

To The Problem of Law Enforcement Legal Errors: Theoretical and Legal Aspect

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Abstract:

This scientific article examines controversial issues related to law enforcement errors. Attention is drawn to their concept, features, nature, and classification. Of fundamental importance is the issue of their causes. One of the conclusions of the work is that a law enforcement error is understood as a result of conscientious error and carelessness.

***Keywords:** law enforcement legal error, law enforcement, negligence, types of law enforcement errors, stages of law enforcement, causes of law enforcement errors.*

I. Introduction

As is known, in most cases, the implementation of legal norms occurs without the participation of the state, its bodies, and other government structures. Citizens and organizations voluntarily, without coercion, by mutual consent, enter into legal relations, within the framework of which they use subjective rights, fulfil obligations and comply with the prohibitions established by law. At the same time, in some typical situations, there is a need for authoritative, most often state, intervention in the form of the application of law, without which the implementation of law is impossible [1]. The well-known domestic legal theorist Valery Vasilyevich Lazarev believes that law enforcement acts (and law enforcement. - Author) are valuable due to their unique role, necessity, and usefulness in the mechanism of legal influence on social relations. The value of the former also lies in the fact that they implement specific social goals together (simultaneously) with regulatory legal acts [2]. It seems that it can be stated that, on the one hand, the quality and effectiveness of legal norms act as a specific prerequisite for the effectiveness of their application, which is in the system with other general (economic, political, cultural, etc.) and direct (professional culture of law enforcement entities, the microclimate of the law enforcement agency, the scientific organization of the work of their employees, the material and technical support of the law enforcement process, etc.) factors, however, on the other hand, the effectiveness of law enforcement activities is in many ways an "indicator" of the effectiveness of legal norms, a means of expressing it [3]. social change refers to changes in social aspects, community governance, and group behavior patterns. One example of social change is the increasing number of formal community institutions. For example various organizations ranging from government organizations, to social gathering organizations, are now becoming more formal, with a more rational pattern of relations. This is different from social organizations in the past, which are more informal by using emotional relationships. Soekanto in Ismail (2019)

However, it should be considered that, in this case, we are talking about error-free law enforcement activities. However, in practice, numerous examples of law enforcement errors do not contribute to the effectiveness of legal regulation. A law enforcement error distorts the will of the legislator, does not contribute to the achievement of the goal that he programmed, and violates the rights and legitimate interests of citizens and other participants in the law enforcement process.

II. Review of Literature

When preparing a scientific article, the following methods were used:

- 2.1 General Philosophical** (dialectical-materialistic), which is used in all social sciences;
- a. **General scientific** (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law but also by other social sciences;
 - b. **Special methods** (philological, cybernetic, psychological, etc.) developed by special sciences and widely used for the knowledge of state and legal phenomena;
 - c. **Private scientific** (formal legal, interpretation of law, etc.) developed by the theory of state and law.

III. Result and Discussion

3.1 On the concept of law enforcement error and its features.

In legal literature, authors offer different interpretations of the concept of law enforcement error. Thus, Lyudmila Aleksandrovna Morozova takes the following definition of an error in law enforcement as a basis: ".. a negative result caused by an unintentional and incorrect act of a subject or participant in the law enforcement process, which prevents the implementation of rights and the establishment of objective truth in each specific case" [4].

Elena Leonidovna Kovaleva argues that "an error in law enforcement can be defined as an unintentional, objectively illegal result of the activities of a law enforcement officer. An error can be caused by a bona fide mistake or carelessness committed by the law enforcement officer in the course of applying the law. As a rule, negative legal and (or) social consequences occur as a result of errors" [5]. The presence of law enforcement errors leads to the fact that law enforcement goals are not achieved, a dispute is incorrectly resolved, unreasonable measures of legal liability are applied to a person, etc. [5]. From the point of view of Kamil Ramilevich Mursalimov, "an error in law enforcement is the result of the incorrect authoritative activity of the law enforcement officer, which contradicts the norms of law, committed due to failure to fulfil the necessary set of conditions for achieving the true goal, as a result of a conscientious mistake or carelessness" [6].

Nikolay Nikolaevich Voplenko draws attention to the following features of law enforcement errors: 1) errors in the application of law often arise as a result of improper authority activity of particular subjects; 2) errors in law enforcement most often have a hidden

rather than apparent nature; 3) the peculiarity of a law enforcement error is that its statement, legal recognition falls within the competence of the subject of the error itself or a higher law enforcement body with control and supervisory powers; 4) errors in law enforcement are a unique legal fact entailing the emergence, change or termination of certain legal relations; 5) an error means an uncreative approach to law enforcement, failure to achieve the regulatory effect programmed in the law while maintaining general guarantees of restoring the truth; 6) errors in the application of law, as a rule, are an accident, not typical for legal regulation operating under a regime of genuine legality [7]. Emma Viktorovna Kazgerieva justifiably critically evaluates such a feature of law enforcement assessment as its uncreative nature. The point is that one can approach the resolution of a life situation attentively, conscientiously, and creatively but make a mistake due to circumstances independent of the law enforcement officer [8].

Focusing on the fact that law enforcement errors have a particular sphere of existence - the sphere of individual legal regulation, which distorts the authoritative state activity contained in regulatory acts when translating it into the plane of specific legal relations that are the result of law enforcement activity, Nikolai Nikolaevich Voplenko offers his vision of a law enforcement error: "a law enforcement error ... is a result of the authoritative activity of special subjects of law enforcement that contradicts the norms of substantive or procedural law and does not achieve the true goals of legal regulation, which is qualified as erroneous by the competent authority in a special act" [7].

You are correct in limiting the subject of a law enforcement error only to a particular subject. Anastasia Vitalievna Parkina and Natalia Ivanovna Uzdimaeva believe that "... a law enforcement error is the issuance by a special body (person) authorized to do so of an act of applying the law that does not correspond to the basic principles of law and the content of the applicable legal norm"[9].

3.2 On approaches to understanding a law enforcement error

Generally speaking, two main approaches to understanding a law enforcement error have been formed in legal literature.

The first approach characterizes a law enforcement error as an objectively illegal act. This understanding is based on such a definition of the concept of an error as a negative social and legal deviation, a defect (error) in professional legal activity, which is the result of an unintentional action (inaction) of a subject, which does not achieve the goals of legal regulation and requires the application of specific measures of social and legal protection [8].

With this approach, a law enforcement error is clearly distinguished from an offence, and the criterion for this is the subjective side of the act. In other words, a law enforcement error is understood as an innocent act arising from a bona fide error of the law enforcement officer. In particular, Nikolai Nikolaevich Voplenko believes that a law enforcement error is committed by a subject who does not see and does not want the erroneous result of his activity and is the result of a bona fide error [10].

Ekaterina Anatolyevna Pakhmutova and Tatyana Viktorovna Khudoykina, calling one of the signs of erroneous law enforcement activity its innocence, believe that the subject should not have or could not have foreseen the consequences of his act [11]. Alexander Borisovich Lisyutkin notes that by endowing a legal error with a sign of guilt without a direct and unambiguous indication of the law, scientists create doctrinal prerequisites for formalizing the principle of objective imputation in law enforcement practice [12].

The second approach is characterized by the fact that a law enforcement error is understood as a result of a bona fide mistake and carelessness [13]. This approach distinguishes between excusable (good faith) and inexcusable errors. The first means that a person with the most careful and conscientious attitude to the case could not avoid this error, which cannot be held against him; the second - can take place in the case if the subject, with a careful attitude to the case, could not have made this error [14]. It turns out that with an excusable error, there is no guilt; with an inexcusable error, guilt is in the form of carelessness.

In his time, Igor Mikhailovich Zaitsev considered a judicial error as a type of offence, i.e. culpable unlawful behaviour [15]. Gennady Aleksandrovich Zhilin, having classified a judicial error as a culpable unlawful behaviour, writes that "if a judge, as a result of insufficient qualification or bad faith, allows a judicial error, his behaviour (action or inaction) will be truly unlawful, since it will contradict the tasks and goals of the court in civil proceedings, its procedural functions, rights and obligations enshrined in the norms of civil procedural law" [16].

Disagreeing with the position that a law enforcement error is associated with an intentional form of guilt, which is supported by both this author and other scholars [17], we point out that a judicial error can be made in the form of negligence when the judge does not foresee, but under the circumstances of the case could and should foresee the occurrence of unfavourable consequences. For example, in judicial practice, an expert examination in civil cases is often appointed when preparing a case for trial, and sometimes, a ruling is made by a judge in the absence of persons participating in the case. This happens because the judge has yet to analyze the procedural rules governing the sole preparatory actions of the judge and the rules on the rights and obligations of the parties to the case when appointing an expert examination. The judge may also foresee unfavourable consequences of violating the procedural rules of law but frivolously counts on preventing them. For example, when appointing an expert examination, he does not explain to the parties to the case their right to present to the court the issues on which an expert opinion is required, believing that they are aware of this right and do not wish to exercise it [16].

3.3 Types of Law Enforcement Errors

In legal literature, scholars distinguish the following types of law enforcement errors. Firstly, depending on the legal status of the participants in the law enforcement process, errors are divided into a) those committed by the subjects of this process (errors of investigators, judges, prosecutors, etc., those who have authority); b) errors of other participants in the process (witnesses, victims, experts, etc.). It seems that this classification gives rise to significant objections, given that law enforcement errors are committed only by the subjects of law

enforcement (government bodies, their officials) and not by the participants in the law enforcement process (witnesses, victims, etc.).

Secondly, depending on the type of legal norm (there are errors in applying substantive and procedural law).

Thirdly, based on the stages of the law enforcement process, a distinction is made between a) errors made by law enforcement subjects in identifying and analyzing the factual circumstances of the case. Most often, such errors concern the relevance and admissibility of evidence; b) errors in qualification. They are expressed in the incorrect assessment of actions (inactions) about a specific legal norm; c) errors in decision-making. They entail a distortion of the will of the state regarding the merits of the case; d) errors in the execution of the adopted act, as a rule, reflect all the miscalculations made at the previous stages of the law enforcement process, have a direct impact on the implementation of subjective rights and legal obligations, reduce the effectiveness of professional legal activity [4]. Elena Leonidovna Kovaleva, turning to the analysis of law enforcement errors, draws attention to the fact that errors in establishing the factual circumstances of the case are generated by the formal attitude of the law enforcement officer to his duties, are a consequence of his failure to comply with the principles of proof: comprehensiveness, completeness, reliability of evidence. As the author emphasizes, legal qualification errors result from qualification errors. Distinguishing logical and factual (legal) errors in qualification activity, it is indicated that logical errors are associated with the distortion of connections between thoughts, and factual errors arise due to the distortion in thoughts of relationships between objects, phenomena, and the surrounding reality. Suppose logical errors can be characterized as errors in the form of evaluative mental activity. In that case, factual (actually legal) errors can be characterized as errors in the content of this activity [5].

According to the author, errors in issuing a law enforcement act are usually associated with an insufficient legal culture and a lack of knowledge of the law enforcement officer. The most common law enforcement error, in this case, is failure to comply with the form of the law enforcement act, which does not give rise to the necessary legal consequences for the interested party about whom the law enforcement act was issued [5].

It seems that the statement of Alexander Sergeevich Eremenko, who, leaning towards the stage of legal qualification, interprets the legal error of the law enforcement officer as "... a legally significant result of the impossibility of qualifying the relationship, i.e. the impossibility of establishing the identity between the factual composition and the legal composition of the qualified relationship, caused only by such a bona fide error of the law enforcement officer regarding the circumstances that have legal significance, which is insurmountable in these specific conditions of law enforcement in the absence of fault of the law enforcement officer in the actions or inaction to eliminate such error" is questionable [18].

3.4 Causes of errors in law enforcement

The causes of errors in law enforcement are very diverse. Thus, at one time, Igor Leonidovich Petrukhin distinguished three groups of causes of judicial errors and, accordingly,

three stages of their cognition: a) causes of errors associated with the violation of the requirements of substantive and procedural law at the level of principles and specific norms; b) causes of errors consisting in the general conditions of the administration of justice and the level of training of judges, the peculiarities of their legal awareness and moral qualities, the conditions of their life and work, the organization of the judicial system, the effectiveness of the participants in the process, the influence of legal science on legal practice, the degree of information services to the judicial system, etc.; c) causes rooted in the state of guarantees of legality: economic, ideological, political, legal [19].

Nikolai Nikolaevich Voplenko, who surveyed 327 law enforcement officers (218 investigators and 109 judges), analyzed the following list of causes of errors in law enforcement activities: 1) ambiguity, inconsistency of legislation; 2) lack of stable legal practice; 3) insufficient legal knowledge of the law enforcement officer; 4) opposition from interested parties; 5) unfavourable operating conditions; 6) deficiencies in the selection and placement of personnel; 7) one-sidedness and incompleteness of evidence; 8) complexity of procedural requirements for the performance of individual legal actions; 9) heavy official workload; 10) lack of specialization in work [20]. Law enforcement errors can be caused, which, at first glance, will seem paradoxical, by the professional experience of law enforcement entities, which, in addition to positive, also has negative characteristics. It is necessary to consider that the same type of legal situations, which professional experience is guided by, as a rule, generates stereotyping of intellectual processes, template actions and data operations, making it difficult to see the uniqueness of a particular case [21].

IV. Conclusion

In this part of the work, it is possible to present several conclusions reached by the author:

1. A law enforcement error is the issuance by a particular body (person) authorized to do so of an act of applying the law that does not comply with the basic principles of law and the content of the applicable legal norm.
2. A law enforcement error is understood as a result of a bona fide mistake and as a result of carelessness. This approach distinguishes so-called excusable (good faith) and inexcusable errors. The first means that a person with the most careful attitude to the case could not avoid this error, which cannot be held against him; the second - may take place if the subject, with an attentive attitude to the case, could not have made this error.
3. Among the various types of law enforcement errors, errors are particularly distinguished based on the stages of the law enforcement process: errors in the process of identifying and analyzing the factual circumstances of the case, in legal qualification, in making a decision, in the execution of the decision taken.
4. The reasons for errors in law enforcement may be objective (for example, ambiguity or inconsistency of legislation) and subjective (for example, insufficient legal knowledge of the law enforcement officer).
4. Prospects. The controversial general theoretical problems of law enforcement errors considered in the article may, become the subject of scientific research by legal theorists and representatives of sectoral legal sciences.

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