the limits imposed by following the fundamental rights and freedoms of citizens, which characterise the existence of a genuine rule of law. These limits imposed by the Constitution are also a guarantee of the conformity of the law with the principles laid down in the Fundamental Law.

Both lawmaking and law enforcement and the achievement of the law (Niemesch, 2019, p.76) can have only one meaning - the achievement of justice between people.

Even if there is a solution in national law to resolve possible contradictions in case law caused by differences in the interpretation and application of the same legal text, such situations are likely to affect the citizen's confidence in the legal security provided by the State through the rules enacted, but sometimes the effort to fill gaps or imperfections in the law can lead to the courts exceeding their jurisdiction in the process of enforcing the law, and although the court can interpret any legal rule, it cannot replace the legislator, and if it does so, it violates the separation of powers in the state, which can create a legal conflict of a constitutional nature.

In conclusion, it can be stated that the justification of legal rules does not come from their normative content, but from the adoption procedure considered to be legitimate by citizens, with the result that they cannot be equated with the legitimacy of the legal rule but only with the legal form of the adoption procedure. The justification of legal rules is strictly linked to the procedure for enacting and applying them.

The supremacy and respect for the law therefore appears, not as a tyrannical instrument of coercion or of undermining or standardising the identity of individuals, because the law cannot enjoy the force with which it is endowed if it does not comply with certain qualitative requirements, but strictly as a complex instrument which ultimately seeks to protect individuals as subjects of law and the ultimate recipients of the effects of legal rules. Respect for and enforcement of the law is necessary in order to ensure a real legal order, which in turn will make it possible to ensure the conditions necessary for the development of individuality, without having to give up some of the personal attributes and values.

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