

# THE EFFICIENCY OF LEGAL MEANS

Pavliukov Ihor

**Annotation.** *The aim of this work is to determine modern scientific approaches to the effectiveness of legal remedies, analysis of effectiveness criteria and existing gaps. The methodological basis of the study, when conducting the research, are general scientific and special methods of scientific knowledge. Results. Various scientific approaches to the definition of the category “efficiency” in the context of the application of legal means have been studied. The concept of “effectiveness of the mechanism of legal regulation” is considered in the “broad” and “narrow” sense. In the “broad” sense, efficiency is studied as the internal structure, features and interaction of all elements of the mechanism, while in the “narrow” sense, efficiency should be considered from formal and logical positions. Attention was also paid to the dependence of the functioning of these elements on the internal and external environment. Two groups of factors affecting the effectiveness of the mechanism of legal regulation are singled out. The first group of factors is related to the external conditions of the functioning of the mechanism of legal regulation (external factors), which ensure its general effectiveness and functionality, and the second - to the internal (specific) conditions that characterize its internal structure and directly organize its effectiveness. Conclusions. The problem of correct and effective use of legal means in various types of legal activity, their adequate reflection in legal consciousness is relatively new in legal science. It requires further elaboration and decision, especially against the background of the current stage of development of Ukrainian legislation and in connection with its significant renewal. The effectiveness of legal regulation of social relations is marked by the possibility of using various legal means. That is why a phenomenon that has crossed a certain limit turns into its opposite. In the same way, a violation of the balance of the use of various means of legal influence creates the impossibility of achieving the set goal. That is why legal incentives, if they are supported by legal constraints, are the most effective in satisfying subjects’ own positive interests.*

**Keywords:** *principle of efficiency, legal means, mechanism of legal regulation.*

## 1. Introduction.

The cornerstone issue of the instrumental theory of law is the effectiveness of the applied legal means and the criteria for such assessment. The modern level of studying the problems of legal effectiveness and practical tasks mediated by law require analysis and scientific generalization of the legal effectiveness research process. However, there is no single concept of approaches to determining the principles of efficiency, criteria for its evaluation, methods of measurement, etc., in the legal literature.

Therefore, the specific identification and study of efficiency factors that contribute to or, on the contrary, hinder the achievement of the goals of the means of legal regulation, and therefore the mechanism of legal regulation as a whole, is a rather complex process, because it is quite difficult to answer the question of whether a specific means of legal regulation is effective or not.

## 2. Analysis of scientific publications.

Despite the work done on certain issues regarding the evaluation of the effectiveness of legislation abroad, they remain poorly researched in Ukraine. Domestic scientists devoted their works to individual elements of evaluating the effectiveness of legislation: V. Golovchenko, N. Onishchenko, P. Rabinovych, N. Savinova, T. Tarakhonych and others.

### 3. The aim of the work.

The purpose of this article is to determine modern scientific approaches of the effectiveness of legal means, analysis of effectiveness criteria and existing gaps.

### 4. Review and discussion.

The main approach for evaluating the effectiveness of legal means, which is the most common in modern legal science, is to compare the actual data characterizing the state of social relations intended and achieved by the legislator. The disadvantage of this approach is that the initial state of the object of regulation is taken as the basis for comparison and, therefore, the effectiveness depends on the indicators characterizing the state of the object of regulation before the implementation of a certain legal instrument.

In this case, the lower the degree of effectiveness before the introduction of a legal remedy, the higher its effectiveness will be. In view of this, the method of determining and evaluating efficiency indicators, based on the correlation of the legal instrument and the mechanism of its action not only with real indicators (for example, data on the actual state of the object of legal regulation), but with an ideal model, where the criterion the effect of the action, will be the goal of this legal instrument, which expresses the ideal imaginary image of the created value. In this case, the criterion for assessing effectiveness can be a theoretically constructed optimal model of the legal mean, comparing with which the real impact of the legal mean and the legal mechanism of its action, its effectiveness can be determined.

The concept developed in modern jurisprudence, according to which the ratio between the goal and results is a special formula for determining the effectiveness of legal regulation, is considered valid. This concept has proven its suitability for determining real, actual efficiency based on the study of the results of the operation of legal norms.

The presence of a social problem can be evidenced by various sources. Undoubtedly, in order to assess the legal effectiveness of the mechanism of legal regulation, it is necessary to pay attention to laws and by-laws. Establishing the social goals of legal regulation is an activity carried out in the process of interpretative practice (in the process of interpreting the law). In the target interpretation, first of all, the normative content of the texts of legal acts is evaluated. So, at the first stage of interpretation, the legal goals of legal regulation are clarified.

To determine the degree of achievement of the social goal of the researched legal instrument, based not so much on individual as on mass results, mathematical evaluation methods, in particular, correlation analysis are used. Correlation dependence is one of the most important statistical methods that can be used to make the transition from a set of empirical data to scientifically based conclusions. Correlation (correlation dependence) is a statistical relationship between two or more random variables (or variables that can be assumed to be such with some acceptable degree of accuracy).

The feasibility of using correlation analysis to determine the effectiveness of legal means is determined by the fact that this method reflects the essence of the theory of effectiveness. For example, in order to find out the relationship between the goal and the result of a legal norm, it is first necessary to formulate the goal and the result in concepts available for calculation and comparison. In other words, the compared concepts should be interpreted mathematically [1; p. 105].

In order to evaluate the effectiveness of the legislation, it is necessary, first of all, to identify the task of such an evaluation. Thus, P. Kindrat singles out the following:

- 1) definition of goals and objectives of legislative acts;
- 2) systematization and analysis of socially significant results of legislation;
- 3) establishment of qualitative characteristics of legislative acts and analysis of their compliance with the principles of effectiveness of legislation;

- 4) identification of elements that impair the effectiveness of legislation;
- 5) formation of proposals on ways to improve the effectiveness of legislation [2; p. 118].

Of course, the main methods include clarifying the goals of legislation, and therefore, methods of interpreting legal norms, for example, actions to determine the goals of the law by studying the relevant scientific literature (doctrinal interpretation), both published before the publication of the interpreted normative act. It should be noted that the teleological interpretation is not always appropriate. Sometimes the legislator indicates the goals of the regulatory act directly in the text. At the same time, the goals can be removed from the text or meaning of the norm itself, which is being interpreted, or other norms related to it.

The criterion of effectiveness of legislation can also be considered the degree of conflict of social relations, in relation to which one or another legal remedy is applied. Some of the scientists also suggest to study the indicators of legality. To do this, it is recommended: first, to evaluate the effectiveness of a specific legal norm by comparing its goal with the actual result (for example, norms on compliance with legal discipline with actual data on going to work, tardiness, absenteeism, etc.); secondly, to establish indicators of compliance with the law by spheres, as well as the ratio of legal acts, actions and illegal acts (for example, the total number of local acts per year and the number of cancelled, suspended, changed, unfulfilled); thirdly, enter the general indicator of the level of legitimacy (as the average value of the indicators of legitimacy by sphere).

The effectiveness of any law is characterized by objective, well-defined indicators. The determination of such indicators in relation to a certain law, based on the content and characteristics of social relations regulated by them, allows us to program the study of the real effectiveness of the law [3; c. 14].

Given the extent of the impact of legislation on relations, there is a need to coordinate a set of indicators that are variable both in terms of content and form. To do this, it is proposed to group them within the framework of a hierarchically branched system. It consists of three levels: criteria, indicators and sub-indicators, which are divided depending on the level of abstraction. Evaluating the effectiveness of legislation in the information sphere is a purposeful process, the purpose of which is to analyze the results of the legislation in relation to industry and regulatory goals and existing informational interests, as well as the formation of proposals for improving efficiency by eliminating identified shortcomings [4; p. 58].

According to V. Sirenko, the research process of the "efficiency" category requires parallel consideration of the concept of "interest". The definition of interest as a relationship between the need to satisfy the needs of various social groups, classes, and individual strata of the population and the possibility of satisfying these needs leads to the emergence of a model whose components can be considered as elements of efficiency, namely: social needs that must be satisfied with the help of a specific regulatory act; legal means, their quantity and quality; the ability of legal means to satisfy social interests, including economic ones, enshrined in the normative act; the perspective of directions for improvement of legislation in order to meet social needs with the help of legal means [5; p. 13]. In our opinion, within the limits of the stated position, a question arises, which consists in determining the interest itself, that is, what interest must be formed or implemented in order to increase the effectiveness of the means of legal influence in the future: national, collective or personal.

The basis of the methodical approach, which was proposed by the Swiss scientist L. Mader for the development of the normative content of laws, is the selection of analytical steps, or sequences: 1) analysis and definition of the problem, which is supposed to be solved by legislative activity; 2) defining or clarifying the goals of legislation; 3) examination of legal instruments or means that can be used to solve the problem, and this choice is based, among other things, on the results of a prospective assessment of their possible impact; 4) design of normative content; 5) formal implementation; 6) application; 7) retrospective assessment; 8) if necessary or if possible – adaptation of the legislation in accordance with the results of the retrospective assessment [6; c. 122].

In foreign legal literature, special attention is paid to the study of the so-called principle of effectiveness - the problem of the connection between law and fact, legal and factual [7; c. 6]. At the same time, effectiveness is interpreted as an expression of the relationship between some actual state of social reality (facts, behaviour of subjects, etc.) and the rule of law. This relationship can be considered in two ways:

on the one hand, the actual circumstances may fully correspond to the law at a specific moment; on the other hand, there may be a discrepancy between them. In the second case, in contrast to the first, new factual relations cause the need to change or cancel outdated legal norms or create new ones.

In general, the provisions on the researched issue developed in foreign legal literature combine elements of methods available in Ukrainian jurisprudence. Undoubtedly, the given opinions of foreign scientists have the right to exist, but this is not an exhaustive list of possible methods for evaluating the effectiveness of legal regulation.

In modern legal literature, it is noted that the evaluation of the effectiveness of the implementation of laws is reduced to determining the degree of achievement of regulatory goals; typical violations of laws and their causes, as well as to the development of measures to eliminate them. Accordingly, among the necessary actions for evaluating the effectiveness of the implementation of the law, it is possible to highlight the following: a) comparison of the norm, as a model, with the actual results in the sphere it regulates, according to certain indicators; b) identification of reasons for violation of the law (legislative errors or conflicts, ignorance of the law, distortion of content, failure to use powers, interference with the competence of other organizations, violation of citizens' rights, poor work of state bodies, illegal actions); c) establishment of facts of inaction of the law; d) description of the negative side effects of the implementation of the law; e) determination of the impact of the level of legality on the state of management, economic activity, and people's behaviour; f) development of measures to eliminate deviations from the law and improve law enforcement activities regarding the introduction of changes, additions or cancellation of provisions of the law.

Moving on to the next part of this article, it should be noted that the very problem of the theory of legal means in the aspect of the instrumental approach is related to the separation of legal means and their use in the practical activity of subjects depending on the general principles and methods of legal regulation; secondly, the very methods of legal regulation, acting as original and effective legal means, require a special legal mechanism to ensure their operation and implementation; thirdly, the practical side of the problem is related to the fact that legal means united in certain complexes, "blocks" as part of types of legal regulation are closely interconnected and in such unity are able to exert an optimal effect on social relations, creating such a legally coordinated mechanism, the use of which in a complex gives the greatest effect in solving various social tasks.

A special burden is borne by legal means in the mechanism of law enforcement. Ultimately, the achievement of the goals of legal regulation depends on the correct choice of legal means, hence the effectiveness of law in general. Underestimation, incorrect choice of legal means, techniques laid down in the normative basis of legal regulation, lead to failures in the implementation of the law, a decrease in the legal effect. The common point regarding the evaluation of the reasons for the low level of effectiveness of the law was the indication of the lack of an appropriate mechanism for its implementation.

Such an analysis involves the identification of hierarchical relationships between legal means in different types of regulation, correspondence between the content of legal means and their practical use in the process of legal activity, which allows for the development of recommendations for improving the mechanism of law enforcement, optimal and effective use of legal means in solving various problems.

At the same time, the starting point of such research is the starting point of a special meta-theoretical field of knowledge, praxeology, which sets as its task the creation of a general theory of effective organization of any human activity. The analysis of means and methods of activity should be carried out from the point of view of clarifying their significance for the realization of the goals and objectives of the activity, taking into account the factors that determine the means. The praxeological approach to the analysis of legal means and activities of subjects has not yet found application in legal research.

A law that does not correspond to the objective properties and content of law is not, frankly speaking, a legal act. It can be a command of state power, which due to objective reasons, for example, in the absence of legal means of its implementation, will remain only "words written on paper", or it can be implemented only by force of state coercion as an act of state arbitrariness. In other words, a law as a legal document, a source of law, cannot but have the properties of law, otherwise it is not such, and a well-developed system of legislation cannot be built from such "laws". Another issue is the quality of laws and

the entire legal system, their compliance with all objective properties of law. But this is an independent problem, primarily of practical jurisprudence, sociology of law, related to determining the efficiency and effectiveness of law and legislation.

Implementation of the right using special legal means is carried out in the process of legal activity of subjects in the process of legal regulation. An instrumental approach to the examination of activities in the process of law enforcement allows to identify and formulate rules for the effective use of legal means in various types of special legal activity.

In our opinion, the effectiveness of the mechanism of legal regulation should be considered in the "broad" and "narrow" sense. In the "broad" sense, the effectiveness of the mechanism of legal regulation must be investigated as the nature, essence, internal structure, peculiarities and interaction of all elements of the mechanism of legal regulation. In the "narrow" sense, efficiency must be considered from formal and logical positions. In this case, attention should be paid to the dependence of the functioning of these elements on the internal and external environment.

Some scientists point out that the conditions or factors of effectiveness are those circumstances that, on the one hand, contribute to the optimal realization of the value of the law, which allows to more fully satisfy the interests of subjects, and on the other hand, determine the actions of subjects in achieving such value and its use. That is why the study of the effectiveness of the mechanism of legal influence indicates the insufficiency of narrow and broad approaches and the need to apply a systemic approach to the characterization of the effectiveness of the studied phenomenon.

The functioning of the mechanism of legal regulation within society, its conditioning by objective and subjective factors makes it possible to single out two groups of factors that influence the effectiveness of such a mechanism. The first group is related to the external conditions of the functioning of the mechanism of legal regulation (external factors) that ensure its general effectiveness and functionality, and the second - to internal (specific) conditions that characterize its internal structure and organize its direct effectiveness.

The first group of efficiency factors (external factors) can include, for example, 1) the degree of development and functioning of the legal system as a whole, 2) macro-social factors of social development, 3) the level of development of state-legal regulation, etc.

Another group of factors of the effectiveness of the mechanism of legal influence consists of specific factors (conditions) that serve exclusively to ensure the effectiveness of the mechanism of legal regulation itself. These include 1) the formed level of legal awareness of individual individuals and society as a whole, 2) coordination of public interests with implemented legal means, 3) social value of the existing mechanism of legal regulation, 4) general legal awareness of society, 5) optimization and balancing of legal means.

In our opinion, it is appropriate to consider the last factor in more detail. Due to the fact that the effectiveness of legal incentives and restrictions comes as a result of their struggle with obstacles, the main ways of their improvement will depend on the strength and variety of the latter. Taking into account such general management laws as the law of necessary diversity, the law of the ratio of incentives and "anti-incentives" (obstacles), we can say that only more powerful various legal incentives and legal restrictions can become effective competitors (obstacles). That is why the effectiveness of the mechanism of legal regulation also depends on how effectively the "law" of the ratio of incentives and restrictions will operate.

Based on this, it is possible to optimize the process of legal stimulation and legal restriction only by overcoming the obstacles that stand in their way, which simultaneously leads to the optimization of the informational and psychological impact of law.

## 5. Conclusions.

The problem of correct and effective use of legal means in various types of legal activity, their adequate reflection in legal consciousness is relatively new in legal science. It requires further elaboration and decision, especially against the background of the current stage of development of Ukrainian legislation and in connection with a significant update of the legislation.



Summarizing the above, it should be noted that the effectiveness of legal regulation of social relations is marked by the possibility of using various legal means. That is why a phenomenon that has crossed a certain limit turns into its opposite. In the same way, a violation of the balance of the use of various means of legal influence creates the impossibility of achieving the set goal. That is why legal incentives, if they are supported by legal constraints, are the most effective in satisfying subjects' own positive interests.

#### References:

1. Bobylyov A., (1999) Mekhanizm pravovoi dii na suspilni vidnosyny [Mechanism of legal action on social relations]. *Derzhava i pravo – The law and the state*. No. 5, 104–109 [in Ukrainian].
2. Kindrat P., (2017) Kontsepsiia otsiniuvannia efektyvnosti zakonodavstva v informatsiynii sferi [The concept of evaluating the effectiveness of legislation in the information sphere]. *Pidpriemnytstvo, hospodarstvo i pravo – Entrepreneurship, economy and law*. No. 7/2017, 117–120 [in Ukrainian].
3. Rabinovych P., (2008) Efektyvnist yurydychnykh norm: zahalnoteoretychnyi-poniattieviy instrumentarii doslidheniia [The effectiveness of legal norms: a general theoretical and conceptual research toolkit]. *Visnyk Akademii pravovykh nauk Ukrainy – Bulletin of the Academy of Legal Sciences of Ukraine*. No. 1(52), 13–21 [in Ukrainian].
4. Kindrat P., (2015) Metodolohichni pryntsyipy otsenky efektyvnosti zakoniv [Methodological principles of evaluating the effectiveness of laws]. *Legea si viata*. No. 6/3 (282), 58–60 [in Russian].
5. Sirenko V., (1995) Vyznacheniiia efektyvnosti zakonodavstva: metodolohichni aspekty [Determining the effectiveness of legislation: methodological aspects]. *Zakonodavstvo: problem efektyvnosti – Legislation: efficiency issues*. 3–13 [in Ukrainian].
6. Luzius Mader (2001) Evaluating the Effects: A Contribution to the Quality of Legislation. *Statute Law Review*. Volume 22, Issue 2. 119–131 [in English].
7. Elvira Mendez-Pinedo (2021) The principle of effectiveness of EU law: a difficult concept in legal scholarship. *Juridical Tribune*. Volume 11, Issue 1, March. 5–29 [in English].

---

**Ihor Pavliukov,**  
*Postgraduate student*  
*of the Department of Theory of Law and State*  
*of the Educational and Scientific Institute of Law*  
*of Taras Shevchenko National University of Kyiv*  
*e-mail: pavliukovknu@gmail.com*  
*ORCID ID: 0000-0003-3490-1221*