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Socio-legal phenomenon of judicial reasoning in the context of the implementation of a functional state

Roman Vandzhurak
Doctor of Philosophy in Law, Doctoral Student
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
https://orcid.org/0000-0002-8474-2276

Nataliia Kushakova-Kostytska*
Doctor of Law, Professor, Leading Researcher
Institute of Lawmaking and Scientific and Legal Expertise of the National Academy of Sciences of Ukraine
01024, 3 Pylyp Orlyk Str., Kyiv, Ukraine
https://orcid.org/0000-0002-1116-4751

Olga Balynska
Doctor of Law, Professor
Lviv State University of Internal Affairs
79000, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-0168-143X

Oleg Pankevych
PhD in Law, Associate Professor
Lviv State University of Internal Affairs
79000, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-6636-1330

Iryna Nastasak
PhD in Law, Associate Professor
Ivan Franko National University of Lviv
79000, 1 Universytetska Str., Lviv, Ukraine
https://orcid.org/0000-0002-3963-1788

Abstract. The relevance of judicial discretion in the context of implementing state functions is determined by several key factors. This phenomenon enables the exercise of justice in a flexible manner, taking into account the specific circumstances of each case and the changing socio economic conditions, thereby ensuring a balance between the branches of power. It enhances the effectiveness of judicial protection of human rights, prevents a purely formal approach to the application of the law, and fosters public trust in the judiciary. This study aimed to explore judicial discretion as a socio-legal phenomenon, concerning the nature of state authority and the demands of contemporary legal regulation of social relations. To achieve this, a number of methodological approaches have been adopted. The hermeneutic method has been used to demonstrate how discretion is conceptually embedded in the socio-cultural context in which it arises and functions at various stages of state development. Through the socio-dynamic approach, internal and external contradictions of discretion have been identified, showing its role as an organic component of a given socio-cultural environment and its close link to the evolutionary dynamics of that environment. The use of deductive-logical analysis has demonstrated the interdependence between the functional potential of the state and the discretionary powers of judges. Among the principal findings of the study is the recognition of judicial discretion as an effective means of shaping

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*Corresponding author

public opinion and legal consciousness within society. This highlights the socio-legal dimension of the phenomenon and its potential to foster a proactive civil society and influence the development of state legal policy. Emphasis is placed on the reciprocal relationship between the discretionary powers of judges and public opinion. Judicial discretion is both a consequence of and a contributor to public perception and collective legal consciousness. As such, it can shape and shift societal attitudes, influence the level of public trust in state institutions, promote legal culture, and ultimately contribute to shaping domestic policy in the spheres of law enforcement and the protection of rights. The study holds practical significance as it outlines a theoretical framework – a kind of roadmap – for those exercising the discretionary powers of the state, as well as for all individuals affected by the implementation of discretion in decision-making by representatives of public authorities

Keywords: judicial conviction; civil society; discretion; public authorities; judicial powers; discretion; state functions

Introduction

Judicial discretion cannot exist in isolation, and although its boundaries may not always be clearly defined – an issue that has sparked considerable debate – it nonetheless operates within a legally established framework and is legitimised by law. Discretionary powers, therefore, form part of the state's administrative mechanism, serving a specific function and constituting one of the forms through which the state operates. Through its designated institutions, the state regulates social relations and, in particular, ensures the protection of the rights and interests of its citizens. In addition to these direct functions, there are levers of influence that may not be formally declared – indeed, may even be denied – by the state, yet they hold significant weight in society and cannot be overlooked when judicial discretion is exercised. Issues relating to the content, form, methods, and techniques of law enforcement have long been the subject of academic discussion. In the context of ever-changing social relations, it is exceedingly difficult to ensure effective implementation of the law through legislation alone. Judicial discretion, in this regard, serves as a crucial mechanism for maintaining the balance between the rule of law and the evolving needs of society.

The issue lies in the existence of opposing perspectives on the nature of discretion. One view holds that discretion is a compensatory form of legal implementation, as the law cannot account for every possible scenario it seeks to regulate, and an individualised approach requires discretionary powers. In the Ukrainian scholarly tradition, discretion is often perceived as a legal mechanism that compensates for the shortcomings or incompleteness of the law – particularly within the judiciary. However, a potential concern lies in the excessively broad scope of discretionary power, which may turn the application of law into unrestrained subjectivism, procedural voluntarism, or even arbitrariness. Thus, while discretion is deemed necessary, it must be clearly limited, well-reasoned, and subject to oversight, so as not to become a form of legalised arbitrariness.

Sources that preceded this study and explored the issues of discretionary authority, judicial discretion, and the risks of subjectivism and abuse in legal practice can be provisionally grouped according to the approaches they adopt. R.V. Vandzhurak (2025) demonstrated how the absence of a logical structure in reasoning can lead to subjectivism and procedural arbitrariness. N. Shelever (2024) identified the risk of a judge's "personal sense of justice" becoming a standard, potentially resulting in legal subjectivism. A. Yevtushenko (2025) described discretion as a factor contributing to corruption risks, noting that excessive, unchecked discretion provides fertile ground for abuse and arbitrariness.

G.S. de Queirós Campos and A. Bedê (2023) analysed the critical stance towards judicial discretion, emphasising the need to limit discretion in order to uphold the integrity of the law and avoid subjectivism in judicial decisions. In N. Cowdery's (2022) study, the use of discretion at various stages of the criminal process is examined, with particular attention given to the need for rules that prevent unwarranted subjectivism and ensure fairness. J. Brown (2025), a lecturer at the University of Aberdeen, noted that sentencing guidelines do not impose rigid constraints on the individual delivering the sentence, acknowledging the appropriate degree of discretion that should rightly be afforded to a judge. In his study, Brown concludes that guidelines provide a framework for judicial discretion but do not eliminate it.

A broader perspective on the issue is offered in the research of R. Henham (2022), who explored how social values influence judicial discretion in sentencing. Author highlighted the risks of subjectivism and stressed the need to strike a balance between flexibility and predictability. This broader approach to the discussion is seen as a possible path towards addressing the identified problem. One possible direction for further inquiry is the examination of judicial discretion in the context of the implementation of state functions. Given the clear gap in research concerning the operation of the state and contemporary approaches to the legal regulation of this mechanism, this study aimed to critically evaluate and reconsider the institution of judicial discretion as a phenomenon of socio-legal reality within the framework of the state's functional implementation. It also seeks to demonstrate the interdependence and mutual alignment of judicial discretion and state functions within the activities of public authorities.

In line with this objective, the following tasks are to be undertaken: to analyse the current state and pressing issues related to the organisation and functioning of the Ukrainian legal system in the context of the exercise of judicial discretion; to trace how the content of discretion, as exercised by state-authorised actors, is shaped by social, cultural, economic, political, and other factors; and, simultaneously, to reveal the potential of judicial discretion to influence public opinion and collective legal consciousness – and thus affect relevant aspects of the state's domestic policy in the fields of judicial and law enforcement activity.

Materials and methods

The study of such objects of scholarly inquiry as state functions and discretion must be conducted across various disciplinary domains, employing a range of methodologies integrated within an interdisciplinary approach. Accordingly, in examining the development of the institution of discretion, the hermeneutic method was employed in combination with the principle of historicism. This enabled the demonstration of a substantive interconnection between discretion and the

socio-cultural environment, shaped by and operating within specific circumstances. This aspect was situated within the broader context of state function implementation, taking into account the diverse socio-historical conditions of state formation.

Given the fundamental methodological value of the socio-dynamic approach, discretion was analysed as an organic component of a particular socio-cultural environment, with its transformations closely linked to the evolutionary dynamics of that environment. In the course of this analysis, both internal and external contradictions of discretion were identified and described, arising from the social nature of the actors involved in its application and the embeddedness of legal practice as the sphere in which discretion is exercised.

To derive and generalise the findings, deductive-logical analysis was applied. This approach demonstrated that state authorities (or their representatives), in the course of their professional activities and in realising the functional potential of the state, influence the formation of discretion among law-applying subjects. At the same time, discretion contributes to shaping the principal directions of state activity and often serves as a significant factor within the system of safeguards against the abuse of power.

The primary materials used and analysed in this study comprised scholarly research of various levels – academic articles, dissertations, monographs, and collaborative studies – that reflect active discussion of the issue of discretion in law. These works address topics such as the limits of discretion, the risks of subjectivism, and its impact on the fairness of legal enforcement. Collectively, they have provided a solid foundation for further examination of the institution of discretion within both international and national legal scholarship.

In addition, the comparative method was employed to analyse the institution of judicial discretion and to explore possibilities for its further refinement. This included a review of legislation regulating the exercise of judicial discretionary powers in the context of the state's functional implementation (Law of Ukraine No. 474-XIV, 1999; Criminal Procedure Code of Ukraine, 2012; Law of Ukraine No. 187-IX, 2019), as well as relevant case law (Decision of the Judicial Chamber for Civil Cases of the Supreme Court of Ukraine No. n0090700-04, 2004; Decision of the European Court of Human Rights in the Case No. 36650/03, 2012; Resolution of the Criminal Court of Cassation of the Supreme Court in the Case No. 634/609/15-k, 2018). Furthermore, information-analytical materials (Labiak, 2023) were utilised to explore the interaction between judicial bodies and civil society, highlighting current issues such as public access to court decisions and the expansion of opportunities for public participation in decision-making by public authorities.

Results and Discussion

A wide range of public officials vested with authoritative powers possess discretionary authority; however, this study focuses specifically on discretion (i.e. discretionary powers) as exercised by actors engaged in the law enforcement function of the judiciary. Broadly, the concept of "discretionary powers" is rooted in the notion of discretion, which has evolved in parallel with the development of the concept of the state. As the state began to take shape, the need for governance in the management of public affairs emerged. No administrative or executive body can function without the use of administrative discretion. This idea gained particular prominence with the rise of the welfare state model, which led to an expansion of state functions (Munir *et al.*, 2020). In light of this, it may be asserted that discretionary powers are not merely a management tool but a necessity arising from the state's development as an organisation striving to fulfil its functions effectively in complex socio-economic conditions. In particular, the evolution of the welfare state has necessitated an expansion of state functions, significantly enhancing the role and importance of discretionary powers (Prysyazhnyuk, 2024).

Judges' discretionary powers are primarily associated with the exercise of the state's law enforcement function. Judicial discretion in the application of the law has accompanied the entire history of justice since ancient times and has evolved in tandem with transformations in the sociopolitical realities of each historical period. A retrospective examination reveals a discernible pattern. For instance, in contrast to the judiciary of the ancient Eastern despotisms – where judicial discretion was largely directed towards punishment and submission to the ruler – Western legal traditions often exhibited a tendency towards proportionality between punishment and harm caused, the pursuit of justice restoration, and the possibility of the offender's correction and rehabilitation.

In the Middle Ages, judicial practice was guided by Christian moral values: the main criterion for discretion was the alignment of the defendant's actions with the doctrines of the Holy Scriptures and the interests of the Church. Judges, in exercising their discretion, were expected to identify the legal issue, find the appropriate norm, and justify its application to the specific case (Shevchenko, 2024). During the Renaissance and the modern period, as the influence of the Church on socio-political life gradually declined, society once again turned to the philosophical and legal ideas of Antiquity. Of particular interest were the teachings of ancient Greek thinkers concerning the natural foundations of law. During this period, radical changes were also observed in the procedural paradigm, particularly concerning the burden of proof and the gradual abandonment of the use of torture. Cesare Beccaria argued that this shift was motivated by the belief that, where the elements of a crime had been proven, torture became unnecessary – sufficient evidence of guilt eliminated the need for it. Conversely, where guilt could not be established, the individual was presumed innocent, and thus the law prohibited inflicting physical suffering on someone who was, by definition, innocent (Gadzhiev, 2014).

Beccaria consistently opposed judicial discretion, asserting that only the law could determine which actions constituted crimes and what punishments were appropriate. In his view, resolving such matters should never fall within the judge's remit. When administering criminal justice, one must be guided by the letter of the law, not its spirit, as deviation from this principle leads to judicial arbitrariness, swayed by personal weaknesses and passions. The right to interpret the law belonged exclusively to the monarch (or sovereign), while the judge's role was limited to the literal application of that law. Thus, according to Beccaria, the division of competences between monarch and judge was as follows: the monarch enacts and interprets the law, while the judge analyses the actions of individuals and determines whether they comply with the law (Hryshchuk, 2014).

The aforementioned classical humanist ideas were further developed in modern legal doctrines, laying the conceptual foundation for the universalisation and legal

enshrinement of fundamental human rights and freedoms (Rudyuk, 2019). Accordingly, since the mid-20th century, human rights and freedoms have served as core reference points in the exercise of judicial discretion and the legitimisation of procedural decisions. One of the defining features of a modern democratic society is its ongoing pursuit of openness and transparency. This, firstly, enables society to exert influence over governmental decisions and the adoption of legislation; and secondly, in judicial proceedings, it often allows judges to take public opinion into account. Such responsiveness is made possible through the exercise of judicial discretion – without the need to wait for formal legislative amendments. In this way, it may be argued that the mechanism of judicial discretion enables the judiciary to respond swiftly to evolving public demands, with the resulting decisions potentially serving as a basis for future legal reform.

An illustrative example is the Law of Ukraine No. 187-IX (2019), which amended Article 349 of the Criminal Procedure Code of Ukraine (2012) by adding Part One, stipulating that: "After the actions provided for in Article 348 of this Code have been completed, the presiding judge shall grant the prosecution and the defence the right to deliver opening statements". Long before this legislative amendment, the legal community had expressed the view that, in order to ensure equality of arms before the court, it would be appropriate to allow the defence, prior to the examination of evidence and following the reading of the indictment by the prosecutor, the opportunity to respond to the charges and present counterarguments. Courts often granted this possibility, evidently exercising their discretionary powers, as such a right was not provided for at the normative level until this practice eventually became the basis for legislative change (Zeykan, 2016).

In view of these circumstances, it may be asserted that judicial discretion has been an indispensable component of law enforcement throughout its history, serving as perhaps the only effective means of compensating for the "regulatory deficit" of legal norms. Despite the inherent element of voluntarism it entails – *de facto,* potentially unrestricted – judicial discretion has consistently functioned as a unique tool through which the state performs its functions. In practice, a judge may be guided not only by the law itself but also by broader societal values, mediated through personal worldviews, including considerations such as state security and the stability of public order (Kravchuk, 2015).

At the same time, the concept of judicial discretion remains highly contested, ambiguous, and even controversial, with no clearly defined boundaries or established criteria for its application. An analysis of both national and international legislation reveals that, unlike in several other countries, Ukrainian law lacks a clear legal definition of "discretionary powers". This gap prompted the Supreme Court to provide clarification on the matter. In particular, in its Resolution of the Criminal Court of Cassation of the Supreme Court in Case No. 634/609/15-к (2018), the panel of judges of the Second Judicial Chamber of the Cassation Criminal Court of the Supreme Court stated that: "The concept of judicial discretion in criminal proceedings encompasses the court's authority (rights and obligations), granted by the state, to choose between alternatives, each of which is lawful. It also involves the intellectual and volitional exercise of judicial power to resolve disputed legal issues – where permitted by law – based on the aims and principles of law, the general rules of judicial procedure, the specific circumstances of the case, the characteristics of the offender, and considerations of fairness and the proportionality of the punishment selected".

Thus, although the concept of "discretionary powers" of a law-enforcement actor is not formally defined at the legislative level, judicial practice in Ukraine has developed a position on the matter. Discretionary powers are understood to refer to a situation in which, within limits set by law, a public authority may choose at its own discretion from among several legally permissible options. This interpretation aligns with the view of L.B. Solum (2024), who distinguishes between two dimensions of discretionary powers: *de facto* discretionary powers and *de jure* discretionary powers. The latter refers to situations where legal norms explicitly grant discretion to a specific official or institution. The scholar notes that even when a decision is theoretically governed by a rule or standard, in practice it may still be discretionary – particularly when violations of that rule are not realistically subject to correction. For instance, it may be argued that, in theory, the US Supreme Court is bound by the text of the Constitution. However, in practice, the Court possesses *de facto* discretionary power, as its rulings on constitutional matters are final. In this sense, the Court may effectively hold *de facto* discretionary authority to determine constitutional law, even if it lacks *de jure* authorisation to do so.

It should be noted that, under Ukrainian law, the grounds for judicial discretion in sentencing include: criminal-law sanctions, whether relatively determined (where sentencing ranges are established) or alternative (where multiple types of punishment are provided); legal principles; authorising norms, which use formulations such as "may" or "is entitled to" when referring to judicial powers; legal terms and concepts that are polysemous or lack precise legislative definition, such as "the personality of the offender" or "genuine remorse"; evaluative concepts, the meaning of which is determined not by legislation but by the legal consciousness of the adjudicator. These arise, for example, when considering mitigating and aggravating circumstances (Articles 66 and 67 of the Criminal Code of Ukraine (2001)), determining "other circumstances of the case", or assessing the possibility of correcting the convicted person without enforcing the punishment – relevant in the application of Article 75 of the Code; individualisation of punishment, i.e. the specification of the type and extent of coercive measures imposed by the court, depending on the nature of the offence and the characteristics of the offender.

Judicial discretionary powers are also recognised by the European Court of Human Rights, which, in its rulings – including in the case of Dovzhenko v. Ukraine (2012) – emphasised "the necessity of determining the lawfulness, scope, means, and limits of the use of discretion by judicial authorities, based on the compatibility of such judicial powers with the principle of the rule of law. This is ensured, in particular, by appropriate reasoning provided in the court's procedural documents" (Resolution of the Criminal Court of Cassation of the Supreme Court in the Case No. 634/609/15-кб 2018).

It is important to emphasise that judicial discretion may not be applied in all circumstances, but only when both options are lawful and when the legal provision is vague, ambiguous, or lacks formal legislative definition or clarity. As noted by A. Barak (1989) in his seminal work, judicial discretion is invoked in situations where "the legal path leads to a crossroads, and the judge must, in the absence of a clear and

precise standard for guidance, decide which road to take". However, this should not be interpreted as granting absolute freedom in judicial decision-making. As Barak argued: "A judge does not have the discretion to choose an option that is unlawful, even if the decision is not challenged, and even if the ruling – if issued by the Supreme Court – remains binding and authoritative for others".

When analysing judicial discretion within the paradigm of its optimisation and the prevention of excessive subjectivity, it is necessary to consider that a judge's understanding of this concept may shift depending on their worldview or personal convictions. For example, from an ontologicaldeontological perspective, the key condition for optimising discretionary judicial approaches lies in aligning the deontological content of judicial decisions with the ontological realities of both the natural and social context. On the one hand, such optimisation can help eliminate manifestations of judicial subjectivism by appealing to objective principles and standards. On the other hand, the application of abstract and generalised deontological content of legal norms to specific cases often requires creative interpretation, thereby enhancing the law-making potential of judicial discretion. At the same time, procedural decisions should aim to achieve an optimal balance between public, individual, and state interests, with a view to fostering the conditions necessary for the continued social, economic, and cultural development of society.

An analysis of the epistemological foundations of judicial proceedings reveals that the current trend in jurisprudence toward relativising approaches to interpreting truth does not justify the doctrine of a "shift from truth to post-truth" in the exercise of judicial discretion. Such a shift would render the very notion of procedural proof meaningless. Moreover, unlike the philosophical interpretation of the nature of phenomena – where ambiguity is understandable, since such phenomena cannot be perceived directly as "factual truth" – procedural truth lies in the substantiated and clear determination of the presence or absence of specific circumstances in a case. The effectiveness of establishing the truth within the framework of judicial discretion largely depends on harmonising empirical and theoretical methods. The evaluation of evidence, which forms the empirical basis of discretion, requires the use of theoretically generalised and systematised approaches for its rationalisation. Conversely, theoretical and analytical conclusions must be grounded in reliable empirical data.

Regarding the axiological dimension of the issue, it is important to note that true (reliable) information about the content and circumstances of a case under investigation – while a necessary condition for the administration of justice – constitutes only the subject matter of judicial discretion and is not always sufficient for delivering a fair and rational procedural decision. This is because there is no direct correlation between deontological concepts of what ought to be and the actual state of affairs. In most cases, such concepts are shaped by and function within a specific system of values. Therefore, the axiological aspect of judicial discretion must closely correlate with its epistemological basis, grounded in fundamental values such as freedom, dignity, justice, and equality.

When analysing judicial discretion from the perspective of aligning the normative and legal foundations of its implementation with logical principles of reasoning, it becomes evident that such alignment significantly broadens the capacity to objectivise the criteria for evaluating evidence in terms of its admissibility, relevance, reliability, and sufficiency. Furthermore, it enables the construction of a generalised logical model, which in turn allows for the systematisation of the judicial decision-making process and the verification of decisions against the goal of maximising their alignment with the core objectives of justice in the specific legal relationship under consideration. Under these conditions, judicial reasoning is substantiated not only by subjective internal conviction but also by a justification of that conviction through its correspondence with the objectively logical foundations of rationality (Vandzhurak, 2025).

Given the practical application of judicial discretion, it should be noted that it is arguably the only effective tool in legal practice for protecting the rights and interests of individuals in situations where there is a power imbalance between the defence and the prosecution. In some cases, courts, guided primarily by such principles as dignity, freedom, equality, and justice, may issue unpopular decisions that diverge from the prevailing political direction of the state at a given moment, thereby siding with citizens in their confrontation with public authorities. Clearly, such protection could not be achieved if legal practitioners were bound entirely by rigid procedural frameworks, without a degree of discretionary latitude.

Nevertheless, as the legal theorist H. Kelsen (1949) observed, despite the potential of judicial discretion to stand in opposition to state authority, the functions of the state may still be equated with the main directions of its activity and, ultimately, with the activity of the state itself. For the effective fulfilment of state objectives, appropriate state bodies are established as integral components of the state apparatus – a system of public institutions whose activities are aimed at performing and implementing state functions. Some of these institutions are vested with authoritative powers (including discretionary ones), through which the goals and functions of the state are carried out.

As the system of state functions is highly complex – and a single function may fall under various classifications and criteria – there is a prevailing view in academic circles that state functions should be categorised according to the forms of activity based on the principle of the separation of powers, namely legislative, executive, and judicial (Doronin, 2020). Accordingly, state functions may be divided into legislative (law-making), executive (administrative), and lawenforcement functions (including judicial functions).

According to Yu. Kolomoets (2017), the law-enforcement function of the state is a key component of its internal functions and entails the guaranteed protection of citizens' rights and freedoms through the establishment of an effective legal order, the upholding of the rule of law, and the safeguarding of sovereignty, territorial integrity, national security, and state borders. It is generally accepted that the law-enforcement function of the state is carried out through both lawmaking and law-enforcement activities (Dudchenko, 2019). Therefore, in light of the above considerations, judicial discretion may be viewed as a form of exercising law-enforcement activity within the framework of the state's law-enforcement function. However, judicial discretion as a form of legal enforcement is not confined solely to that function; it also interacts with other forms of state activity. For instance, by introducing legislative amendments that define new rules for the evaluation of evidence, the state shapes the

legal framework governing the activities of law-enforcement actors – developments which inevitably influence discretionary procedures as well. Alternatively, through mechanisms of oversight and supervision, the state – by establishing specific regulatory bodies – may influence the direction of discretionary reasoning (Miroshnychenko, 2020). Particular attention should also be given to the state's social function, as certain state programmes aimed at protecting human rights and interests in the social sphere may generate a public demand for justice. This, in turn, may influence the discretion exercised by law enforcement actors, particularly when they are aware of the potential societal impact and public resonance of their decisions (Dzhuraeva, 2005).

The examples provided concerning the state's law-enforcement function suggest that, although the state does not explicitly claim control over the exercise of judicial discretion, it nevertheless establishes the broader context within which such decisions are made – through legislative, supervisory, social, and other mechanisms. On the one hand, the state implements its public functions by regulating the discretion of legal actors through legislation, oversight, evaluation systems, professional training, and education. On the other hand, discretionary powers themselves serve as a tool for realising state functions, expressed through the assessment of facts and circumstances, the selection and interpretation of legal norms, the application of sanctions, and the choice of procedures. In this regard, discretionary powers constitute a crucial component in the implementation of state functions, providing flexibility and adaptability in law enforcement while simultaneously serving as a safeguard against the abuse of authority (Savchyn, 2016).

A clear illustration of this can be seen in how oversight and supervision – through the prosecution of certain judges – may influence the discretion exercised by others when considering similar cases (Dzhuraeva, 2005). Conversely, the inadequacy of a particular legal provision that ambiguously regulates specific legal relations and thereby requires judges to exercise discretion may prompt legislative reform to address the issue (Zeykan, 2016). It is important to note, however, that such examples also reveal potential threats to the effective exercise of discretionary powers. Excessive scrutiny of a specific category of cases – particularly when judges are held accountable for decisions made in such cases – may undermine the capacity of the judiciary to exercise discretion independently. If judges observe that their colleagues are being sanctioned for rulings in a particular type of case – especially where such rulings diverge from prevailing public sentiment – this may lead them to render judgments not based on their own legal reasoning and conviction, but rather in line with the established practices of judicial oversight bodies. This could result in a chilling effect, where discretion is no longer exercised as an instrument of justice but is instead constrained by fear of reprisal, ultimately compromising judicial independence.

At the same time, in addition to the aforementioned functions of the state aimed at shaping and implementing particular policies, there also exist functions that are not explicitly declared by the state but through which it may influence the exercise of discretionary powers by law enforcement actors. In a socio-legal context, this refers primarily to such forms of influence on discretion as the shaping of public opinion through state-controlled media. While formally these may not be recognised as functions of the state, their deliberate use can effectively serve to implement specific governmental policies – particularly in contemporary conditions where society increasingly demands transparency and openness from public authorities. Evidently, under such circumstances, judicial decisions may be adjusted in response to prevailing public sentiment (Vandzhurak, 2024). It may be observed that the law enforcement system is capable of actions that may significantly diverge from official governmental positions or even statutory requirements, yet still enjoy public approval.

A clear example of this was the Decision of the Judicial Chamber for Civil Cases of the Supreme Court of Ukraine No. n0090700-04 (2004), issued in response to a complaint against the decision, actions, and inaction of the Central Electoral Commission concerning the outcome of the run-off presidential election in Ukraine. The ruling was handed down against the backdrop of mass protests by Ukrainian citizens regarding the results of the second round of the 2004 presidential election. This decision is regarded as unprecedented in Ukrainian procedural history, as at the time, the Law of Ukraine No. 474-XIV "On Elections of the President of Ukraine" (1999) did not provide a legal mechanism for declaring an election invalid through judicial proceedings. Nevertheless, the Supreme Court of Ukraine delivered its judgment based on the principle of the rule of law, going beyond the scope of electoral legislation and grounding its decision primarily in the Constitution of Ukraine. As a result, the political crisis was resolved through legal means. Although the judgment itself does not explicitly mention public dissatisfaction or mass protests, both the manner in which the case was handled and its outcome indicate that the Court recognised the urgency of the issue and took into account the prevailing public sentiment and opinion at the time.

Public opinion remains a constant influence on public legal consciousness. Even under dictatorships – where it was disregarded in judicial decisions – it still influenced how those decisions were framed. In today's complex and dynamic world, there is an increasing need for the governance of societal processes, which in turn elevates the importance of manipulating public opinion in accordance with political interests. In the era of the information society, public opinion has become more accessible due to the Internet, enabling its rapid dissemination and easier reception (Kushakova-Kostytska, 2019). Through the media, opinion can be deliberately shaped to benefit those in power or those who control information resources. Although the state often proclaims its intention to counter such manipulation, it, too, possesses the capacity to influence public opinion.

P. Bourdieu argued that opinion polling functions as a tool of political action, as it creates the illusion of consensus and thereby legitimises certain policies (Sokol, 2023). Modern media – particularly television and the internet – structure events by determining what is considered important, and in doing so shape people's thoughts and behaviour (Vandzhurak, 2024). Similarly, B. Cohen noted that the media do not tell people what to think, but rather what to think about (Mishchenko, 2022). This applies equally to legal practitioners, who, like all citizens, are subject to the influence of public opinion.

The authorities are obliged to guarantee the protection of rights and freedoms, primarily through the courts, whose fundamental role is to resolve public disputes. However, the judiciary faces a dilemma: to maintain legitimacy, it must

earn the trust of the public, which is the source of its authority and effectiveness (Commentary on the Code…, 2016). At the same time, this pursuit of trust may lead to a tendency to align with public expectations rather than adhere strictly to evidence and legal norms (Vandzhurak, 2024). Public opinion does not always reflect the genuine needs of society; it can be shaped by vested interests through media influence. For instance, selective coverage of court proceedings can foster bias against a defendant, influencing both public sentiment and legal institutions. Moreover, social media platforms and online petitions are increasingly used to exert pressure on courts or other bodies in an attempt to prevent the adoption of unpopular decisions. At the same time, the state as an institution may exert influence over the media and even openly advocate for the existence of public broadcasting. Thus, it can be argued that the state, whether overtly or covertly, is capable of shaping public opinion and thereby influencing the discretion of legal practitioners.

When analysing the specific nature and influencing factors of discretionary powers in the modern context, it is important to highlight the phenomenon of propaganda as a distinct feature of socio-political life. Propaganda is a complex and evolving phenomenon, constantly transforming in form and method through the development of information technologies, which complicates the task of distinguishing truth from carefully constructed propagandist narratives.

However, propaganda is not necessarily hostile, as is commonly assumed. It can also serve as a vehicle for promoting domestic narratives – such as "society demands real convictions" (Labiak, 2023) – which may implicitly pressure judges to expedite proceedings and dissuade them from issuing acquittals, under the assumption that society is not inclined to accept such outcomes. Yet, such pressure to deliver guilty verdicts risks transforming the judicial process – within a state that declares the rule of law as a constitutional principle – into a form of repression. Nevertheless, propaganda also has a positive dimension: it can serve as a tool for disseminating truthful information, promoting healthy lifestyles, encouraging engagement with sport and culture, and popularising scientific achievements.

Legal practitioners, who are authorised to apply the law based on their internal conviction, are themselves citizens and participants in the same societal processes. As such, their integration into these processes inevitably finds expression in their decisions. Consequently, legal practitioners – and their rulings – become potential targets of propagandistic influence. There is always a risk that a legal actor, having been subtly influenced by propaganda narratives and trusting the information disseminated in this way, might form an internal conviction aligned with such narratives and, accordingly, be inclined to resolve a case in the direction shaped by propaganda.

When examining the concepts of a judge's internal conviction and the functions of the state, several contentious issues arise that warrant particular attention. For instance, the definition, form and content of state functions, as well as their classification, remain ambiguous. Academic literature offers dozens of interpretations of the functions of the state – some of which differ so radically that the question arises as to whether it is even feasible to unify them under a single definition (Marushchak, 2019).

The issue of judicial discretion remains particularly contentious, as academic and professional circles continue to debate its legitimacy as a legal instrument. One group of scholars advocates for the necessity of discretion, arguing that the law cannot account for every possible life situation and that resolving certain cases requires the exercise of judgement (Popovsky, 2014; Fasii, 2023). Conversely, others maintain that such a tool often leads to unchecked subjectivism and even arbitrariness (Shevchenko, 2024).

It is evident that the positive aspect of judicial discretion lies, among other things, in its capacity to offer more effective protection of human rights in cases involving legislative gaps or conflicts. In this regard, a judge's discretionary powers are directly linked to the exercise of the state's law enforcement function, which occupies a central role in democratic societies where citizens' rights and legitimate interests are regarded as paramount. According to O. Sokolenko (2012), the law enforcement function of the state constitutes a complex, integral, and priority area of state policy aimed at ensuring the principles of the rule of law and the primacy of human rights. V. Kharchenko (2019), meanwhile, defines this function as the system of social relations that emerge and evolve in the course of the state's activity – primarily through its institutions – focused on securing the rights, freedoms, and interests of individuals and citizens. By contrast, O. Bezpalova (2017) considers the law enforcement function to be an independent, multifaceted area of state activity in its own right.

Since the law enforcement function of the state is exercised through both law-making and law-applying activities, the latter would be impossible without legal actors vested with discretionary powers. These powers are an essential component of legal enforcement and arguably the only means of compensating for the "regulatory deficit" of statutory legal norms. It is therefore entirely consistent with the view expressed by H. Hart (2013) that there are situations in which judges must make rather than merely find the law – that is, they must act at their own discretion.

W. Farnsworth (2013) emphasised the need to reconsider the widely held belief that public policy can always be interpreted through legislation. If a particular issue has not been addressed by the legislature, he argues, it should be reflected in judicial decisions and consistent actions by state institutions. At the same time, M. Savchyn (2016) highlights the contradictions in the approach whereby courts, acting in the name of the state but in the interests of society at large, effectively legitimise the state's authoritative will through mechanisms established by the state itself via the legal system. According to researcher, judicial rulings must ensure that the executive branch does not exceed the powers granted to it.

The above suggests the existence of a certain bipolarity: on the one hand, discretion cannot function outside the framework of the state apparatus, and the state itself cannot be fully realised without it; on the other, discretion serves as a system of checks and balances against potential abuses of power. It is important to emphasise that in the context of Ukraine's recent realities, there exists a broad spectrum of ways in which the functions of the state and judicial discretion may be exercised, along with a complex interplay between them. As long as legal enforcement activity simultaneously represents both the implementation of state functions and a mechanism to restrain their excessive use, the issue of judicial discretion remains central to academic discourse (Nalyvaiko & Klyuchkovich, 2023).

Thus, by carrying out its activities through a range of functions – particularly legal enforcement and the protection of rights – and by employing the state apparatus in their implementation, the state has the capacity to influence judicial reasoning, including by instilling elements of official state rhetoric. At the same time, judicial discretion can, in turn, recalibrate that rhetoric, acting as a counterbalance against the abuse of authority or the unconstitutionality of a legal act. In doing so, it helps uphold the rule of law and ensures the protection of violated, unrecognised, or contested rights and legitimate interests.

Conclusions

In considering judicial discretion as the central focus of this study, it should be noted that this phenomenon – like the national legal system as a whole – is subject to continuous and dynamic change. In Ukraine, these changes are driven both by internal systemic needs (such as the reform of the judiciary and law enforcement system) and by external challenges (including martial law, active efforts towards European integration, globalisation, and others). Therefore, it is reasonable to assert that the institution of discretion exercised by legal actors faces a range of issues linked to the organisation and functioning of the legal system. These include inadequate coherence among legislative norms, a formalistic approach to their application, limited institutional capacity, and the presence of corruption risks.

The essence of discretion exercised by authorised legal actors is heavily influenced by a variety of social, economic, political, cultural, moral-ethical, and psychological factors. It is also important to emphasise that discretion functions simultaneously as both a result of and a contributing factor to public opinion and collective legal consciousness. The decisions of judges, prosecutors, and representatives of other law enforcement bodies, services, and institutions shape civil society's understanding of the fundamental principles of modern coexistence – justice, equality, the rule of law, state efficiency, and governmental accountability to its citizens.

The discretion exercised by legal actors can shape and shift public sentiment, influence the level of public trust in state institutions, and enhance legal culture. As a result, it contributes to the formation of domestic policy in the field of law enforcement and rights protection. This highlights judicial discretion as a socio-legal phenomenon, the exercise of which must be accompanied by a high level of professionalism and responsibility, adherence to ethical and moral standards, and, crucially, an awareness of the broader social significance of one's actions. The proposed research has scope for further development, as the issues addressed may also be explored through other interdisciplinary perspectives – examining the phenomenon of discretion among legal actors through the lenses of psychology, cultural studies, semiotics, and related fields.

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Соціально-правовий феномен суддівського розсуду в контексті реалізації функцій держави

Роман Ванджурак
Доктор філософії в галузі права, докторант
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
https://orcid.org/0000-0002-8474-2276

Наталія Кушакова-Костицька
Доктор юридичних наук, професор, провідний науковий співробітник
Інститут правотворчості та науково-правових експертиз Національної академії наук України
01024, вул. Пилипа Орлика, 3, м. Київ, Україна
https://orcid.org/0000-0002-1116-4751

Ольга Балинська
Доктор юридичних наук, професор
Львівський державний університет внутрішніх справ
79000, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-0168-143X

Олег Панкевич
Кандидат юридичних наук, доцент
Львівський державний університет внутрішніх справ
79000, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-6636-1330

Ірина Настасяк
Кандидат юридичних наук, доцент
Львівський національний університет імені Івана Франка
79000, вул. Університетська, 1, м. Львів, Україна
https://orcid.org/0000-0002-3963-1788

Анотація. Актуальність суддівського розсуду (дискреції) в контексті реалізації функцій держави зумовлюється рядом ключових факторів: цей феномен дає змогу реалізовувати функцію правосуддя гнучко, з урахуванням конкретних обставин справи та мінливих соціально-економічних умов, що забезпечує баланс гілок влади; підвищує ефективність захисту прав людини в судовому порядку; дозволяє уникати формального підходу до правозастосування; підвищує довіру суспільства до судової системи. Метою даного дослідження був розгляд суддівського розсуду як соціально-правового феномену з урахуванням природи державної влади і потреб сучасного правового регулювання суспільних відносин. Для цього обрано низку методологічних підходів: на основі герменевтичного методу продемонстровано змістову «вписаність» розсуду в соціокультурний контекст його формування та функціонування в державі на різних етапах її становлення; за допомогою соціодинамічного підходу виявлено внутрішні та зовнішні суперечності розсуду як органічного компоненту певного соціокультурного середовища, з еволюційною динамікою якого тісно пов'язані його трансформації; на основі методів дедуктивно-логічного аналізу доведено взаємовпливовість функціонального потенціалу держави і дискреційних повноважень суддів. Серед основних результатів розвідки також визнання суддівського розсуду як дієвого способу формування громадської думки та суспільної правової свідомості, а отже, розуміння соціально-правового контенту цього феномену з потенційними можливостями формувати проактивне громадянське суспільство і коригувати державно-правову політику. Акцентовано на взаємовпливі дискреційних повноважень суддів і громадської думки, адже суддівський розсуд є одночасно і наслідком, і джерелом впливу на громадську думку та колективну правосвідомість, а відтак може формувати і змінювати настрої в суспільстві, впливати на рівень довіри громадян до державних інституцій, підвищувати правову культуру, і, як наслідок, формувати внутрішню державну політику у сфері правоохорони і правозахисту. Дослідження має практичну цінність, бо демонструє певну теоретичну схему дорожньої карти для тих, хто застосовує дискреційні повноваження держави, а також усіх, кого стосується реалізація розсуду при ухваленні дискреційних рішень представниками органів державної влади

Ключові слова: внутрішнє переконання судді; громадянське суспільство; дискреція; органи влади; повноваження суддів; розсуд; функції держави