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Article in *Юридичний вісник* · October 2021

DOI: 10.18372/2307-9061.60.15953

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PhD in Physics and Mathematics, Senior Researcher, Lawyer

ORCID ID: <https://orcid.org/0000-0002-9599-0347>

P. D. Bilenchuk,

Doctor of Law, Professor

ORCID ID: <https://orcid.org/0000-0002-9599-0347>

EFFICIENCY IMPROVEMENT CHALLENGES OF LAW APPLICATION IN UKRAINE

Institute of Nuclear Research of the National Academy of Sciences of Ukraine

Nauki Avenue, 47, 03028, Kyiv, Ukraine

National Aviation University

Liubomyra Huzara Avenue, 1, 03680, Kyiv, Ukraine

E-mails: obikhod@kinr.kiev.ua, k_kpipp@ukr.net

Purpose: to study the effectiveness of rule-making and law application in the conditions of the formation and development of market relations in Ukraine, when the need for reforms in different areas of life is a key necessity. **The methodological base of an investigation** is connected with historical legal, dialectical and special methods of cognition. **Results:** the step-by-step implementation of the law in public life is considered and the need for a comprehensive knowledge of the political, economic and spiritual components for the effective implementation of the law norm is emphasized. Authors proposed effective methods of rule-making activities such as experimental legislation, graphic representation and strict control with strict sanctions. **Discussion:** to search for methods of overcoming legal nihilism in Ukraine and to consolidate the norm as an essential link in public life.

Keywords: law application; experimental legislation; graphic representation; strict control; strict sanctions.

A problem statement and its urgency. Ukraine is at a stage when a characteristic feature of its legislation is the need to establish an effective functioning of the economic mechanism in the context of developing market relations. This is one of the main tasks of reform, since market reforms cannot be carried out without an effective regulatory framework. Legislation should ensure the efficient functioning of the economy, freedom of entrepreneurship and private property. For the effectiveness of the norms-goals, it is necessary to take into account the specific result, spiritual and cultural factors that influence on the setting of the goals of law regulation and the achievement of the result. Therefore, the analysis of the creation and

effective implementation of the rule of law is a key task of modern law-making activity.

The analysis of research and publication. An important source base for processing of this topic has been published by scientists, such as: V.G. Bondarevs'kyj, O.F. Skakun, K.G. Volynka, Y.S. Shemshuchenko, S.S. Alekseeva, O.A. Lukashova, E. Matuzov, A.G. Skok, I.A. Omelchuk, Yu.O. Topol, M.I. Panova, O.S. Bondareva and others [1-4]. At the same time, due to the dynamism and changes in society, it is necessary to expand ways to overcome legal nihilism through the effective realization of law in Ukraine.

Purpose. The main purpose of the article is to study the processes of creation and stages of implementation of the rule of law, ways to improve its

quality and methods of effective implementation in everyday life.

Presentation of the main material. The operation of laws, their effectiveness, law enforcement activity depends on economic, political, ideological and law factors. "The historical principle of the development of law, as directly expressing the common basis of the people's spirit is in its indivisible unity, it directly corresponds to the beginning of communality, and the opposite mechanical principle, which deduces law from an external agreement between all individual atoms of society, is obviously a direct expression of the beginning of the individualistic," wrote the philosopher Soloviev V. in his work [5]. Thus, he recognized two sources of law - the spontaneous creativity of the people's spirit and the free will of individuals.

Lawmaking and law enforcement are forms of law regulation that affect on the development of the whole society [6]. We can talk about the effectiveness of any law as it has a specific purpose, it is used as needed, if it is not an extra link in the mechanism of law regulation and a certain effect is expected from it. Many normative laws do not contain normative prescriptions fixing norms-goals, or the level of goals is reduced to the level of tasks. Therefore, for the effective functioning of the rule of law, the following requirements must be attributed:

1) compliance with the level of development of social, political, economic, spiritual and cultural relations existing in society and requiring regulatory regulation;

2) taking into account the prospects for the development of predictable social and law processes;

3) consideration of possible directions of social development.

The essence of law enforcement is as follows [4]:

- in endowing some participants in law relations with subjective legal rights and in imposing on other participants of subjective legal obligations;

- in resolving a dispute about the right - the existence or extent of subjective legal rights and subjective legal obligations;

- in determining of the degree of legal responsibility of the offender.

The following shortcomings of legal regulation are common:

- the unsystematic legal regulation;

- the lack of normative content, declarativeness;

- the lack of financial and economic justification;

- there is no general description and assessment of the state of legal regulation of the relevant social relations;

- there is no analysis of the laws and other regulatory legal acts in different area of life;

- the laws are not supported by materials of law enforcement practice;

- there is no assessment of the legal, socio-economic, political consequences of the implementation of the proposed law.

In this aspect, the experience of Europe is indicative [7]. In particular, a special department is included in the Council of Europe for the execution of decisions of the European Court of Human Rights. As a result of his work, the following conclusions were drawn:

- the need to develop a regulatory framework to ensure the execution of court decisions;

- clear procedures are required to facilitate prompt and proper enforcement of court orders;

- an effective and independent bailiff service should be established;

- there is a need to increase the accountability of government officials responsible for the execution of judicial decisions at the national level, both by increasing their personal responsibility and by strengthening control;

- effective domestic remedies are required to expedite the execution of court orders;

- compensation should be provided for non-performance.

Modern legislation has taken the form of programs to achieve specific goals. Therefore, it is necessary to make sure whether the set goals are actually achieved. To this end, the impact of legal norms should be assessed in order to draw conclusions and move on to improve the norms, where necessary. After the adoption the law is realized in the following steps:

1) the government, which either finances or does not finance the implementation of its norms;

- 2) executive authorities;
- 3) law enforcement agencies;
- 4) the prosecutor's office;
- 5) the court;
- 6) public organizations;
- 7) media.

If any of these links does not work, then we will not achieve the result. That is, the rule of law is one of the elements of the mechanism through which the final result is achieved. Lawmaking is not the prerogative of lawyers. Lawmaking specialists should be trained taking into account the branches of social and economic activity in which they will work. For the effectiveness of the rule of law, it is necessary to check:

- the maximum feasibility of the causal assumptions that underlie legislative action;
- are they based on the best theories and reliable information;
- their effectiveness after the adoption and application of laws.

The purpose of this work is to be closer to reality, to improve the legislator's ideas and knowledge about the impact of legislation on public life.

In this aspect, the *experimental legislation* [7] is relevant, that is, legislation in force for a limited period of time in order to determine the acceptability of a legislative measure to achieve the set objectives. This is a form of legislation that has some features:

- it should be limited in time;
- it should contain a clear definition of the purpose;
- it should indicate the objectives of the legislative action;
- it should specify the criteria used to assess the suitability of the interim instruments;
- it should determine what data should be collected, determine the responsibility for collecting this data and evaluate the results.

For example, in Switzerland, a pilot law was passed several years ago on the distribution of heroin among drug addicts for medical purposes. Based on the convincing results of this assessment, Switzerland has decided to introduce such measures for a specific period.

The graphical presentation [7] of causal relationships between the legal norm and the observed social reality greatly helps to reveal some of the weaknesses and shortcomings of the developed hypotheses. It helps to critically examine and investigate legal hypotheses despite the reducibility and complexity of potential or real causal relationships.

The most important element of the effectiveness of legal application is *strict control and tough sanctions* [7]. It is known that a norm cannot be represented in the law if it is not accompanied by sanctions. However, it must be remembered that in modern legislation there is a wide variety of sanctions. This applies not only to civil and administrative law, but also to criminal law.

For example, in Sweden, reform work is aimed at decriminalizing certain actions, replacing punishments with administrative sanctions. A criminal offense can lead to sanctions not only in the form of criminal penalties, but also in the form of administrative sanctions, such as, for example,

suspension of a driver's license in the field of road traffic. After extensive research into drink driving and the effectiveness of drunk driving legislation, attempts have been made to find out how drivers assess various sanctions in terms of their severity and social impact. The prevailing view among drivers was that fines and incarceration had relatively limited negative consequences. However, the suspension of a driver's license had great negative consequences;

the risk of license suspension is believed to be of the same importance in other areas. Committees studying the restaurant business in Sweden have concluded that the most effective way to force restaurant owners to pay taxes and other deductions is by threatening *to suspend a restaurant's alcohol license*;

the effectiveness of *criminal sanctions* in terms of crime prevention is also questionable. One of the common conclusions: prisons inevitably foster prison psychology, prison subcultures contribute to criminalization. To prevent recidivism, *sanctions that do not provide for detention, and not imprisonment, should be used*.

Conclusions. The stages of rule-making and law enforcement activity are considered. In the course of creating legal norms, it is necessary to take into ac-

count the scope of its application and be not only a legalist but also a specialist in specific law enforcement activities: transport, finance, education, etc. Successful implementation of the rule of law requires its successful implementation at all stages, from government funding to popularization through the media. Overcoming legal nihilism is impossible without modern methods of implementing the rule of law, such as: *experimental legislation, graphical presentation* of causal relationships between the legal norm and the observed social reality, *strict control and tough sanctions*.

Література

1. Бондаревський В.Г. Правовий нігілізм в Україні та шляхи його подолання. Київ, 2012. 750 с.
2. Скакун О.Ф. Теорія держави і права: підруч. Харків: Консум, 2009. 656 с.
3. Волинка К.Г. Теорія держави і права: навч. посіб. Київ: МАУП, 2003. 240 с.
4. Застосування правових норм. Юридична енциклопедія: у 6 т. / ред. кол. Ю.С. Шемшученко (відп. ред.) та ін. Київ: Українська енциклопедія ім. М.П. Бажана, 1998. Т. 2: Д – І. С. 538.
5. Soloviev V. Law and Morality (Essays from Applied Ethics). St. Petersburg, publication of Y. Kantorovich, «Central» type-lithograph by M.Y. Minkov. S. 9.
6. Гадамер Х.-Г. Истина и метод: основы филос. герменевтики: пер. с нем. / общ. ред. и

вступ. ст. Б.Н. Бессонова. Москва: Прогресс, 1988. 704 с.

7. Human rights in Europe: work in progress. Position of Thomas Hammarberg Council of Europe Commissioner for Human Rights. Council of Europe Press F-67075, Cedex, Strasbourg, 462 с. URL: <https://book.coe.int>.

References

1. Bondarevskiy V.G. Pravoviy nigilizm v Ukraini ta shljahy jogo podolannja. Kyi'v, 2012. 750 s.
2. Skakun O.F. Teorija derzhavy i prava: pidruch. Harkiv: Konsum, 2009. 656 s.
3. Volynka K.G. Teorija derzhavy i prava: navch. posib. Kyi'v: MAUP, 2003. 240 s.
4. Zastosuvannya pravovyh norm. Yurydichna enziklopediya: u 6 t. / red. kol. Y.S. Shemshuchenko (vidp. red.) ta in. Kyiv: Ukrayinska enziklopediya im. M.P. Bajana, 1998. T. 2: D – I. S. 538.
5. Soloviev V. Law and Morality (Essays from Applied Ethics). St. Petersburg, publication of Y. Kantorovich, «Central» type-lithograph by M.Y. Minkov. S. 9.
6. Gadamer H.-G. Istina i metod: osnovy filoz. hermenevtiki: per. s nem. / obch. red. i vstup. st. B.N. Bessonova. Moskva: Progress, 1988. 704 s.
7. Human rights in Europe: work in progress. Position of Thomas Hammarberg Council of Europe Commissioner for Human Rights. Council of Europe Press F-67075, Cedex, Strasbourg, 462 p. URL: <https://book.coe.int>.

**ПРОБЛЕМИ ПІДВИЩЕННЯ ЕФЕКТИВНОСТІ
ПРАВОВОГО ЗАСТОСУВАННЯ В УКРАЇНІ**

Інститут ядерних досліджень НАН України
проспект Науки, 47, 03028, Київ, Україна
Національний авіаційний університет
проспект Любомира Гузара, 1, 03680, Київ, Україна
E-mails: obikhod@kinr.kiev.ua, k_kripp@ukr.net

Мета: вивчити ефективність нормотворчості та застосування законодавства в умовах формування та розвитку ринкових відносин в Україні, коли необхідність реформ у різних сферах життя є ключовою необхідністю. Законодавство має забезпечувати ефективне функціонування економіки, свободу підприємництва і приватної власності. Для ефективності норм-цілей необхідно враховувати конкретний результат, духовно-культурні фактори, що впливають на постановку цілей нормативно-правового регулювання і на досягнення результату. **Методологічна база дослідження** пов'язана з історичними, правовими, діалектичними та спеціальними методами пізнання. **Результати:** розглядається поетапне впровадження закону в суспільне життя та наголошується на необхідності всебічного знання політичних, економічних та духовних складових для ефективного впровадження норм права. Розглянуто етапи нормотворчої та правозастосовчої діяльності. Під час створення правових норм необхідно враховувати сферу їх застосування і бути не лише легістом, а й фахівцем у конкретних правоохоронних діях: транспорт, фінанси, освіта тощо. Автори запропонували ефективні методи нормотворчої діяльності, такі як експериментальне законодавство, графічне зображення та суворий контроль із суворими санкціями. **Обговорення:** пошук методів подолання правового нігілізму в Україні та закріплення норми як важливої ланки суспільного життя.

Ключові слова: застосування закону; експериментальне законодавство; графічне зображення; суворий контроль; суворі санкції.