



## NOTAS Y DEBATES DE ACTUALIDAD

UTOPIA Y PRAXIS LATINOAMERICANA. AÑO: 23, n° 82 (JULIO-SEPTIEMBRE), 2018, pp. 423-431  
REVISTA INTERNACIONAL DE FILOSOFÍA Y TEORÍA SOCIAL  
CESA-FCES-UNIVERSIDAD DEL ZULIA. MARACAIBO-VENEZUELA.  
ISSN 1315-5216 / ISSN-e: 2477-9535

### Legal Regulation of Socially-Oriented Legal Eechnique

*Reglamentación jurídica de la técnica jurídica de orientación social*

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This paper is filed in Zenodo:

DOI: <http://doi.org/10.5281/zenodo.1513434>

#### ABSTRACT

The authors defined conceptual provisions of the modern classification and specification of legal technologies. The legal tools of law enforcement technology are investigated, its concept and structure are revealed, typologies of law enforcement and law enforcement technology are defined; the forms of expression of law enforcement technology are investigated; the features of the use of law enforcement technology in various types of legal activity are revealed; the author's model of law enforcement technology of arbitration proceedings is developed; the problems of law enforcement monitoring are analyzed. The authors have proposed the ways of using judicial practice in law enforcement monitoring.

**Keywords:** Legislation; modernization; regulation; technology.

#### RESUMEN

Los autores definieron las disposiciones conceptuales de la moderna clasificación y especificación de las tecnologías jurídicas. Se investigan los instrumentos jurídicos de la tecnología de aplicación de la ley, se revelan su concepto y estructura, se definen las tipologías de la aplicación de la ley y la tecnología de aplicación de la ley; se investigan las formas de expresión de la tecnología de aplicación de la ley; se revelan las características del uso de la tecnología de aplicación de la ley en diversos tipos de actividad jurídica; se desarrolla el modelo de autor de tecnología de aplicación de la ley en los procedimientos de la cotidianidad; se analizan los problemas de la vigilancia de la aplicación de la ley. Los autores han propuesto las formas de utilizar la práctica judicial en la vigilancia de la aplicación de la ley.

**Palabras clave:** Legislación; modernización; regulación; tecnología.

Recibido: 20-08-2018 • Aceptado: 15-09-2018



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## **INTRODUCTION**

As an alternative to the name of the law enforcement monitoring procedure provided for by the Regulation on law enforcement monitoring in the Russian Federation, it is advisable to use the more General term "monitoring of the implementation of the right", otherwise the direct forms of the right implementation can be included as objects of study in the framework of the generalization of law enforcement practice only optionally. It is interesting that Chapter 12 of the Federal law of 28 June 2014 No. 172-FZ "on strategic planning in the Russian Federation" applies the term "monitoring of the implementation of strategic planning documents" (Houlgate, 1998).

Monitoring of enforcement should be considered in conjunction with the powers of law enforcement authorities. The monitoring carried out by state bodies and their officials by virtue of their duties differs from similar actions carried out by other bodies and persons by virtue of their will (desire), as, for example, the official interpretation of the law differs from its informal explanation. The main difference is the legally significant legal consequences of these actions: in the first case they occur, and in the second – no (Errera, 2007).

Monitoring of law enforcement should become an integral part of public administration, the results of which should be taken by the authorized bodies of the relevant management decisions. Therefore, the dissertation fully shares the point of view of those scientists and practitioners who believe that the organization and implementation of monitoring should become the authority of the state. The same position is evident in the arguments of some researchers about the nature of the state control, which "is designed to ensure the regulatory activities by analyzing and verifying the implementation of laws and other legal acts and the validity of the actions". Thus, in the exercise of control, the legality of the adoption of legal acts is considered, the actual situation is studied and the assessment of the actions taken is carried out. A similar view is shared by other researchers, believing that one of the stages of the control procedure is the stage of making a decision on the application of coercive measures to the controlled object (Samuel, 1991).

However, the technical and legal aspect of law enforcement monitoring remains out of the field of view of legal experts. It should be emphasized that the objects of law enforcement monitoring as a kind of legal activity have technical, legal and technological and legal components: a set of tools used to achieve the goals and objectives of law enforcement monitoring. The main focus should be on law enforcement monitoring technologies (Goodrich, 1985).

## **LITERATURE REVIEW**

At first glance, the technology of law enforcement monitoring appears as a set of tools used in the technology of observation, analysis and evaluation of legal information, as well as criteria and indicators of the effectiveness of laws and practices of their implementation. However, as the monitoring of law enforcement is institutionalized and the phenomenon is understood, the content of this technique is becoming more complex and its elements more diverse, more clearly showing technological features (Errera, 2007).

At the initial stage of a kind of technological and legal techniques that make up the technology of law enforcement monitoring, there are relatively few, elements of rule-making or law-enforcement technology are adapted for it. However, this assumption, as suggested by N.N. Chernogor does not exclude the possibility of independent technological methods and technical means, for example, techniques of drawing up plans, references to other plans, techniques of approval of plans and monitoring programs, techniques of registration of proposals of Federal Executive authorities in the draft consolidated plan, that is, it is a question of structural and substantive rules for monitoring of law enforcement (Errera, 2007).

When monitoring enforcement, legal and technical means used in specific technological frameworks should be used in accordance with certain technological strategies, tactics, methods, rules and techniques aimed at specifying the purpose and object of monitoring. Thus, the collection of information is carried out by sending instructions, requests to the subordinate territorial bodies of state power, Federal services and agencies and etc. At the stage of generalization and analysis of information using such technological tools like "file law", the criteria and indicators of the effectiveness of laws and practices of their application. In the design of the monitoring results, special methods are used for preparation of the outcome document of the report contains sound proposals for improvement of legislation, etc.

### **DATA AND METHODOLOGY**

Thus, the technology of law enforcement monitoring is quite multifaceted and complex in content and structural terms, which, in our opinion, requires the most serious study and application of the relevant methodology. The following definition can be adopted as a working one: the technology of law enforcement monitoring is a set of methods and methods, rules and techniques for the use of monitoring planning tools, obtaining the necessary information, recording it, summarizing, analyzing and evaluating it, processing and publishing it, as well as implementing its results (Broekman and Backer, 2013).

Research of law enforcement monitoring technology, formation of positive scientific knowledge about this phenomenon require the application of the methodology of legal science. The concretization of the used cognitive means, the determination of the set of methods and methods of their use, methodological approaches used to study this phenomenon, is based on the characteristics of the subject of research, its forms of existence and the specifics of the scientific problems to be solved.

### **RESULTS AND DISCUSSION**

Currently, in legal science there is a research paradigm, according to which the issues of monitoring technology in law, its technique and methodology are not distinguished and formulated as the problems of the latter. This approach seems to be unproductive and, in our opinion, can lead to erroneous conclusions (Hellebuyck, 2009).

The category "methodology of legal monitoring", so fashionable today, as well as the calls of some scientists to actively develop it, seems quite controversial. Moreover, the reasoning about it is reduced to the formation of positive theoretical knowledge about monitoring – the development of applied concepts, goals, principles, subjects, stages, methods of its implementation. The task of the theory is to form a positive knowledge of the subject. The methodology is responsible for organizing the formation of this knowledge. From this point of view, we can state that there is a substitution of concepts – the theory and methodology of monitoring in law (Leith and Hoey, 1998a).

The methodology of legal monitoring, defined as a set of methods, methods and means to ensure a rational and effective organization of the activities of monitoring subjects to implement the inventory, forecast, to assess the effectiveness and efficiency of regulatory legal acts and law enforcement practice, in the process of perception and study is mixed with the technology, technique and methodology of its implementation (Alder and Wilkinson, 1999). However, it is easy to note that in this case out of the field of view of the technical and legal means of drawing up programs and plans of monitoring activities, criteria and indicators of the effectiveness of laws and practices of their implementation, the technique of maintaining the dossier of the law, registration of the results of monitoring, etc.

Representatives of this approach distinguish as the most important methods of legal monitoring the observation, analysis, synthesis and evaluation of the information. The mentioned techniques and methods of scientific knowledge are really used in the course of monitoring of law enforcement, and, at least, at the level of scientific hypothesis, we can say that they, along with other technical and legal means and techniques are covered by the concept of "legal technique of legal monitoring". However, their totality cannot be qualified as the methodology of the latter (Leith and Hoey, 1998b).

The main difference between the methods of law enforcement monitoring technology and the methods and principles of scientific knowledge is characterized by the sphere, goals, objectives and results of their application. Methods of scientific knowledge are used in research conducted to obtain new theoretical or empirical knowledge, to expand the content of the General theory of law or other legal science. The techniques of law enforcement monitoring technology determine the way, the correct movement of thinking not in the scientific but in the practical sphere related to the monitoring, analysis and evaluation of legislation and its application. Therefore, if one or another part of scientific methods can be applied in the process of monitoring, the rules of law enforcement monitoring technology are ineffective in scientific knowledge and cannot contribute to new scientific knowledge about the law, the laws of its functioning and development.

The results of the application of scientific methods and technologies of law enforcement monitoring are also fundamentally different. If the combined result of the first are scientific knowledge in the form of a theory of law or other legal science, the total result of law enforcement monitoring technology is characterized by its operating system and the degree of achievement of its main goal – to provide feedback between the society and the legislator (Grabowski, 2013).

The task of further progress in conducting theoretical and applied research of this phenomenon and equipping of the subjects and participants of monitoring enforcement of scientifically grounded recommendations on optimization of the established practice of its realization, to improve its efficiency requires to overcome the above-mentioned paradigm of research. The limitation of the research objectives development of methodology of monitoring enforcement does not allow to cover all issues related to the topic and is able to fully satisfy practical needs of the organisation and monitoring of enforcement across the state (Legal Argumentation..., 2007).

It should be noted that in recent years the role of social technologies used in various spheres of non-production, primarily legal, has increased significantly. The experience gained to date in monitoring the law enforcement in the public authorities of both the Russian Federation and its subjects, as well as the achieved level of scientific understanding of this phenomenon allow us to assert that legal monitoring is a kind of legal and, in particular, law enforcement technology (Binder and Hofbauer, 2017).

The progressive process of institutionalization of law enforcement monitoring, quantitative and qualitative growth of rules, methods, techniques, methods of its implementation cause the emergence of an objective need for their harmonization and systematic use. Consistent implementation of law enforcement monitoring in the practice of state bodies is associated with the complexity of its mechanisms, requires more developed forms of legal mediation of this activity. All this has historically and logically led to the emergence of law enforcement monitoring technology (LoPucki and Weyrauch, 2009).

It is the "technological" view of law enforcement monitoring that allows us to bring the empirical and logical in scientific research as much as possible, to cover and link together not only the methods of studying legislation and law enforcement practice, but also the organizational, administrative blocks, its components, institutional, functional and instrumental in its nature and content (Kosielińska-Grabowska and Grabowski, 2015).

The law enforcement monitoring system should include:

- authorized entities;
- objects of law enforcement monitoring;

- regulations;
- certain procedure;
- information block, including social information;
- analytical and evaluation block.

This understanding of law enforcement monitoring allows us to broadly interpret its objects—the dynamics of the legal sphere, legislation and other legal acts, state and public institutions, legal conflicts, lawful and illegal behavior of citizens. This can be attributed to objective processes, and the contents of which are incorporated into institutions and legal norms (Mäntysaari, 2017).

Consequently, all of the above indicates that law enforcement monitoring is technologically sound, allowing for the improvement of law enforcement technologies. The detection of the technological effectiveness of law enforcement monitoring is a consequence of the progressive study of the phenomenon, which has not been previously subjected to special research in the aspect of legal technology and technology, the discovery of new monitoring parties, which, although previously recorded in the studies, were considered as elements of the methodology for monitoring law enforcement (Pascuzzi, 2016).

Special studies of law enforcement monitoring technology should start not only with the collection and understanding of empirical facts, but also with the implementation of a critical analysis of the concepts of legal monitoring of law enforcement, clarifying the links and patterns of its implementation. The specificity of knowledge of this type of law enforcement technology is that first there was a theory of monitoring, in which were developed separate technological and legal tools (criteria and indicators for assessing the effectiveness of the law and its implementation), and then it was regulated. The desire to theoretically comprehend, to reveal the laws of law enforcement monitoring involves the solution of a number of epistemological problems (Frändberg, 2014).

In particular, since the technologies of law enforcement monitoring are heterogeneous, they can be classified on several grounds:

- stages of monitoring enforcement can be identified planning techniques, collect the necessary information, it is fixed, compilation, analysis and assessment, design and publication and implementation of results;
- for the roles (functional load), you can highlight the technology of preparation of documents (plans, reports, dossiers of the "law", etc.), evaluation of the monitoring object and information about it (benchmarks and performance indicators);
- depending on the quality of the structural elements, it is possible to identify the technology of strategy or tactics, the choice of method or method, rules and techniques that ensure the use of legal and technical means for the optimal achievement of the goals and objectives of law enforcement monitoring.

The last classification shows that the structure of law enforcement monitoring technologies in General is identical to the basic structure of legal technology, which consists of technological strategies and tactics, methods, methods, rules, techniques of optimal use of legal and technical means aimed at servicing activities to monitor the process of application of legal norms with a view to further improvement and adjustment of the current legislation in accordance with the realities of legal reality. It is important to note that procedural forms of law enforcement technology are not included in the structure of this type of technology due to the lack of strict procedural regulation of this activity.

## CONCLUSION

The content of the object, subjects, aims and objectives of law enforcement monitoring determines and confirms the need to develop law enforcement monitoring technology. Based on the previously identified essence of legal technology, it can be concluded that the technology of monitoring of law enforcement as one of its varieties is a systematic use of technological tools to ensure that the subject of monitoring the desired result.

Therefore, the structure of the law enforcement monitoring technology in General is identical to the basic structure of the legal technology and law enforcement technology, that is, it consists of the technological strategy and tactics, technological methods, methods, rules, techniques for the use of technical means. The technology of law enforcement monitoring is focused on the service of activities to monitor the process of practical implementation of legal norms with a view to their subsequent improvement and adjustment in accordance with the realities of legal reality. Procedural forms are also included in the structure of this type of technology due to the strict procedural and procedural regulation of this activity.

Thus, the basis of the content of technological means of law enforcement monitoring should be the means, rules, techniques, methods and techniques from the field of statistics, sociology, mathematics, Cybernetics, formal logic, serving the analytical intellectual and volitional activities to track the objective laws of the implementation of law. Moreover, most of the components of the technological means of law enforcement monitoring cannot have regulatory regulation and do not need it, unlike legal and technological means serving various types of legal activities.

Based on this, we can formulate the following definition: law enforcement monitoring technology is a system of knowledge about the optimal use of social, technical and technological means within the framework of certain strategies, tactics, methods, methods, rules, techniques used in the implementation of law enforcement monitoring aimed at analysis, evaluation of the effectiveness of legal norms and law enforcement actions with the prediction of their subsequent optimization. At the same time, the law enforcement monitoring technology implemented within the framework of the law enforcement technology is aimed not only at identifying defects in the law with the aim of their normative correction (which is inherent in the monitoring and technology, when the latter is its element), but also to study the peculiarities of the implementation of certain groups of law norms in order to develop the most effective and optimal technologies for their application.

In the scientific literature, a different term is used: "the mechanism of law enforcement monitoring "as" a well-established movement of information on the action of legal norms between the links involved in monitoring research, the gradual transformation in the course of analytical and evaluation activities and subsequent use to adjust the rule-making and law enforcement, as well as forecasting the needs for legal regulation". We believe that the analogy with the mechanism of the state in solving purely technological problems should not be, although the author and "stipulates that under the elements of the monitoring mechanism of law enforcement in this case refers not only to the actors and other participants in this activity, but the recipients of the information received by results of carrying out monitoring (not only the legislator but also the enforcers of all types)".

Development of technologies for monitoring enforcement will improve the effectiveness of this activity as a whole, because now the real results of the monitoring of law enforcement practices is not yet obvious. For example, in The State Duma of Russia as a justification for the introduction of draft laws monitoring of law enforcement is not called. In the messages of the President of the Russian Federation to the Federal Assembly in 2012, the topic of monitoring was raised only in relation to the quality of medicine, education, scientific results, the demand for cultural institutions, and in 2013 the word "monitoring" was not used at all (Lind, 2015).

However, the experience of law enforcement monitoring is accumulated, so it is necessary to generalize and promote the positive, and the technology of law enforcement monitoring-to improve. At present, a number of problems have been found in the law enforcement monitoring technology, the solution of which will significantly improve the efficiency of this technology.

There is a problem of fixing of subjects of monitoring of law enforcement. The main subject of law enforcement monitoring is the Executive authorities, the role of legislative bodies in the Regulation on law enforcement monitoring in the Russian Federation is reflected optionally. The principle of separation of powers determines the problem of inclusion of judges in the monitoring of law enforcement. Local governments were previously reflected in the "header" of the table of Federal law enforcement monitoring Plans, but none of them are named as performers, and now they are mentioned only as one of the possible subjects of proposals to the law enforcement monitoring Plan (though not independently, but only "through the public authorities of the Russian Federation"). Civil society institutions are designated only as a source of information for the authorities. Probably, these problems are caused by the complexity of the domestic legal system and the principles of its construction, however, they can be solved by improving the technology of law enforcement monitoring. In particular, this paragraph will provide some information on the implementation of law enforcement monitoring by legislative authorities (for example, the legislative Assembly of the Nizhny Novgorod region), and in the next paragraph – participation in this technology of courts.

One of the problems in the implementation of law enforcement monitoring is the technology of collection (and selection) of information. In accordance with paragraph 6, the Methods of monitoring law enforcement in the Russian Federation should be used:

- a) practice of courts of General jurisdiction and arbitral tribunals;
- b) the practice of the Federal Executive bodies, public authorities of the constituent entities of the Russian Federation and other state bodies;
- c) information on the practice of application of normative legal acts of the Russian Federation, received from the Commissioner for human rights in the Russian Federation, the Commissioner Of the Russian Federation to the European court of human rights, the Commissioner for the rights of the child under the President of the Russian Federation, as well as from the Public chamber of the Russian Federation, state corporations, funds and other organizations established by the Russian Federation on the basis of Federal law;
- d) information received from public, scientific, human rights and other organization;
- e) information obtained from the media;
- f) information from citizens;
- g) information received from other sources.

In accordance with paragraph 7 of the Methodology, additional information can be used:

- a) statistical information derived from statistical data for the time being-and supplemented by industry statistics of public authorities and other state bodies;
- b) sociological information formed on the basis of sociological researches'.

However, experience shows that not the whole range of information that requires generalization is collected and studied. For example, when monitoring the law enforcement Of the law of the Nizhny Novgorod region of December 27, 2007 № 196-Z "on public events held in the Nizhny Novgorod region", the working group considered the materials presented by the state Ministry of internal Affairs of Russia in the Nizhny Novgorod region , on the results of work on the implementation of the law for 2012 and 2013 and decided to summarize information on the practice of the law of the region from other sources, in particular

information on scientific research on the problems of legal regulation of the right of citizens to conduct public events.

Generalization of scientific research on the problems of legal regulation of the right of citizens to conduct public events allowed to draw conclusions, important both in the doctrinal key and to improve the technology of law enforcement. In a doctrinal vein, it was found that scientific research of such a specific problem is characterized by:

- complexity, as legal relations are at the "junction" of the basic branches of law-constitutional, administrative and municipal;
- exclusively applied value-closely related to the practice of law enforcement, however, mainly do not precede the implementation of citizens ' right to hold public events, and there are post factum;
- a detailed study of the actions of law enforcement officers during public events.

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