



CRITERIA FOR DETERMINING THE EFFECTIVENESS OF THE LAW

Vladimir A. Rybakov

Dostoevsky Omsk State University, Omsk, Russia

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The subject of the article concerns the assessment of the effectiveness of law.

The purpose of the article is to identify indicators that reflect the effectiveness of the law. The methodology of the research includes complex analysis of scientific legal literature, synthesis of ideas as well as formal-legal method of interpretation of legal acts.

The main results and scope of their application. More than 2500 existing normative legal acts of the Russian Federation contain various requirements for improving the efficiency of legal regulation. The complexity of the study is caused by the lack of a common understanding of the phenomenon. The effectiveness of the law is often understood by many authors as the ability to influence public relations in a certain direction useful for society; or as the ability to influence positively on social relations at the lowest cost; or as fundamental feasibility, predetermined by common knowledge, clarity and consistency of legal norms; the correspondence between the objectives of the legislator and development of social relations. An indicator of the effectiveness of legislation is a criterion for determining the degree of achievement of the goals and objectives of legal regulation. The indicators that are offered by scientists for assessment the effectiveness of law, has logical defects. These indicators are frequency of application of laws that are estimated for the effectiveness (I.S. Samoshchenko, V.I. Nikitinsky, A.B. Vengerov); measure of conflict regulated by this norm of social relations (V.V. Lapaeva); proportional ratio of the number of facts of lawful behavior to the number of cases of illegal behavior (T. Geiger and E. Hirsch), etc. Conclusions. The following formula can be proposed to determine the effectiveness of the law: $\text{effectiveness} = \text{LR2} - \text{LR1}$, where: LR1 – initial legal relations, and LR2 – the state of legal relations on the current date. Effectiveness can be measured in this formula in a number of violations and satisfied claims and complaints. There is no direct connection with the goal of legal regulation in this formula but it is possible, to trace the dynamics of the effectiveness of law with this formula by using statistics data.

1. Introduction

The effectiveness of legal norms traditionally refers to the actual problems of legal science. The problem of the effectiveness of law in the literature is called "the problem of the highest degree of difficulty" in the Russian legal science [1, p.114].

"The effectiveness of legal regulation of social relations is an eternal problem of the theory of law, which scientists are engaged in since the advent of legal science and will,- said G. P. Tolstopyatenko,- to solve up to the disappearance of law..." [2, p. 251].

The term "effectiveness of law" is widely used both in legal literature and in normative acts. More than 2500 existing normative legal acts of the Russian Federation contain various requirements for improving the effectiveness of legal regulation [3, p. 61-66].

But there is no single approach to the definition of "effectiveness of legal norms". It is understood as

- effectiveness of legal tools, its ability to produce the necessary effect in public life [4, p.151];
- the degree of achievement of the legal objectives of the current legislation in various areas of legal regulation [5, p.210];
- the ability to influence public relations in a certain direction useful for society" [6, p.3];
- ability with the least cost impact positively on social relations [7, p.26].

There is a widespread understanding of the effectiveness of the law as the achievement of the goals of law, the correspondence between the goals of the legislator and the actual results [8, p.22; 9, p. 44].

The uncertainty of determining the effectiveness of the law significantly complicates the decision of the most important aspect of efficiency - its measurement. And it is also a means of evaluating the effectiveness of the state implementing the policy in the field of legal

regulation.

2. Criteria for the effectiveness of the law

The level of effectiveness of legal norms cannot be assessed without identifying performance criteria and corresponding indicators.

It seems that criterion of the effectiveness of the law are the objectives of their implementation. Of course, the goals imply long-term implementation and incomparably greater scale than the task. In view of this, it seems unacceptable to assess the effectiveness of legal norms in an absolute sense: in such a way, one can only talk about the law that has ceased to be in force. By virtue of the above, such an assessment should not be made by ascertaining the fact of achievement or non-achievement of its ultimate goal by a legal norm or legislative act, but by detecting and indicating the degree and stage of its achievement at the time of evaluation. The very purpose of the rule of law should be the measure against which the described comparative parameter is revealed.

At the same time, an indicator of the effectiveness of legislation should be understood as a means of determining by which the observer is able to judge the effectiveness, that is, the compliance with the criteria, the degree of achievement of goals and objectives.

Search for indicators of the effectiveness of law and legislation, legislation in general is to some extent problematic. This is due to the diversity of social relations regulated by the norms of various branches of law and regulations of different branches of legislation. In view of this, it seems that the task of developing individual performance indicators is imminent. Nevertheless, there are universal indicators that are equally acceptable in assessing the effectiveness of the implementation of the vast majority of normative legal acts. These include statistical, absolute and comparative, financial and

economic indicators, etc. Through the use of these indicators, an understanding of the nature of the phenomena, their assessment is achieved, so that the observer can make an objective conclusion. In the end, thanks to the use of these indicators in the right there is an opportunity to get an idea of the observable legal reality.

In the literature, several criteria (formulas) for determining the effectiveness are proposed. The most common is the definition of effectiveness through the ratio between the goal and the result. From this understanding of the effectiveness of the law, it follows logically that its criterion is the purpose for which the rule was created. Despite its prevalence, the approach has been criticized on several grounds.

A. S. Pashkov and L. S. Yavich noted that the target moment, as necessary including the element of subjective reflection of reality, cannot be the main and objective criterion of an effective legal norm in all cases. Not every action of the norm leads to social efficiency, which involves the achievement of objectively necessary and socially useful results. Such a result can take place only when the very purpose of the norm correctly reflects the objective laws of the development of society. If the purpose of the rule is defined incorrectly, its achievement will not at all indicate the social effectiveness of the legal norm.

Further, the ratio of the result to the goal is not the only indicator of the effectiveness of the rule of law, and because there is a situation in which this goal is achieved outside the immediate connection with the action of the rule under study. In this case, we are faced with a manifestly imaginary efficiency standards [10, p.41].

The understanding of the effectiveness of punishment as the achievement of its goals, wrote I. V. Shmarov, simplifies the essence of the issue, since it does not take into account how optimal, reliable, with the cost of what means of human energy and time they are achieved [11, p. 57, 59].

L. I. Spiridonov argued that the target criterion of the effectiveness of law unduly limits it only to the law-making activities of the state. According to this scheme, the law-making body, having identified a social problem and set a goal to solve it by legal means, issues a rule of law that forces people to do the things that the legislator expected. But, first, no legislator is able to give a complete and accurate analysis of social processes and formulate specific goals that can be resolved through the adoption of legal norms: Even when society sets itself certain tasks, they are excessively abstract.

Secondly, the problem of the effectiveness of the law turns out to be identical to the problem of the effectiveness of legal sanctions, since punishment is the only means used by the legislator himself to maintain the authority of his claims. In reality, the effect of legal prohibitions is mediated by systems of social, personal, socio-psychological and a number of other factors [12, p. 214-215].

Zhinkin S. A. the disadvantage of this approach is that the intention of the legislator in this case are treated as a kind of absolute and beyond criticism, the ideal to which to aspire. The achievement of any goals set by the legislator, in this case, will be an absolute indicator that the law as a social regulator and its specific rules are effective, regardless of what — direct and indirect, close and distant [13].

V. V. Lapaeva believes that in modern conditions, "when the task of legal regulation is no longer seen in achieving the goals set from above, but in expressing and harmonizing social interests that contribute to the normal, free development of social relations, the provisions of the theory of the effectiveness of legislation should be revised accordingly. It would be wrong to continue to interpret the effectiveness of the law as a ratio between the result of the rule and its prescribed non-legal (economic, political, ideological, etc.) objectives [14, p.215-216].

The criticisms made should not exclude the objective from the criteria of the effectiveness

of the law. Social and legal phenomena are linked by the relationship "means" – "purpose". The goal is a category that denotes a pre-conceivable result of conscious activity of a person, society as a whole. In implementing the goals, people resorted to the selection of the necessary funds. This criterion makes it possible to determine the social effectiveness of the legal norm (institution, branch of law, lawful behavior).

Its role and importance are very high. First, the Goal is a measure of effectiveness. The degree of achievement of the goals and the degree of effectiveness of the legal norm, legal regulation in General. Allows you to determine the percentage of efficiency, effectiveness of 50%. 70%, 90%, and accordingly, its levels. Objectives determine the degree of effectiveness of the law. Based on the achieved result, it can be designated as inefficient, ineffective, medium-efficient, high-efficient.

Secondly, the objectives determine the levels and types of effectiveness of the law. They are fixed in the system of law and its constituent elements: in separate branches, institutions of law and legal norms [15, p. 47-52]. The purpose of law - to ensure order in society; branch of law - the ordering of homogeneous social relations; the purpose of a separate rule of law - the formation of the motive of lawful behavior in the minds of participants of legal relations and the legitimate behavior itself.

The goal allows to distinguish between potential (predicted) efficiency and actual (actual). This distinction will make it possible to clarify more clearly the reasons for the lack of effectiveness of legislation.

Thirdly. The goal setting itself can play the role of a direct means of regulating social relations, while also playing a guiding role, as well as being a means of positive motivation of people's behavior.

In this regard, the proposal of V. V. Lapaeva to replace the social purpose, external to the law, with the immanent legal purpose [14, c. 215-21] deserves attention.

Unfortunately, the legislator does not always, by adopting a legal act, accurately and specifically formulates the objectives of the legal regulation of a particular area of public relations. This creates the need to adjust them in the future, respectively, and legislation. In some cases, the legislator deliberately hides them.

The content of the goal may not reflect the interests of the population. As an example, the resonant law adopted a few years ago, the so-called "Dima Yakovlev Law", which has received far from unambiguous assessment in Russian society, can be cited. Its purpose is not defined even in the explanatory note, despite the fact that in the media the purpose of its adoption was voiced by both the authors of this law and its official commentators. That is, the legislator either could not clearly formulate the purpose of the adoption of this law, or deliberately concealed it, which allows us to talk not only about its unpopularity, but also about social inefficiency.

Correct position, in essence, it requires that the accounting costs necessary to achieve a positive result. We are talking about cost-effectiveness, the ability of law with the least cost to influence positively on social relations.

From the point of view of the General theory of efficiency, no result can be obtained without the implementation of any costs, so the result is always a realized cost. They allow you to take into account the "cost" of the effects. At the same time, costs are interpreted in the broadest sense: as the use of certain funds, as the expenditure of material and spiritual labor in General, and as undesirable and negative effects of the publication of a legislative act, expected or unforeseen.

In addition to the target criterion are called and a number of others. I. S. Samoshchenko, V. I. Nikitinsky, A. B. Vengerov proposed to use the index of frequency of application of the estimated laws [16, p.70-78].

The number serves as a kind of performance indicator. For example, that the number of accidents can to some extent judge

the effectiveness of traffic rules.

V. V. Lapaeva to the criteria includes a measure of conflict. She argues that the effectiveness of the law is closely related to the degree of balance between group and individual interests and can be seen as the ability of the existing legal system to effectively resolve emerging conflicts and thereby reduce the overall level of conflict of social relations [14, p. 215-216].

"Empirically, the author writes, an indicator of the effectiveness of the legislation could serve as a legal indicator in its essence, as a measure of the conflict of social relations regulated by this norm. After all, law is first of all the most important means of objective, generally fair for the conflicting parties to resolve social conflicts, a way to ensure the stability of the social system, its integration as a whole."

T. Geiger and E. Hirsch evaluate the effectiveness of the legal norm through the proportional ratio of the number of facts of lawful behavior to the number of cases of unlawful [17, p.92-95].

According to this approach, it turns out that the effectiveness of the rule is determined solely by its impact on the legal behavior of citizens. This approach is unrealistic, as it is impossible to determine the number of lawful behavior, and illegal is not always recorded.

V. M. Baranov considers the criterion of effectiveness of the rule of law to be the property expressing the measure of its ability to cause achievement of scientifically grounded positive result in due time at certain social expenses [18]. But what is a measure of the capacity of a rule of law and how to define it remains an open question.

3. Formulas for the effectiveness of law

V. V. Luneev expresses the effectiveness of criminal law in the form of a mathematical model: $A = B / C$, where A - efficiency, B - achieved social result, C - socio-criminological model, to achieve which one

or another norm was adopted. Accordingly, if $A = 1$ or slightly less than one, the efficiency is at a quite acceptable level [19].

A. S. Mordovets proposes the following formula of efficiency: "reasonable goal - legal means - optimal result" [20].

A reasonable goal is the harmony of people's interests, and the normative consolidation of the duties of the legal, social state is to serve the interests of man and society; legal means are antipodes of disorder, irresponsibility, prevention of mutual responsibility, loss of moral convictions; optimal results are the consequence of the components of "reasonable goals" and "legal means". The formula "reasonable goal – legal means – optimal results" is attractive, but it is imbued with the spirit of idealism.

T. Ya. Khabrieva argues that "the basic principle of assessing the effectiveness of a legal norm is not so much the social effect of this norm, as the satisfaction of the private interest present in the legal forms used to achieve a social goal." The author also believes that "the legal act meets the criterion of usefulness if it improves the situation of at least one subject of private law" [21, p.22].

First, the private interest cannot be present in the legal norm. It is present in the consciousness of the subject of economic activity. The legal norm establishes the framework for its implementation.

Secondly, if the legal norms satisfy the interest of only one subject of private law, say, for example, an entrepreneur, then this is a direct way to illegal monopolization and illegal competition, which, from the point of view of the classical market economy, are the main negative institutions that do not allow it to develop effectively.

V. P. Kazimirchuk associated the effectiveness of law with the reflection of economic, political and spiritual needs and interests of classes and society as a whole, aimed at protecting the rights and freedoms of the individual [22, p. 37-44].

To calculate the effectiveness of the legal norm V. I. Nikitinsky and N. S. samoshchenko,

V. V. Glazyrina proposed the following formula: $C = (A - B) / K$, where C is an indicator of the effectiveness of the legal norm, A is the result of the norm, B is the initial state, K is the costs incurred [23, p. 61].

At the same time, the researchers believed that "social value, the usefulness of the result" are also important. The social value and usefulness of the result characterize the ratio of its economic component with the value of the costs incurred. Comparison should be made for comparable indicators. Thus, the basis for assessing the effectiveness of the legal norm is not the absolute value of the result and not the absolute value of the costs incurred, but their ratio.

D. Yu. Tarasov made a fair comment on this - why is this indicator absent in the formula? And he proposed his formula: $C = (A - B) / (K + M)$, where C is an indicator of the effectiveness of the legal norm, A is the result of the rule, B is the initial state of economic reality, K is the costs incurred, M is the social value of the result [24, p.27-29].

The method here is much more difficult than in assessing the formal effectiveness of the implementation of the law, because in this case it is necessary to analyze both the benefits brought to society by this rule of law, and the harm if the rule has not been implemented.

M. Yu. Osipov has a different view. To assess the effectiveness of the implemented rules of law, he writes, "it is necessary to divide the number of cases where the rule of law has not been implemented by the total number of cases considered and the result subtracted from the unit: $e \text{ real. right} = 1 - N1/Q1$, where e is real. rights - the effectiveness of the implementation of the law; N1 - the number of cases where the rule of law has not been implemented; Q1 - the total number of analyzed cases; 1 - a given rule of law" [25, p.83-92].

The author concludes that "since the maximum possible effect consists in the presence of the maximum benefit and the

absence of any harm, the social effectiveness of the implementation of the law will be determined by the formula: $\text{Social. E real. rights} = (U - D) / U_{\text{max}}$, where U is the benefit brought to society by the implementation of the law; D is the harm caused to society by the implementation of the law; U_{max} is the maximum benefit that could be brought as a result of the implementation of the law [25].

Of all these options for determining the criteria for the effectiveness of the law is the most acceptable formula, which includes three indicators of effectiveness: the ratio of purpose, result and cost. But in that case, a legal factor should be added to them. It can be defined as legal effectiveness. It is related to legal means, i.e. "legal tools" - a prerequisite for the effectiveness of the law. It ensures the implementation of the law.

The effectiveness of legal regulation is the effectiveness of legal instruments, all legal means used in legal regulation - normative and law enforcement acts, its ability to produce the necessary effect in public life.

Determining the effectiveness of legal regulation, it is necessary to proceed from the fact that the legal norms are aimed: first, to consolidate the legal means of social relations that have already developed in society; second, to stimulate the further development of existing relations; third, to oust socially harmful and dangerous connections and relations.

The law should provide for a clear mechanism for the implementation of the norms declared in it, that is, contain norms that are addressed directly to state and public bodies, officials and citizens, and directly applied in practice. At the same time, the more constructive the idea of the law, the more concrete and objective its provisions, the easier it is to implement such a law, the more effective it acts.

In declaring the goal itself to be a criterion of effectiveness, one cannot deny this quality to the means that lead to this goal by virtue of their dialectical unity and interdependence. Without means, goals are not real, are not

feasible, as well as in the absence of goals, real means do not lead to a positive result [26].

Compliance of the chosen legal means with the purpose is a necessary prerequisite for the effectiveness of legal norms; the wrong choice of means excludes or reduces the effectiveness of legal regulation, since only the indissoluble unity of legal regulation, since only the indissoluble unity of need, means and ways of action forms the content of the purpose. It is in the means of realization that one or another goal gets certainty and concreteness.

To determine the effectiveness of the law, the following formula can be proposed: $e = LR2 - LR1$, where: LR1 - initial legal relations, and LR2 – the state of legal relations on the current date. The unit of measurement is the number of violations and satisfied claims and complaints. With this formula, there is no direct connection with the goal, but it is possible, using statistics, to trace the dynamics of the effectiveness of law. For example, in 2018 2.8 million criminal cases were initiated, and in 2017 – 1.7 million there is a decrease in the effectiveness of criminal legislation [27, p.43-46].

The proposed formula makes it possible to clearly determine the real situation in a certain sphere of social relations. For example, corruption increased by 70% in the year following the adoption of the new Code of administrative offences. According to Prosecutor General V. Ustinov, 85% of officials of the state apparatus of the bfl are corrupt.

The number of persons convicted of environmental crimes is calculated in units. A similar situation has been observed with the application of these norms before. Thus, the norm of Art. 248 of the criminal code is not applied for many years. According to MVD of Russia (form 1-G), there was not a single crime as in 1998, 1999 and 2000 For the period 2009-2012 under article 248 of the criminal code has not been registered any crime. According to Art. 259 of the

criminal code in 2010, one criminal act was registered, in 2012 - two crimes, but not a single case was sent to the court [28, p. 8].

4. Conclusions

The effectiveness of law is the ratio of the purpose of legal regulation and the resulting positive result, taking into account the material costs and legal tools. The effectiveness of the law can be determined by the formula: $e = LR2 - LR1$, where LR1 - source relationship, and LR2 – state relations for the current date.

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INFORMATION ABOUT AUTHOR

Vladimir A. Rybakov – Doctor of Law, Associate Professor; Professor, Department of Theory and History of State and Law

Dostoevsky Omsk State University

55a, Mira pr., Omsk, 644077, Russia

e-mail: vladimir-40@mail.ru

RSCI SPIN-code: 6914-5474; AuthorID: 679506

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