On the Efficiency Factors of Positive Law

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ABSTRACT
The article discusses some of the topical theoretical and legal and philosophical and legal problems of lawmaking. According to the author, the efficiency of the application of legislation in the mechanism of legal regulation directly depends on the quality of lawmaking, including its ideological content and scientific elaboration. Based on the works of reputable lawyers of the past and present, the author convincingly proves that the technique of legislative activity determines the effectiveness of the adopted normative legal acts, the totality of which forms a positive law. Guided by the considerations expressed in the article, the author formulates a number of recommendations aimed at improving the legal, technical and substantive aspects of positive law in order to increase the efficiency of legal regulation.
Keywords: legal regulation mechanism, sources of law, positive law, legislation, efficiency of legal regulation, legal technique.

The methodological prerequisites for the conception of the legal phenomenon itself set the main vectors for the subject research area. Precisely, it is the multitude of approaches to the study of this conception that, in fact, provokes the diverseness of the efficiency factors of the phenomenon. It forms the purpose of the research, including the analysis of the efficiency facts of positive law in the context of various methodological perspectives (approaches) of the indicated phenomenon.

To wit, if we consider law as an instrument of social management, then its efficiency can be shown as the outcome of legal regulation of public relations. Such a «managerial» approach inevitably has an impact on the definition of the law efficiency, which in this context means the ratio of the goal of a legal norm and the results of its regulatory influence. The goal is the leading criterion of this ratio. It is the efficiency factor of legal norms of behavior. At the same time, the general conditions for the effective operation of legal norms are the quality of legislation, which appropriately (adequately) mediates general social, economic and political regularities and public inquiries objectively generated by them. Within this approach, the quality of law enforcement and the quality of legal awareness at all levels also refer to the general conditions for the efficiency of legislation.

Whereupon, consideration of the efficiency of law within the framework of the «legal norm – individual» scheme, although complicated by an indication of the influence of «positive» and «negative» phenomena, is an abstract approach. Within this framework, it is impossible to disclose the real efficiency of any historically defined legal phenomenon without understanding what the efficiency of law is. In fact, before a legal norm begins to regulate the relevant social relations in the context of human behavior, it is determined by specific social relations. Not abstract «positive» and «negative» conditions, but social relations determine the concrete content of the norms and their effectiveness. On the other hand, the sociological formula «the behavior of an individual is a function of the interaction of his social positions» forces to move the legal norm from the center of the scheme to the place of one of the conditions that, together with objective factors (primarily socio-economic), affect human actions. For this reason, the named list of general legal conditions for the efficiency of a legal norm should be significantly expanded by including social factors and establishing a hierarchy in their interaction. Only under such conditions the research can escape its formal character and become socially relevant.

Another approach involves the analysis of the efficiency of legal institutions, focused on the behavioral experience of the individual as a criterion for the efficiency of any factors (including legal norms) influencing these acts. The better a legal norm is assimilated by an individual, the deeper it penetrates into the structure of the personality and transforms into its attitudes, the more the actions of people correspond to legal requirements and, therefore, the more effective the normative act is.

Considering the efficiency of law to be due to many factors, it is impossible to establish their role in the effectualness of the studied normative act without systematization of these factors. In this case a systematic approach comes to the fore.

There at, the study of the effectiveness, in particular, of legislative activity, is due to the entire set of socio-cultural, economic, political and other factors that operate not only at the level of an individual legal order, but also in the global legal context as a whole. Under such circumstances, the efficiency of the law becomes an integrative result of the interaction of a large number of variables, that its quantitative assessment today is hardly possible even in the case of engaging the most modern computer technology.

Nonetheless, it is quite obvious that in modern science the type of theoretical cognition that presumes the study of social phenomena as complex organic systems is brought to the fore. This does not mean that the study of the law efficiency in its relatively independent existence ceases to be important. It is still relevant for direct legal practice and therefore should be the subject of special analysis and studied by the branch sciences primarily. Whereupon, a combination of the law legitimacy categories and its efficiency is only possible at the level of a legal meta-theory

It is not easy to apply a system analysis in any field of knowledge, despite the apparent availability and clarity of the abstract principles that are to be guided and have been disclosed by a large number of publications of a philosophical nature. This may explain why the attempts made to apply system concepts in legal science are currently not used, despite extensive use in the 70s and 80s of the last century. In any case, we must admit that the results obtained still do not correspond to the potentialities that could be expected.

Nevertheless, the use of system analysis to solve problems of jurisprudence and the problem of the efficiency of law, in particular, is a necessity due to the peculiarities of its research subject. First of all, this relates to the study of the legal norms efficiency. Its purpose is to find out how legal regulations work in public life. Consequently, when studying the legal rules of behavior efficiency the subject of analysis is not only the rule, the lawful or illegal behavior of individuals, the activities of legal institutions, society as an initial object of sociological theory, but the interaction of all these objects and its results. Thus, a multi-object nature and a poly-systemic subject of research emerge, and the corresponding analysis acquires features of a poly-systemic nature on this account. This condition indicates that a theoretical study of the legal norms efficiency problem, i.e. research in terms of the general law theory, should overcome «subject-centrism» and study legal norms efficiency in interaction with social factors, that are currently operating in the state and its legal system as a whole, and at the level of the society where general social factors operate. Besides, the «subject-centrism», which might be inherent by sectoral legal disciplines if necessary, must be overcome. Thereat, a transition should be made from the «systemic-centrism» of the law theory as a general legal theory to a poly-systemic theory of a socio-legal nature, where the subject is multi-objective and is part of a higher-level system – the system of society as a whole. As the result, it determines all the systemic qualities of individual social phenomena (legal norms in particular).

Thus, the main requirement that a study of the legal norms efficiency in the context of the law legitimacy must meet is its implementation within the framework of a wider social system, with the necessary application at all stages of the systemic approach. Let us consider what the implementation of this approach in the framework of theoretical and legal research should actually mean.

The systematic analysis methodologically presupposes consideration of the same phenomenon in two qualitative aspects – in terms of its qualitative nature and in terms of its qualitative specificity. First, its functional and structural qualities, and then its specific historical systemic properties are determined. It is specified that in the first case, the phenomenon is taken by itself, in its most general and abstract moments, and in the second – as an element or component of a given system, as a systemic phenomenon.

Legal science distinguishes these two aspects of consideration of legal reality in general. However, their differentiation in the positive law analysis at large and the subsequent synthesis are still not carried out consistently enough. In this connection, considering the action of law mechanism problem, jurisprudence refers mainly to qualities that can be characterized as a qualitative nature. In this case, the analysis is carried out only at the level when the law impacts people and their behavior. This section of research is mainly limited by the framework of «law – individual» and «law and its subjects» relations. On the contrary, referring to the genesis processes, the historical fate of law in general and legal systems of a certain type, the main attention is paid to the interaction of law and society. Herein, preference is given to the qualitative specificity of law and its system-wide properties[1].

Whereupon, it is quite obvious that we should talk about law as an integral social phenomenon in both cases, fully manifesting both of the considered characteristics of its qualitative structure at each level at the same time. In this connection, the first level should reveal the general characteristics of law and its efficiency, and the second should reveal its historical modifications, including the section of its efficiency. Only in such an analysis is it possible to understand law and its functioning as a concrete historical social phenomenon. This actual application is the only social approach to its study and it is a prerequisite for the formation of scientific criteria for its legitimacy.

Thus, the particular historical (or social) approach, by virtue of its target setting, presupposes the study and comparison of two aspects of qualitative certainty – qualitative nature and qualitative specificity – of legal phenomena (law – individual, society – law). Though, the specificity can be understood only within the framework of the general rules of the law functioning, only by virtue of their implementation through the regulations of a particular social system existing at multiple levels. The specific quality has the peculiarity of influencing the quality nature. The latter can be manifested only in a specific way, i.e. it can exist only in the form of a concrete historical modification and in no other way. Special aspects of a particular social situation often actualize one of them, and, as a result, it is subjected to analysis in different historical periods at multiple levels. Therefore, this does not exclude, but, on the contrary, presupposes a separate consideration of these qualitative determinations applied to the entire phenomenon at large.

[1] S. S. Alekseev, for instance, differentiates these two sides of the analysis on the reason, considering them in different volumes of his fundamental course «General Theory of Law» (Alekseev, S.S. General Theory of Law. Vol. 1.M., 1981.Vol. 2. 1982.)

In legal science, in our view, an evident preference is given to the study of the special legal aspect of the law operation, i.e. its quality nature, for a long time. And it has already been mentioned to be correct to certain limits. One is to remember that the so-called «general conditions» should not overshadow the specific historical, social, legal, territorial aspects. Among other matters, the methodological prerequisite for analyzing the problem should be the study of the specific conditions of a particular socio-historical era, a particular society. From this point of consideration, the law appears as one of the components of the social system, which does not have an isolated separate existence and is determined by systemic properties. It is the social system that determines, in all its constituent elements, their social nature and properties, and it allows attributing them to a historically determined social res integria.

Here, the legal norm efficiency, if included in the entire set of social variables of a given system, is a systemic effect, a result of the functioning of the social system as a whole. Therefore, the concrete historical foundations of law are not purely external to study its efficiency. It seems that without them it is impossible to resolve fully the issue of the goals, purpose, essence of the legal system and its individual elements, because they all have a social nature and are set by society at large. Consequently, out of concrete historical conditions, one cannot judge the results to which the normative prescriptions have led. Furthermore, out of concrete historical conditions, one cannot judge the legitimacy of law too.

Thus, when a law is recognized as a social phenomenon, one should not be limited only by the fact of its social origin and consider that further a law, having separated from its source – the social entire, begins to exist and function, be effective or ineffective, independently or relatively apart.

The process of social dependence of law does not terminate in the act of its genesis. Society continuously «generates» law. Law is constantly transforming in the course of the historical development of society. It is important to note that the process of transformation of the law social nature, its content and social functions is not necessarily accompanied by changes in the form of its expression, including the verbal expressions of the law formulations. The latter often coincide even in different social formations. For instance, the criminal law prohibition, the rules of contract law and etc., coinciding in many respects from linguistic point of view, but have different, often opposite social meaning, in a historical cut. Consequently, the social approach, which is equivalent in this case to the systemic one, should be understood more broadly and become a method not only of the general theory of law, in which it is currently being developed, but also of sectoral disciplines. The socio-structural (sociological) approach acquires particular importance in the field of constitutional law and, which is extremely important to emphasize, in the context of the process of constitutionalization of the national legal system branches[2].

To clarify and to gain a better understanding of the hierarchical relations between different social, intra-system phenomena, sometimes private cases of subject-object relations are considered. This takes place when relationship between law and other social institutions are negotiated.

To wit, in accordance with two most important aspects of the qualitative determination of law (specific and functional), its action can also be considered at two levels as two interrelated subject-object relations: «society – law» and «law – individual». In this respect, the first should characterize the specific qualities of the action of law, to a greater extent, and the second functional qualities.

From a philosophical point of view, there are several points that make the consideration of these pairs of relations especially interesting in terms of social approach implementation in the study of law efficiency problem.

Firstly, the subject-object relation has an explicit historical nature, which makes it possible to gain a better understanding of the specific features of the law functioning.

Secondly, it always shows the oppositional correlation of the «subject» and «object» categories, through which they mutually determine each other. In this connection, it is easier to reveal the source of the relation, in this case – the development of law, especially within the same socio-historical type.

Hence, thirdly, it follows that the parties of a given relation do not have a fixed attachment to certain phenomena so that one can say: «law is always a subject», and «society is always an object». The same phenomenon in a developing relation can be both a subject and an object. The role of the parties is always historically changeable in the relation researched. Even Hegel noted that «... it is wrong to consider subjectivity and objectivity as a kind of scientific and abstract opposition. Both are quite dialectical.»[3] Society determines law, its content and functions, and in this sense the legal system is an object in relation to the social system. Law influences and regulates social relations, and in this sense it is a subject in relation to society.

It should be borne in mind that the parties to the relationship «society – law» are active to varying degrees. In certain historical conditions, law becomes such an active force that it turns into a subject which is able to transform an object (social relations) in accordance with its fundamental properties. It takes place when the social content of legal forms concisely begins to express the essence of the entire socio-economic system, their action coincides with the direction of objective laws actionin the development of the given system. This coincidence explains such a high efficiency of law in such historical situations, which is directly related to the characteristics of its legitimacy.

In response, the «law-individual» relation is only a specific manifestation of the «society-individual» relation. The interaction of law and the individual is always carried out within the framework of the subject-object relation, where the

[2] Bondar, N. S. Judicial Constitutionalism: Theory and Practice: monograph, 2nd ed., Rev. M.: Norma: INFRA-M, 2015.
[3] Hegel, G. W. F. Encyclopedia of Philosophical Sciences.Vol. 6. M., 1977.

society-subject is represented by one of its most important institutions -the law. Sociology of law emphasizes that in the case of direct contact of an individual with a legal prescription, his actions are primarily determined not only by law, but by the body of social conditions in which he is and his social status. Law is only one of the components of the whole complex of forces affecting the individual.

The logic of scientific analysis prescribes a further transition from general theoretical reflections on the factors of the law efficiency as a special complex social phenomenon in general to the study of the factors of the legislative activity efficiency and its product – the legal system.

The law efficiency (legislation) can be investigated only to the extent of the efficiency problem of the law preparation and adoption process. In other words, the efficiency of legislation largely depends on the law-making process. In these terms, consideration of the law efficiency factors should begin with a study of the preparation and adoption process.

The legislative process is a type of legal process with all its characteristics.

The legal process is a unity of material (factual) and cognitive (informational) activities, as well as the set of rules regulating this activity. Although there is not and cannot be equality between them, it is possible and necessary to ensue to it. In terms of content (and cognition), the stage of the law act development is of high importance. The quality of the law largely depends on how the preparatory work is carried out. However, from the legislation governing the law-making process perspective, it does not matter in most cases (except, for example, the development of the budget) who develops the draft law, where, and how it is developed.

In this case, it is more important (from a formal point of view) that it is introduced to the legislature by a competent entity and in accordance with the established procedure. Further, the legal form of passing the law act through the appropriate authorities contributes to the rejection of low-quality projects or their correction.

Thus, we can state the discrepancy between the legislative process[4] (which is understood in the present context as the activity of the legislative body, regulated by the norms of law, i.e. from a formal legal point of view) and law-making (which is understood as the cognitive, informational activity of the legislative body and other subjects, i.e. from a substantive point of view).

The legal fact and, accordingly, the point from which the legislative process (formal) begins is the legislative initiative, i.e. the introduction of a ready draft law to the legislative body. Thereat, the right of legislative initiative since the formation of parliamentarism belongs to the legislator[5] (along with other subjects).

Legislative (meaningful – information and cognitive) activity begins with the awareness of the problem and the possibility of solving it by adopting a new law or canceling (changing) the old one. This preliminary stage is a subsystem of social processes preceding the beginning of the official process. It includes collecting information on behalf of an official body and making recommendations based on the information received regarding the nature and content of a particular decision.

Based on the foregoing, it seems reasonable to solve the problem of correlation between the formal and substantive aspects of the legislative process, proposed by Korkunov. He wrote: «With regard to the legislative initiative, it is necessary to distinguish between the actual initiation of legislative questions and the actual right to initiate. The right to initiate, like any right, presupposes a corresponding obligation. The right of legislation initiative corresponds to the obligation of discussing the initiated legislative issue. The right to initiate legislation as a special, independent right belongs to the one who can demand that the legislative question raised by him be discussed by the legislative institution»[6].

From a substantive point of view, the preparation of a draft law in general is the objectification of law. This means cognitive activity aimed at identifying law in real social relations. In our opinion, law is a moment, a side of social relations, which are formed objectively and at the same time spontaneously. Therefore, the drafter of the law is to discover the «legal component» in real-life, the legal nature of factors (phenomena, processes), sporadically arising in social reality, that are objectively require special legal influence (legal normative regulation).

However, the author of the draft law can and should anticipate possible trends in changing social life and, if possible, anticipate them by adopting an appropriate normative act. Not any of them will enter the nature of social relations due to the incompleteness and probabilistic nature of the forecasts. But such attempts have been made, are being made and will be made in the future.

The legal criterion for effective law-making (and, in general, legislative) activity is the stable reproduction (functioning) of the state as an integral organism. In this account, bills should take into account not only the trends of political, economic, and socio-cultural development of the country but also its specific features. One should talk about the constitutional identity of a particular national legal system in a broader sense. The problem of constitutional identity is directly related to the content of the public order foundations concept. It correlates to the content of another category of constitutional law – the foundations of the constitutional system.

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4 We deliberately do not consider the issue of a referendum as a form of law-making for the purposes of this study.

5 Gradovsky, A. D. General State Law. Lectures. SPb., 1885. Note that Gradovsky defines the right of legislative initiative as «the right to raise the issue of the need to issue a new law, to cancel, modify or supplement an existing one» (Ibid.). However, he does not write anything about who is entrusted with the solution of this issue, who prepares the bill, etc. The «raising of the question» is followed by «discussion of the draft law.» P.309.

6 Korkunov, L. M. Russian State Law .Ed. 6th.SPb., 1990. Vol. 2.

Modern legal science has yet to synthesize the understanding of the relationship between the categorical triad: constitutional identity – the basis of public order – the basis of the constitutional system, both at its theoretical level and in the sectoral section. The basis of public order and the basis of the constitutional system were legalized in the text of the Constitution of the Russian Federation (Chapter 1), as well as in organic legislation (see, for example, Article 104.6 of the Federal Law Committee «On the Constitutional Court of the Russian Federation»)[7].

Let us consider the planning of law-making activity in detail. Such planning is an attempt to give this activity a scientific basis and provide reliable guidelines for legislative work. Without a clear program that provides specific guidelines for law-making, chaos is inevitable in the work of legislative bodies, as well as ф need to issue an act from «momentary» circumstances, and unjustified duplication, leading to a weakening of intra-system connections in legislation, which ultimately entails inefficiency of legislation. The plans and programs of law-making work allow to apply an integrated approach to the legal regulation of public relations with the allocation of its main directions that depend on social needs, allow more rational organization of work on the preparation of draft laws (strengthen control over the timing of the preparation of draft laws, ensure coordination of the activities of the bodies carrying out their preparation, conduct the necessary research with greater efficiency for the legislative process).

Law-making plans and programs should be drawn up systematically. Thereat, they can be either operational, i.e. for one year only, or long-term. It is advisable to correlate long-term programs with the functioning time period of the electoral legislation. Within such a long-term plan, it is logical to break down draft laws by year or into priority and subsequent ones. Strategic plans for a longer term are permissible. However, such a plan should not be regarded as a normative directive, it is only a model.

In our view, the structure of the long-term plan should reflect the main objects of the legislative regulation. And the legislative regulation should reflect the main aspects of society. First of all, the quality of legislation depends on who is the author the draft law (if not mentioning the influence of the political conjuncture on law-making process). Therefore, a fundamentally important issue of the law-making work plan is to determine the entity responsible for the project work.

In most cases the opportunity to solve this problem is given to the initiative group, so they or any other person can offer a draft law, what is correct in our opinion. However, before becoming a legislative initiative and being introduced to the legislative body by a subject, such a project must undergo an expert review.

In our opinion, it is practicable to entrust the development of draft laws to professionals, scientists and practicing lawyers, as well as practitioners in the area of public relations that is the subject of the draft law regulation (special legal and specialized expertise respectively) in order to increase efficiency. This can be realized by temporary expert groups that cease their activities at the end of the work. However, due to the legislative process as a permanent activity of the legislative body, it would be appropriate to organize permanent research teams in the form of legislative institutions. The Institute of Legislation and Comparative Law under the Government of the Russian Federation is an example of a very successful long-term effective functioning institution. The institute is able to carry out most of the design work and attract the necessary competent specialists for the preparation or examination of any draft law.

Having considered the preparatory subsystem of the legislative process, let us proceed to the analysis of legislative body activities for the laws' adoption.

The procedural stage is the structural element of the legal process. It is worth considering the legislative process through an analysis of its stages.

In etymological dictionaries a stage is traditionally defined as a period, a certain stage, stage, phase of development of something. Hence the stage of the legal process (including the legislative one) is its spatial-temporal, dynamic characteristics. It is expressed in the totality of procedural legal relations, which are united by the immediate goal and established law, with the help of case movement procedure.

The stages of the legislative process have undergone minor changes since the inception of parliamentarism. Gradovsky specified the following aspects of legislation: a) initiative (raising the question of the need to issue a new law, to cancel, modify or supplement an existing one); b) discussion of draft laws, including the possibility of amendments; c) final vote; d) approval of the draft law – the sanction of the royal power, which implies the right of veto[8]. Korkunov identified five stages: 1) initiation; 2) discussion; 3) approval; 4) appeal to execution; 5) disclosure[9]. Taking this into account, it seems appropriate to highlight the following procedural stages: 1) legislative initiative; 2) discussion of the draft law; 3) adoption of a law; 4) approval of the law and its official publication (promulgation).

The mechanisms of the legislative process create very important procedural guarantees of legislations efficiency. At first, they may seem too complicated and formalized. However, the more complicated the laws adopting process, the more likely it is to adopt high-quality, effective regulatory legal acts.

The provided general theoretical foundations of the legislation efficiency indicate the extreme complexity of this problem and it is not possible to separate the «legal component» from the totality of social relations. This is due to the fact that law is

[7] On the Constitutional Court of the Russian Federation: Federal Constitutional Law of 21.07.1994 No. 1-FCL (as revised on 09.11.2020) // Russian Federation legislative corpus dated November 16, 2020 No. No. 46, Art. 196.

[8] Gradovsky, A. D. General State Law. Lectures. SPb., 1885.

[9] Korkunov, L. M. Russian State Law. Ed. 6th. SPb., 1990. Vol. 2.

only a moment, a side of society, and a moment or a side, in fact, of all social relations: economic, political, ideological, and socio-cultural. Therefore, it is impossible to render an image of society in the form of its main spheres located in a row: the spheres of the economy, the sphere of politics, and the legal sphere. All of them are closely intertwined, interact and mutually condition each other.

From there, all spheres of society more or less influence on the final result – the state of society. And even the most complex comparative analysis is not able to show how this final result is influenced by legislation, since it is abstracted (which cannot be achieved in real life) from the influence of other incidental factors. One should note that a quantitative measurement of the society state is a separate problem. Without this factor the problem of the legislation efficiency also cannot be positively resolved.

The second problem worth to be mentioned in this context is the intersection of the federation legislation and the subject of the federation in a state with a federal form of territorial structure[10]. Indeed, what has changed the economic situation in a particular region to a greater extent: the adoption of a new Civil Code at the federal level or preferential taxation of small businesses for the level of a constituent entity of the federation? It is hard to answer such questions. For the successful resolution of these problems, the normative consolidation and especially the practical implementation of the principles delineating the legislative competence of the federation and the subjects of the federation are of great importance.

As already noted, it is extremely difficult to isolate the influence of legislation on the state of society. The theory of criminal law and the criminology turned out to be the most «advanced» of the legal disciplines in this sense. Within these disciplines, an indicative number of researches has been conducted on the study of the preventive effect of criminal legislation. However, legal science currently does not quite have recommendations that fully reveal the optimal criteria for the adoption of criminal laws, even in these disciplines.

Let us turn to the actual factors affecting the efficiency of legislation. They can be classified into internal factors inherent in legislation and factors external to the system of legislation.

Internal factors will be studied first. These include the correct choice of the range of social relations subject to special legal impact; determination of the legal regulation purpose; application of the systematic approach principles; the optimality of the means and methods of legal regulation (permissible, permissive or mixed types, depending on the legal nature of the public relations subject to legal influence); selection of an adequate form of a normative act; adequate timing of administration appropriate regulation; following the rules of legislative technique and others.

Let us begin with consideration of legislative technique rules as the most important factor in the legislation efficiency. These rules constitute the rules of the legislative process and most directly affect the quality of the adopted laws. To state once again: the more complicated the legislative procedure, the greater the likelihood of effective legislation. Particular attention should be paid to the procedure for expert review of draft laws.

The correct choice of the range of social relations, which are subject to legal regulation from a substantive point of view, is no less important. In this case, the objects of legislative regulation should be the main spheres of social life. In these spheres (politics, economics, culture, etc.), the most fundamental, socially significant relations, affecting primarily the legal status of the individual, should be attributed to legislative regulation.

It is important to avoid excessive normative regulation of the relevant social relations, disproportionate legalization of social phenomena and processes, personal and collective behavior. All the more, the intrusion of positive law into a sphere that is legally indifferent, characterized by the ability of self-regulation by non-legal mechanisms of social regulation, is inadmissible.

It is fundamentally important to take into account the economic, geographical, sociocultural and other characteristics of society when determining the objects of legislative regulation. To identify them and objectify them in the form of a law, it is necessary to involve expert experts. In this case, not recording (or not enough recording) of certain public relations that objectively need legal mediation in determining the scope of legal regulation, or, conversely, its extension to relations that do not require appropriate legal impact, can lead to a significant decrease in the law efficiency and consequently its legitimacy.

It is quite important to establish the goal of legislative impact correctly. This is due to the fact that legislative activity is purposeful by its nature. Therefore, law-making begins with the awareness of the problem, which is concretized in the goal or the desired state of the object, where this problem is overcome. The operationalization of such a goal and its translation into legal language are the most essential aspects.

The factor of means and methods of legislative regulation is directly adjacent to the goal factor. It is well known that a goal without real means of achieving it remains nothing more than a good will. In other words, the goal must be achievable. However, the means required for the adoption and, most importantly, the operation of the law, in our opinion, relate to external factors that influence the legislation. In this case, we are talking about legal means, i.e. methods of legal regulation. This requirement (the factor of the legislation efficiency) is in agreement of the adopted law with the branch of law to which it belongs. Consequently, the specificity of the legal norms of the law depends on the legal regulation method, and it must correspond to the method of the branch of positive law.

Logically, the next factor in the legislation efficiency is its consistency. The principle of consistency presupposes both the internal consistency of the law and its consistency with the legislative system at large.

[10] Sergevnin, S. L. Subject of the Federation: Status and Legislative Activity. SPb.: Publishing House of the Legal Institute, 1999. Pp. 171–210.

The issue of the timeliness of a new regulatory legal act adoption is also important for the efficiency of legislation.

Legislation should follow the dynamics of life. This requirement should not be taken literally and imply a simplified (and then faster) procedure for law adoption. Haste can result in low or insufficient quality of regulations. It is very difficult to achieve the optimal combination of efficiency and thoroughness when passing laws. Ideally, the adopted law should be ahead of the dynamics of social relations and express its tendency. However, the adoption of such laws is an intractable task (especially within the modern complication of social relations) and therefore the legislation either does not keep pace with the changes in social relations, or, if adopted in a hurry, is of poor quality. This is the reason for the introduction of numerous changes and additions to the existing regulatory legal acts based on the results of law enforcement. And this, accordingly, negatively affects the efficiency of the current regulation and, more generally, on its legitimacy.

The result of the above factors of the legislation efficiency is the establishment of an adequate form of a normative act, i.e. the consolidation of social relations (either already established or still emerging), experiencing the need for legal mediation, in the form of a law. This requires both the correct choice of the object of legislative regulation, and a clear definition of the purpose and means of legal regulation, etc. In general, it can be argued that the right (as a set of naturally formed generally binding social relations, institutionalized in the rule of law) should be expressed in an adequate form of legislation. The efficiency of legislation largely depends on what relations will be enshrined in the law, how this process will proceed.

Now let's move on to considering the external factors of the legislation efficiency. Among them the political and economic situation in society; material (primarily financial) support for the implementation of laws; the legitimacy of legislation and external influence on legislation (the so-called «visual effect») are to be discussed.

The political and economic situation in society is the primary factor that determines the need for the adoption of a new law or amending (repealing) the current regulatory legal act. However, this influence is not direct, but indirect, mediated and reciprocal. The intermediate links mediating the mutual influence of the political and economic state of society and legislation are the awareness of the problem by the political elite and the setting of a goal that translates this problem into a «legal» language, as well as the legitimacy of legislation (the forecast of whether it will a new law be «adopted» [perceived, approved] by the addressees (by the population in general) or not).

This kind of goal is related to the issue of political will and is the subject of political science. Therefore, let us pay attention to the problem of the legitimacy of legislation as a factor of its efficiency. This problem directly affects the question of the mechanisms (tools) for verifying the legitimacy. However, for example, public opinion polls that study the degree of public support for the activities of certain government bodies or certain laws are not entirely correct. It is hardly possible to expect a designedly positive answer from the majority to the question whether you support such and such a law in the field of taxation, for instance.

In addition, no distinction is usually made between a specific state body, personified with specific officials (or the law) and state power (or legislation) as such in the study of legitimacy. But understanding the need for legislative regulation and a critical attitude towards it are not the same things. A critical attitude is not yet a denial of the need in regulation.

Undoubtedly, legislation (and legislators) must justify the existing «credit of confidence». This presupposes the objective (not opportunistic) needs of the population to be mentioned in the legislation.

At the end of the XX century the so-called «visual effect» has become an important factor affecting the legislative process and the efficiency of legislation (although it was outlined much earlier in other countries). It involves the experience borrowing of other legal systems. Indeed, the world, in connection with the processes of globalization and the parallel processes of the interpenetration of legal systems and even legal families' content, has become a single system where a change in one part affects all other subsystems inevitably. However, the influence of other experience and its borrowing has both positive and negative features.

It was believed that there is a single main line of world-historical development for a long time. Europe (the countries of Western Europe) was the first to embark on this path, and all other regions of the world have to follow this path sooner or later. Therefore, it is necessary to borrow the economy, political institutions and the legislation system of Western Europe and become a member of the developed states.

This trend can be observed both at the level of political elites who are trying to pursue a policy of modernization (or Westernization) in their considered developing countries, and at the level of everyday life. The so-called «visual effect» is observed at the «lower» level. This can be noticed when the population of developing countries is not satisfied with its strata position in comparison with the population of the developed countries. Under certain circumstances, it can give rise to reformational or even revolutionary expectations. This state of deprivation pushes the political elite to borrow (even copy) experience of other countries without any critical attitude towards it.

However, as the experience of the XX century has shown, the world has become one, due to large-scale technological breakthroughs, but various regions of the world continue to retain their uniqueness. Therefore, the experience of Western Europe turned out to be of little use for post-Soviet Russia, for example, without serious adjustments. The main criterion for assessing Western legislation should be the Russian legal culture[11]. Foreign normative legal models for developments in the

[11] Sergevnin, S.L. Russian National Legal Consciousness: Some Constitutional and Legal Problems // Journal of Constitutional Justice.2014. No. 5 (41). Pp. 16-23.

field of domestic legislation can be selected very carefully, if necessary, in terms of the naturally-historically formed legal culture of Russian society. Thus, external influence or consideration of other legislative experience can become an important factor in increasing the legislation efficiency, provided that it is used creatively in relation to the given legal system. In other words, comparative studies are a very powerful and effective means of modern legal technological processes, as well as in the field of law-making activity of public authorities and in the field of linear rule-making in the private law sphere. However, when the relevant national subjects use the comparative toolkit, it requires a special balanced, thoughtful and, in a sense, even delicate attitude of use. This remark is especially relevant for powerful political systems and legal order in terms of historical experience.

In conclusion, it should be emphasized that the law efficiency in general and positive law in particular, as a slightly forgotten problem of general theoretical jurisprudence and sociology of law, requires new attention and new approaches to the research paradigm in new social realities. On the one hand, the analysis of the positive law efficiency is of the great interest in its sectoral cross-section. Since the use of modern electronic technologies at this level will be most indicative within the specific sociological research in the field of various legal phenomena and processes. On the other hand, the external component also attracts special attention. Analysis of the normative regulation efficiency in a comparative legal aspect, analysis in the context of the inclusion of national legal systems in the metasystem of the world legal order, analysis of relationship and interaction of the normative regulation efficiency with supranational legal instruments and mechanisms are also of great interest.

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