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## PRINCIPLES OF LAW ENFORCEMENT ACTIVITY BY PUBLIC AUTHORITIES

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**Abstract.** Both the purpose of research and the study presented in the article are focused on one of the main factors, which influence, at all stages, the efficiency and social value of law enforcement activity. This factor would be the observance of principles of law enforcement activity by public authorities, which, up to present, did not get adequate coverage in either legislation or doctrinal research. It is stated that “general principles of law mean a set of guiding ideas, which, without having the precise and exact character of the regulations of positive law, guide the application of law and its evolution”. The referential framework of the given study is determined by the essence towards which the development of the activity of law enforcement must be oriented, their destination being the ensuring of legal, fair, and impartial law enforcement. The analysis and study demonstrated that the aforementioned principles are intended to influence the regulation not only for those who apply the law, but for the lawmaker, as well. In conclusion, a multispectral and systematic approach in the field implies a research based on the theoretical importance of the principles of the law enforcement activity that resides in their contribution to the work of creating the law as well as the efficiency of the activity of legal norms applying by the public authorities.

**Keywords:** *the application of legal norms, principles of law, public authorities, efficiency, legal norms, the ideology of law, objective.*

**Rezumat.** Atât scopul cercetării cât și studiul prezentat în articol sunt axate pe unul din factorii principali ce influențiază, la toate etapele, eficiența și valoarea socială a activității de aplicare a dreptului. Acest factor ar fi respectarea principiilor activității de aplicare a dreptului de către autoritățile publice, care, până în prezent, nu și-au găsit o reflectare corespunzătoare atât în legislație, cât și în cercetările doctrinare. Se menționează că prin „principii generale ale dreptului se înțelege un ansamblu de idei directe care, fără a avea caracterul precis și concret al normelor de drept pozitiv, orientează aplicarea dreptului și evoluția lui”. Cadrul referențial al studiului dat este determinat de esența spre care trebuie să fie orientată dezvoltarea activității de aplicare a dreptului, destinația lor regăsindu-se în garantul activității de aplicare juridică legală, echitabilă și imparțială. Analiza și studiul realizat demonstrează că principiile în cauză sunt destinate să acorde o influență asupra reglementării nu numai la cei care aplică dreptul, dar și asupra creatorului actelor normativ-juridice. În concluzie, o abordare multispectrală și sistematică în domeniu presupune o

cercetare bazată pe importanța teoretică a principiilor activității aplicării dreptului ce rezidă din aportul acestora la opera de creare a dreptului cât și eficientizarea activității de aplicare a normelor juridice de către organele autorităților publice.

**Cuvinte-cheie:** *aplicarea normelor juridice, principiile dreptului, autoritățile publice ale statului, eficiența, norme juridice, ideologia dreptului, obiective.*

## 1. Introduction

It is obvious that while enforcing the law, the public authorities have the obligation to adhere to the provisions of the law to make sure that everyone – citizens alongside public authorities, all adhere to the legal norms. In this process, the action of the one called to enforce a certain law is fully successful if it is also determined by the “spirit” of this law, which can be deciphered and understood only if the requirements of the principles of law are met [1]. The principles of law enforcement activity by public authorities outline the most essential aspects of this activity, but also of the structure and the functioning of the system of agencies, which have been granted such competence.

Special obligations, in this sense, are placed upon the judge, who more often and in more difficult situations when compared to other public authorities, has to apply the law both in its letter and its spirit. The judge has the duty to apply the law and to do justice by ensuring the legality and legitimacy of the rendered rulings. The role of general, branch and inter-branch principles of law in courts’ activity has always been emphasized in legal literature [2]. According to objectives, principles of law enforcement activity represent the second component of the chain of legal categories. If objectives determine the destination of the legislative branch of state power, then the aforementioned principles show how the former ones must be realized. Along with the positive values, such an approach also highlights its own shortcomings. Compared to concrete legal norms governing various fields of social relations, the principles are characterized by increased stability and can remain intact for a long time, expressing the essence of both the law enforcement activity by public authorities and the policy pursued by state. However, this aspect is not given the necessary attention in all normative acts.

The purpose of the study consists in complex analysis of the principles underlying the law enforcement activity by the public authorities of the state. The scientific problem proposed for solution consists in determining the classification categories of the principles of the law enforcement activity, a fact that points towards the structural and competence modernization in the field, contributing to its organizational and functional efficiency.

It is very important to study the principles and especially their classification categories, which influence the aims and objectives of public authorities; to establish the reasons and circumstances which that substantially diminish the efficiency of the drawn up application acts; to evaluate from a qualitative standpoint the activity of the state apparatus; to establish citizens level of trust towards state power, in general, and especially, towards public authorities.

## 2. Conceptual and literature review

„The general principles of law represent a factor of stability, adaptation and integration within the legal order, and from the standpoint of legal technique, they fill the gap, correct excesses and anomalies in the process of interpretation and application of law. Thus, the general principles of law are not only an “armor” of legal thinking, but are also a result of numerous normative texts, an expression of “the spirit of the law”, while not going

beyond positive law” [3]. The principles of law enforcement activity by public authorities are ideas, provisions, indications, initial orientations and determinants, which form an organizational and logical basis.

Experience has proven and still proves that general, branch, and inter-branch principles of law have an exceptional role in the process of realization of legal norms. It is known that, often enough, public opinion, human communities, or even citizens acting on their own have demanded and continue to demand eliminating acts of corruption, not favoring anyone during law enforcement activity as no one is above the law. However, failure to abide by the legal norm will keep the aforementioned negative phenomena in the society, and even more so, illegality will be favored and the general inefficiency of the law will become a certainty [4].

Along with a thorough and well-thought regulation of the principles of law enforcement activity by public authorities, the corresponding normative acts require a legislative reflection of the acting priority of those norms containing principles of law enforcement activity over any other norms contained in the law. Thus, in cases when discrepancies, contradictions, or legislative gaps are found, public authorities will be allowed to act pursuant to the principles of law enforcement activity, and citizens will be given a clearer perception of their personal rights and freedoms, as well as the power to demand their observance by public authorities. “Therefore, the practical utility of knowing the principles is that we find, with their help, the guidelines for the entire legal system, which can only gain in the result, as now the lawmaker’s and practitioner’s activity is guided” [5]. In legal literature, there are different criteria for classifying the principles of law. Thus, we can highlight the fundamental, inter-branch, and branch principles of law enforcement activity. Regarding the field of law enforcement, both as a form of law realization and as an activity and process, it is explored via the principles of law enforcement phenomenon by several authors, including T. Triboi, who enumerates the following principles which describe the given phenomenon: the principle of promptness, objectivity, opportunity, legality, equity and justice, as well as unity in the process of law enforcement [6]. It is worth mentioning that the author does not carry out an in-depth research of the application of law since the aforementioned principles may characterize a law enforcement activity, and by no means a form of realization of law. A broader vision in this regard was presented by Boris Negru, who describes the ideology of law enforcement as the totality of ideas, opinions, concepts, principles, requirements which show how the legal norms should be applied. Ideology determines the values which must be achieved in the process of application of law. In simple words, ideology includes principles that must be realized, the most important of which are:

1. Promptness of law enforcement – which implies rapidity in the process of law enforcement and is an effective condition when fighting wrongdoings and protecting people’s legitimate interests, while strictly observing deadlines set by the lawmaker. At the same time, the author stresses that promptness has nothing to do with superficially solving certain cases.

2. Objectivity of law enforcement – which implies impartiality and objectiveness, the rendered decision being based on criteria that do not depend on the subject applying the law, but rather on motivated and real facts.

3. Opportunity of law enforcement – which implies the investigation of the state of affairs’ specifics at the time of issuing the application act, etc.

4. Legality of law enforcement – which ensures the adherence of the subject applying the law to the letter and spirit of the law, compliance with the limits of competence by the

public authorities, strict compliance with the procedure established by law, as well as elaboration and limitation of law-appliance corresponding to the examined case.

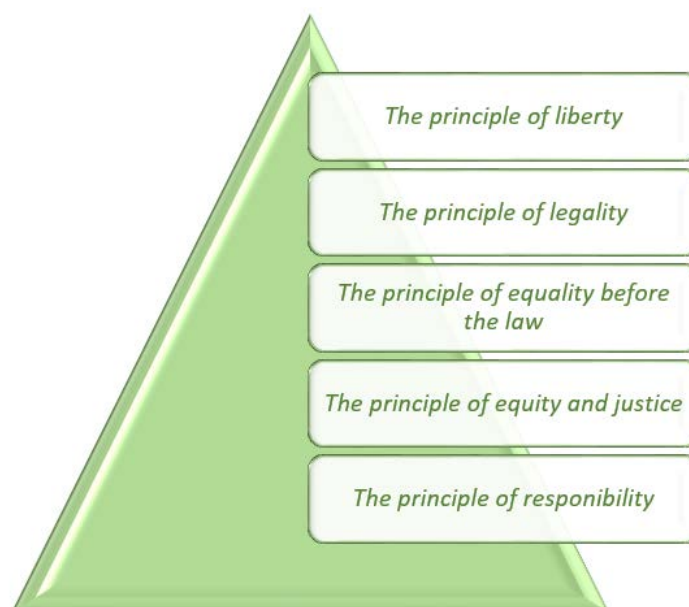
5. Equity and justice in the process of law enforcement – equity brings to the fore the problem of existence of pre-existing fundamental prescriptions, detached from nature or from an order, whose objective is to bring security to social life. It implies adjusting the decision taken during the process of law enforcement to the real state of affairs. Justice is the ideal general state of society, achievable by ensuring the observance of citizens' rights and legitimate interests.

6. Unity in the process of law enforcement – which is characterized by rendering similar decisions for similar cases [7].

### 3. Results and Discussion

Regarding the law enforcement activity by public authorities, in the light of the aforesaid, it would make sense, for instance, to classify the principles of law enforcement activity into general-legal principles, principles of institutional organization and principles of operation. When classifying the principles, it must be taken into account that some of them form the foundation of positive law, while others contribute to the establishment of legal technique in different branches of law.

**The general principles of law enforcement activity** are the following:



**Figure 1.** General principles of law enforcement activity.

a) **The principle of liberty.** The fundamental idea of the law is liberty. Article 3 of the Universal Declaration of Human Rights states: “Everyone has the right to life, liberty and security of person” [8]. Liberty, as a fundamental principle of law, implies elaboration of such legal norms that ensure self-fulfillment for all people based on their own choices in relations with other members of the community and in the given social environment; application of law by authorized state agencies to ensure that everyone is protected in one’s free manifestations and actions, for as long as liberty of others is also ensured. Clearly, during the processes of creating law and law-appliance, it becomes necessary to correlate the liberty of an individual with the liberty of others keeping in mind that, in human society, *liberties coexist*, and this coexistence is based on “some fair laws”, whose provisions facilitate and

ensure the manifestations and free actions of everyone, in a natural relation with the manifestations and free actions of others.

b) **Principle of legality** implies the obligation of public authorities, local public administration, civil servants, citizens and their associations to adhere to the provisions of the Constitution and legislation of the Republic of Moldova, which establishes the exact way of training public authorities, states their duties and correlation in exercising their prerogatives. In general terms, legality requires two sides: a) existence of fair and scientifically approved legal regulations (content side); b) their enforcement since the existence alone of even the most perfect laws will not be suffice (professional side) [9]. The principle and requirements of legality cover all stages of law enforcement activity. Any subject of law enforcement has the obligation to draw up law enforcement acts within the limits of one's legal capacity and to not allow other subjects to carry out any illegal actions; to strictly comply with the norms governing the order (procedure) of examining the case and drawing up the law enforcement act; to make a fair legal assessment and to conclude it with a decision that would correspond to the letter and spirit of the law.

Special obligations, in this sense, are placed upon the judge, who more often and in more difficult situations when compared to other public authorities, has to apply the law both in its letter and its spirit. The judge has the duty to apply the law and to do justice, to perform "the act of righteousness", by ensuring the legality and legitimacy of the rendered rulings.

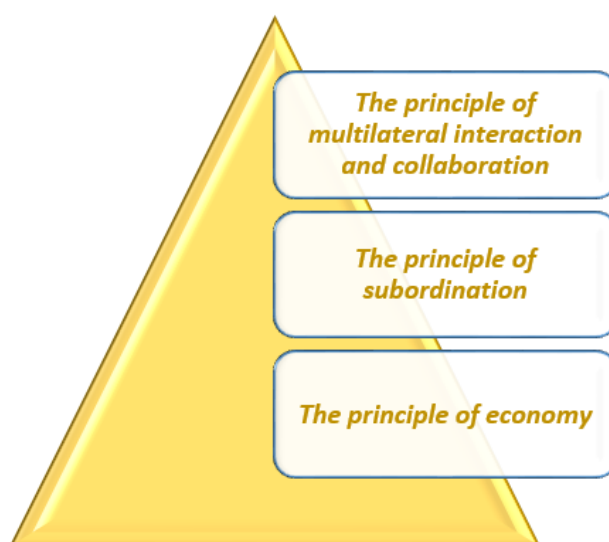
c) **Principle of equality before the law** implies equality of rights, freedoms and obligations, lack of privileges in claiming of rights for certain social categories and certain subjects, regardless of origin, financial status or position held, race, nationality, sex, language, religion, domicile, etc. It is worth mentioning the distinction made between equality of rights and equality before the law. There is a difference in terminology, which can be confusing. A true equality of rights, most certainly, implies the possibility of legislature control. Without control over the constitutionality of laws, equality before them is inefficient.

d) **Principle of equity and justice**, being a general-legal and social principle, legal literature has emphasized the necessity of knowing and promoting the requirements and commands of the principle of equity both in the process of creating law and in law enforcement, noting that under this principle, situations of favoritism, when pursuant to legal regulation certain individuals are favored to the disadvantage of others, must be eliminated. Impartiality and objectivity must be fundamental rules for the judge, but also for all public and social authorities empowered to apply the legal norm. Justice, as an institution of law enforcement, aims to establish justness, treats people by excluding any subjectivism and demonstrating impartiality [10]. In all fields where law is applied, we are dealing mainly with restrictions rather than with the protection of individual freedoms, all for the sake of social solidarity, whose objective is to ensure common well-being.

People called "to make the law" and "to apply the law" must know and take into account the needs and aspirations of the members of society, while not disregarding their status. Equity's requirements towards law enforcement activity mean that the law enforcer is aware of the importance of the accuracy of decision from the standpoint of society's and state's interests. The equity of law enforcement activity implies the correspondence of the taken decision with the moral convictions of society in general. However, the most important side of the principle of equity would, of course, be the impartiality of the subject applying the law, objective attitude towards the circumstances of the case, the subjects involved, and the final decision.

e) **The principle of responsibility.** When exploring the notion of responsibility, in case of assuming it for the results of social action, it is acknowledged that social action is the direct environment for manifestation of responsibility, on the one hand, and on the other hand, that liberty is a fundamental condition of responsibility. Being closely linked to human activity, responsibility appears as a correlation with the normative system. The principle of responsibility refers both to the addressees and to the subjects of law enforcement, such as civil servants, who elaborate concrete enforcement documentation. The latter are responsible for illegal actions and decisions, which violate the rights, freedoms and legal interests of the people; for acts of corruption committed in the activity of law enforcement; for the formal-superficial attitude in issuing law enforcement documentation. In other words, “responsibility becomes an intrinsic aspect of social conduct, being a decisive factor in adhering to the provisions of legal norms and protecting social values actively and consciously” [11].

While studying law enforcement activity by public authorities, we also enumerate and characterize the **principles of institutional organization**, which have a pronounced axiological expression in the field, Figure 2.



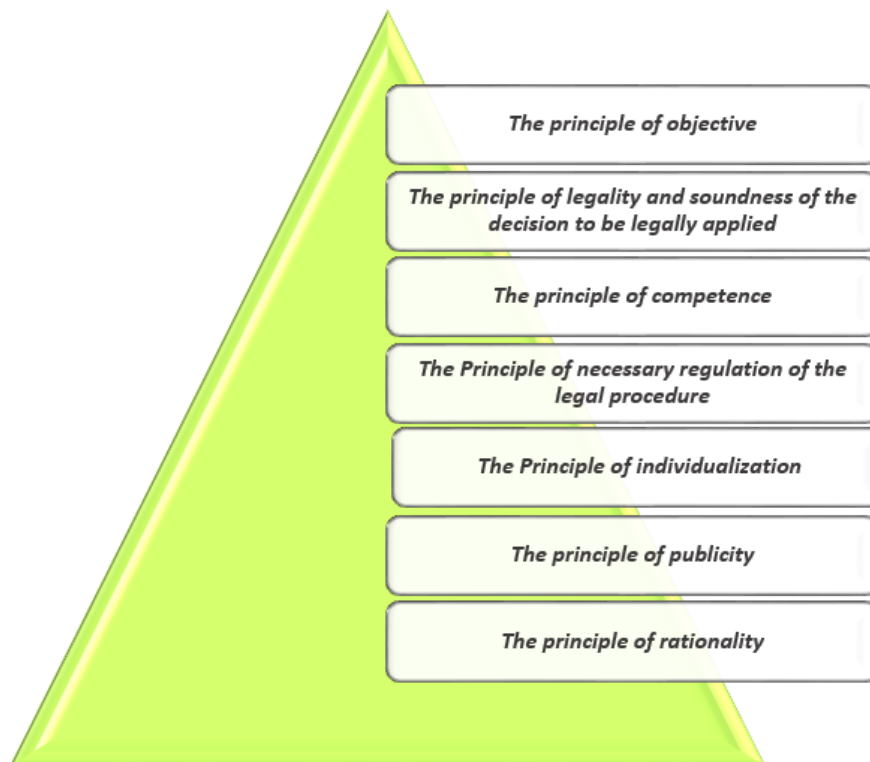
**Figure 2.** Principles of institutional organization.

a) **The principle of multilateral interaction and collaboration.** It is often difficult for public authorities involved in the application of legal norms to issue a legal, well-founded and objective decision individually. The system of public services in a state is determined by a centralized, autonomous or subordinate regime. As a result, “with regards to organization and functioning of the public administration, from a historical point of view, two systems of administrative organization have emerged: centralized and decentralized” [12]. This includes the interaction, or, in other words, the detailed process, oriented towards establishing the links between state agencies for the elaboration of the efficient mechanism of joined actions, for achieving the objectives contained in the legal norm. The efficiency of the law enforcement activity depends, namely, on the level of scrupulousness of the normative-legal regulation, the productivity of the collaboration mechanism and the interaction of law enforcement agencies.

b) **The principle of subordination.** This principle implies a subordination of inferior agencies to the superior ones, resulting from the unity of the system of state agencies, where the hierarchical levels of authority, typical for each level of agencies, must be clearly defined in the legislation.

c) **The principle of economy** determines the objective-professional assessment of not only material resources, but also of human, spiritual, psychological ones, of work, time, etc. This principle can be explored via a double approach: *the first approach* – when forming public authorities, the interdependence and interconnection of their internal structures is taken into account; *the second approach* – the economy of the entire law enforcement activity during all its stages is being presumed. At the same time, this principle affects not only the public authorities or the activity of law enforcement, but also the legal rules which are yet to be applied. This is why a legal norm is considered optimal only when its result is efficient, useful, and meets economy standards [13].

**The legal principles of operation of law enforcement activity by public authorities** can be considered the following, Figure 3.



**Figure 3.** Principles of operation of law enforcement activity by public authorities.

a) **The principle of objective**, multilateral, complete **investigation** of a certain case implies the necessity of a thorough, exhaustive, and non-contradictory study of all case materials, and, at the same time, an objective, fair, and impartial assessment by the subject applying the law given the circumstances of the case. The activity of law enforcement is considered objective if the taken decision is based on criteria that do not depend on the will of the subject applying the law, but on undisputable, real facts and arguments.

b) **The principle of legality and soundness of the decision to be legally applied.** The legality and soundness are two concepts in a relation of reciprocity, which, at the same time, have their own meaning. The legitimate character defines the adherence of law enforcement activity to the normative provisions; this holds true not only for the decisions taken during this activity, but also for the execution of these decisions and of other actions taken by the subject applying the legal rules. The reasoned characteristic, however, refers only to the decisions, and explains their correctness and conformity with the objective factors included in the case, such as evidence, testimonies. The principle of soundness directs the subjects of

law enforcement activity towards the elucidation and analysis of all the circumstances, as well as the establishment of a logical connection between the circumstances of the case and the final decision to further be applied. Unjustified facts, as well as evidence obtained by violating procedural rules cannot be taken into account and must be rejected by the subject who applies the law. Violation or non-compliance with the principle of soundness leads to declaring the issued document of application null and void.

c) **The principle of competence.** Competence means the legal capacity of a public authority or a natural or legal person to deal with a particular matter. In procedural law, competence is defined as the legal authority of a court to examine certain claims, disputes or cases [14]. Every public authority has its own competence, namely, the totality of rights and freedoms which determine its place in a given system. If a concrete life situation is examined by a public authority which does not possess the required powers or competence, then the decision taken by this public authority will also be illegal.

Thus, the legal category of competence determines the right and, at the same time, the obligation of law enforcement agencies in a certain direction or in a negative sense it serves as a limitation, which establishes the fields of implication of each agency [15].

d) **Principle of necessary regulation of the legal procedure** determines the relation between subjects and public authorities who are competent to act in the field of law enforcement. The law enforcement activity is carried out in a certain manner, taking into account all the rules and procedures established by law, which cause the specification of the activity of subjects applying these norms. In some cases, the rules and procedures mediate all stages of the law enforcement activity, in other cases – only the most essential actions of both the subjects applying the rule of law and persons involved in the process of law enforcement. It is worth mentioning that in practice the correlation of legal-material and procedural norms is not always optimal. Sometimes a detailed procedural regulation serves as an obstacle during law enforcement, and other times the lack of procedural norms can lead to abuse by law enforcement officials, civil servants, whose decision influences the realization of subjective rights and legal obligations of the subjects.

e) **Principle of individualization.** This principle relies on certain social-legal factors: the individuality of the person – one's originality and unique features; the specific characteristics of each examined case; personal responsibility of each one only for oneself; acceptance of application of legal liability measures. All of the enumerated factors determine the characteristics and level of social danger of the subject of the deed – a participant in the concrete legal relation, the circumstances of committing the deed, as well as the personality of the subject determining the individualization of the law enforcement act.

f) **The principle of publicity** implies the publicity of both the newly approved legal regulations and the stages determined by the legislation of the law enforcement activity, access and subordination of state institutions and civil servants to society. The application of the principle is not uniform, depending on the belonging of legal norms to be applied to one branch of law or another since the principle of publicity is oriented in its application to avoid affecting certain interests and rights of given subjects. In these conditions, this principle has a limited realization. The accessibility of information regarding all the institutions, the stages of the law enforcement activity by public authorities are oriented towards establishing a social control of the community and avoiding possible abuses. The process of doing justice has always attracted and interested the members of society, this interest being mutual and useful. The lawmaker complies with the publicity requirements of the court hearing to prove



that in any situation when there is a violation of the provisions of the legislation, the perpetrator is tried under legal conditions. For the realization of this principle, the law provides the possibility of allowing representatives of the media or other persons to make photo, audio, and video recordings [16]. The principle of publicity also implies that members of society are ensured access to complex information on the activity of the public authorities and maintaining of close ties between the society and the power. Public authorities, pursuant to their competence, are obliged to ensure citizens' access to correct information on public affairs and on issues of personal interest (except in cases when the right to information interferes with measures of citizens' protection or national security).

g) **The principle of rationality** implies the independence under the law of the law enforcer, which depends on one's subjective qualities. Article 27 of the Code of Criminal Procedure states: "The judge and the person carrying out a criminal investigation shall assess evidence according to their own convictions formed after examining all the evidence managed. No evidence shall have a pre-established force of argument" [17]. The principle of rationality, in the activity of law enforcement, means choosing the optimal variant for realization of legal provisions in certain social relations, as well as adherence to certain conditions for the application of a given normative act. Any legal norm is formulated in such a way as it would allow various decisions to be taken on its basis. This fact gives the law enforcer the possibility to act at his own diligence in choosing the variant of the appropriate regulation of the given legal norm. Thus, the principle of rationality excludes and prohibits the formal attitude of law enforcers towards the examined case [18].

#### 4. Conclusions

Based on the study findings and the study presented, we conclude that the analyzed principles of law enforcement activity are in a reciprocal or interdependent relation, where, by disregarding one of these principles, the efficiency will significantly decrease, or the action of other principles will become impossible. Therefore, adhering to the aforementioned principles is a fundamental condition of the entire activity of law enforcement, which is carried out by public authorities who have competence to apply legal norms, and this activity includes an official procedure resulting in drawing up of application acts, which serve as foundation for the emergence of legal relations, an issue which requires broader considerations.

The opinions of scientists agree that law is an imperfect matter that has imperfections or gaps that reduce its quality and cause damage to human rights. In such situations, in order to avoid or to reduce the risks of affecting the judicial act, recourse is made to the interpretation and application of the general principles of law but also the principles of the activity of applying legal norms where they are imperfect or do not exist. However, this phenomenon not being an immutable one because it evaluates together with the legal changes determined by the social-economic mutations that have occurred. Innovation ensures the permanent transformation of law according to new social requirements, a fact that allows us to admit the emergence of new categories of principles of law enforcement activity and much broader classifications than those presented in the content of the scientific article.

Therefore, in our opinion, the degree of efficiency of the law enforcement activity is determined: by the achievement of the goals that were the basis for the creation of legal norms and the compliance of the principles of law when issuing enforcement acts.

Through this work it was demonstrated that a multispectral and systematic approach in the field implies a research based on the theoretical importance of the principles of the law enforcement activity that resides in their contribution to the work of creating the law as well as the efficiency of the activity of legal norms applying by the public authorities. As a result, without a well-organized mechanism of the process of realization of legal provisions, neither legality, nor public order, nor any legal conduct of the subjects of legal relations can be achieved. Moreover, the very normative essence of legal regulation is questioned if there is a decrease in the quality of legal regulation, and especially of the law enforcement process.

**Conflicts of Interest:** The author declares no conflict of interest.

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