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Effectiveness of legislation and implementation of the rule of law

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Gulnaz Eldarovna Adygezalova *
Sergey Alekseevich Zhinkin **
Irina Stanislavovna Kich ***
Lyudmila Vasilyevna Butko ****
Lyudmila Petrovna Vysotskaya *****

Abstract

The article aims to consider the relevant aspects of such a multifaceted phenomenon as efficiency in state activities and legal systems. In modern Russia, not only the effectiveness of laws, but also the effectiveness of state activities in implementing the rule of law, gains importance. To solve the tasks posed, they used the following methods: logical (description, classification), structural-system, formal-dogmatic and comparative. As a result of the study, it has been revealed that the effectiveness of legislation and the effectiveness of activities to implement the rule of law are inextricably linked to the social component, that is, to meet public needs and interests. It is concluded that the effectiveness of Russian legislation is related not only to the achievement of the objectives set by the legislator, the fulfillment of the legislative objectives and the results obtained, but also to the fulfillment of the laws with the needs of social development and public interests. Effective implementation of the rule of law also has a prominent social component. The abstract principles of the rule of law must be full of real social content.

Keywords: legal efficiency; realization of the rule of law; legal principles; social reality; public interest.

* Kuban State University, Krasnodar, Russia. ORCID ID: <https://orcid.org/0000-0003-3682-2121>

** Kuban State University, Krasnodar, Russia. ORCID ID: <https://orcid.org/0000-0002-0291-4469>

*** Kuban State University, Krasnodar, Russia. ORCID ID: <https://orcid.org/0000-0003-2995-2163>

**** Kuban State University, Krasnodar, Russia. ORCID ID: <https://orcid.org/0000-0002-7080-398X>

***** Kuban State University, Krasnodar, Russia. ORCID ID: <https://orcid.org/0000-0002-1824-1959>

Efectividad de la legislación e implementación del estado de derecho

Resumen

El artículo tiene como objetivo considerar los aspectos relevantes de un fenómeno tan multifacético como la eficiencia en las actividades estatales y los sistemas legales. En la Rusia moderna, gana importancia no solo la eficacia de las leyes, sino también la eficacia de las actividades estatales en la implementación del estado de derecho. Para resolver las tareas planteadas, se utilizaron los siguientes métodos: lógico (descripción, clasificación), sistema-estructural, formal-dogmático y comparativo. Como resultado del estudio, se ha revelado que la efectividad de la legislación y la efectividad de las actividades para implementar el estado de derecho están indisolublemente vinculadas con el componente social, es decir, satisfacer las necesidades e intereses públicos. Se concluye que, la efectividad de la legislación rusa está relacionada no solo con el logro de los objetivos establecidos por el legislador, el cumplimiento de los objetivos legislativos y los resultados obtenidos, sino también, con el cumplimiento de las leyes con las necesidades del desarrollo social y los intereses públicos. La implementación efectiva del estado de derecho también tiene un componente social destacado. Los principios abstractos del estado de derecho deben estar llenos de contenido social real.

Palabras clave: eficiencia legal; realización del estado de derecho; principios jurídicos; realidad social; interés público.

Introduction

The effectiveness of legislation, its regulatory norms and institutions has become the research subject in Russian science, including the scientific works of V.I. Nikitinskii (1971), L.S. Yavich, A.S. Pashkova (1970), V.V. Lapaeva (2011) and other renowned scholars. The issues related to the effective functioning of civil society and the rule of law have also been considered in Russian legal science. The theory of the rule of law and its development were covered by O.K. Ganoev (2011), N.E. Gridchina (2005), V.D. Zorkin (2011), I.V. Leonov (2005), M.N. Marchenko (2014), M.V. Ogneva (2012), O.V. Ralko (2011), F.M. Ryanov (2010), etc.

Scholars also paid attention to specific principles and characteristics of the rule of law, in particular, the principle of mutual responsibility of state and an individual, the legal status and specific rights of an individual in a state governed by the rule of law. The Russian science dwelled on the principle of limiting state power (Gdalevich, 2008), the interaction between

state and its citizens, as well as their participation in the management of public affairs (Yatsenko, 2007).

However, there are still many gaps in the study of the above-mentioned issues. The principles of the rule of law and partially the effectiveness of their implementation were studied in the theses by E.G. Antonova (1996), N.E. Kvacheva (1996) and T.N. Dovbush (2005) published a long time ago. The relevant issues were also mentioned in connection with the study of the legal impact and legal consciousness during different historical periods (Mordovtsev *et al.*, 2017).

At the same time, the effective implementation of these principles, including the purposeful formation of a system of state and social mechanisms, has not been subject to special research in Russian science. In other words, specific theoretical and practical issues related to the effective implementation of the rule of law, including the formation and operation of appropriate mechanisms, as well as many ways to improve the effectiveness of legislation have not been addressed in a separate scientific study.

1. Methods

The research methods are determined by a rather broad subject and include, first of all, logical (definition, description, proof and refutation, classification) and comparative methods to compare features and activities of the phenomena under study. It is also proposed to use the formal-dogmatic method to analyze ways to improve the effectiveness of laws in the area under study.

2. Results

The most important direction in increasing the efficiency of the current legislation is to improve its social aspects. The goals set by the legislator should correspond to the needs of social development and the interests of the general population.

To ensure effectiveness, mechanisms for implementing the rule of law should combine common goals, means, technologies and procedures for such implementation, as well as those entities involved in such implementation.

The mechanisms for the effective implementation of the rule of law should have an unambiguous social orientation, aim not only at the introduction of certain doctrines into the state legislation but at their maximum social adaptation, achieving real social goals using these principles and satisfying

the most urgent needs of social development. This is conditioned by the fact that the theory of the rule of law and the system of its principles exist for society, and not vice versa, i.e. social development should not be controlled even by engaging theoretical ideas.

To ensure effectiveness, the mechanisms for implementing the rule of law under formation should be classified based on several grounds. According to the subjects of implementation, such mechanisms can be subdivided into state and public, whose effectiveness might differ. Public mechanisms should be implemented and are already implemented (although unsystematically) by authorized state bodies of both federal and regional levels.

3. Discussion

In our opinion, mechanisms for implementing the rule of law embrace a set of means, tools and approaches that aim at realizing the relevant principles, as well as state bodies and public associations that directly implement these principles or control their implementation. Accordingly, the better implementation these mechanisms provide, the more effective they are.

The functional dependence of the state and its bodies on society, their subordination to society and their orientation towards social needs should underlie the effectiveness of mechanisms for implementing the rule of law.

The principles of the rule of law and their implementation in the context of ensuring their effectiveness should not contradict the historical needs of developing society or the specifics of its current functioning. If the initial, “classical” separation of powers into legislative, executive and judicial branches leads to constant conflicts between the branches of power and even a crisis of power, then such a model should be transformed by forming other branches or redistributing the powers of the existing branches for their mutual containment and control.

The mechanisms for implementing the rule of law to ensure their effectiveness should include:

- Certain actors (first of all, state bodies and officials, various public associations and social groups, political leaders, etc.). Moreover, their significance and relationship in the implementation of various principles of the rule of law can differ significantly.
- Certain system of means, technologies and tools (methods of legal regulation, information, educational means, etc.).

- Certain established procedures for their implementation (in particular, procedures for holding public discussions of bills, protecting rights and freedoms, procedures for combating abuse of office and other abuses of government bodies to the prejudice of their own citizens, etc).

An important, but only initial stage of ensuring the effective functioning of the above-mentioned mechanisms is to consolidate the relevant principles in laws. Under the Constitution, the activity of the state apparatus is regulated by legal norms of a higher order. This tool “ensures the consolidation and development of the basic principles of the rule of law, the inviolability and impossibility of excluding these principles” (Gasanov, Stremoukhov, 2004).

The mechanisms for implementing the rule of law have the following basic features, which is also important in the context of ensuring the effectiveness of these mechanisms.

1. They aim at achieving a specific goal, namely the implementation of a particular principle recognized as a principle of the rule of law.
2. They include a set of applied means or procedures of a legal, educational, organizational, informational and other nature.
3. They are executed by certain (as a rule, enshrined in legislation) actors. These subjects comprise authorized government bodies and various associations, civil society institutions that might not aim at implementing certain principles of the rule of law as the main goal of their activities.

The mechanisms for implementing the rule of law can be divided and classified on several grounds, which is important in the context of their effectiveness.

According to the subjects of their implementation, such mechanisms should be subdivided into state and public. Authorized bodies of the federal and regional levels are responsible for state mechanisms. Public mechanisms are used by various public associations, social groups or individual citizens. At the same time, an urgent task is to determine the role and correlation of these mechanisms in the effective implementation of specific principles of the rule of law, the consolidation and practical development of various aspects of their interaction.

Depending on the means used, organizational, stimulating, informational and educational mechanisms can be distinguished that have their own specific effectiveness. Unfortunately, the actual form of such mechanisms is not enshrined and has not even been studied in the relevant legal doctrine. Therefore, let us consider this classification in more detail.

Thus, organizational mechanisms should be understood as a set of organizational means and procedures for implementing the principles of legal statehood, as well as bodies and organizations involved in the implementation of these means and procedures. Such bodies do not have to be specially created for the implementation of the rule of law. However, the goals related to the implementation of such principles should be within their competence and, possibly, be enshrined in their constituent documents.

We should also consider organizational procedures for public control over the activities of state bodies and officials, detailed and “transparent” reports of state bodies on their activities and their public discussion, as well as procedures for expressing popular distrust in officials that existed in the Soviet period. Such procedures should ensure the effective implementation of the rule of law.

Informational mechanisms are primarily associated with the formation of information flows that would aim at 1) informing citizens and their associations about the goals and guidelines in the formation of legal statehood; 2) forming such a public opinion that proceeds from the need to build a legal state and implement the rule of law; 3) informing members of society about topical issues related to the formation of legal statehood and the implementation of certain principles of the rule of law.

The relevant procedures are to some extent enshrined in the existing legislation. In this relation, we should mention Federal Law No. 149-FZ “On Information, Information Technologies and Information Protection” (July 27, 2006) which consolidates such significant principles (Article 3) as “freedom of search, obtaining, transmission, production and distribution of information by any legal method; openness of information on the activity of state authorities and local self-government bodies and free access thereto except for the cases established by federal acts”. Accordingly, it is possible to draw some conclusions about the compliance of such activities with the effective implementation of the rule of law based on the generalization of the information collected.

Federal Law No. 8-FZ “On Providing Access to Information on the Activities of Government Bodies and Bodies of Local Self-Government” (February 9, 2009) enshrines several principles granting access to information on the activities of state bodies and local self-government bodies that might be used as a means of increasing the effectiveness of informational mechanisms for implementing the rule of law, in particular: limited activities of state power, responsibility of the state to society and individuals, the openness and availability of information on various activities of state bodies and local self-government bodies, except for cases provided by the federal law; the reliability of the information on the activities of state bodies and local self-government bodies; the timely provision of such information, etc.

Now we will briefly describe stimulating mechanisms for implementing the rule of law, including in the context of ensuring the effectiveness of such implementation. Being a system or set of legal and other means, as well as tools and the relevant subjects, these mechanisms aim at encouraging:

1. respect for law, regulations and other elements of the Russian legal system.
2. the formation of an active civil position and active participation of most citizens in various activities to improve the legal system and its components.
3. the activity of citizens connected with the implementation of socially useful, socially-oriented tasks to satisfy public needs protected by law and meet social challenges.
4. activities associated with the complete understanding and implementation of the rule of law in public life.

This mechanism should also provide a set of measures to stimulate those civil servants and civil society associations that would adhere to the rule of law in their activities.

Today it is essential to form an effective educational mechanism for implementing the rule of law. This mechanism can be implemented by both state bodies and civil society associations combined with the system of legal education and the provision of free legal aid. There are already certain models of the relevant measures in the educational sphere. In modern Russia, various activities on patriotic education are quite popular and cover both the federal and regional levels, including the most diverse activities of the relevant state and public structures. Such activities can effectively implement the rule of law.

The criterion for the effectiveness of the rule of law and mechanisms for its implementation in the current Russian legislation should be the adaptation of these mechanisms to modern Russian conditions and needs of the further social development. For the needs of social and state-legal development, it is relevant not only to formally designate or proclaim certain mechanisms but also to determine the main ways of optimizing activities and increasing the efficiency of these mechanisms. These ways can be as follows:

- To improve and increase the effectiveness of the legislation in force both at the federal and regional levels, to define the means used, powers and responsibilities of the relevant subjects, primarily state bodies and officials;
- To improve and increase the efficiency of procedures for using appropriate tools and technologies, as well as promote a broad public discussion and introduce the relevant adjustments;

- To involve active citizens and civil society organizations in activities for the functioning, optimization and enhancement of the effectiveness of these mechanisms.

In relation to the mechanisms for implementing the rule of law, including state mechanisms, it is quite obvious that they should be equipped with the necessary means of coercion to ensure their effectiveness. Indeed, this is correlated with a broader issue covered in the relevant literature, namely the issue of developing optimal models for combining coercion, persuasion and self-organization in social regulation (Magomedrasulov, 2010).

If mechanisms for implementing the rule of law prove to be ineffective in the context of a specific legal system in a certain period, then it will be advisable:

1. To adjust the existing mechanisms, for example, to change their elements or the subjects involved in their implementation;
2. If necessary, to adjust the very content of any implemented principle to adapt it to social conditions and needs, to increase its effectiveness.

Currently, we can present the main forms of improving the mechanisms for implementing the rule of law and increasing their efficiency in the following way:

- To expand their social base and content-oriented social component.
- To strengthen the effective interaction and complementarity of state and public mechanisms.
- To improve and increase the effectiveness of public control over the activities of federal and regional bodies of state power and the functioning of the most important elements of the legal system.

Among various principles of the rule of law, it is necessary to define those the most relevant for the current development of the Russian society and state, as well as to assess the implementation of these principles.

Conclusion

We achieved the initial objective of this study, i.e. highlighted the importance of the social component in ensuring the effectiveness of the existing legislation.

In the context of ensuring legal effectiveness, we defined mechanisms for implementing the rule of law and their main features, considered principles of their functioning and classified such mechanisms.

The efficiency of the current Russian legislation should be increased in several aspects, namely social efficiency, values-based, special legal, psychological, etc. If the existing legislation does not comply with the needs of developing society, it is impossible to ensure the effectiveness of the above-mentioned mechanisms.

The effective principles of the rule of law should be filled with a specific socio-historical content that would correspond to the current conditions in legislation, state policy and law enforcement, including litigation practice. In addition, there is a need for the legislative consolidation of mechanisms and procedures for implementing these principles and their realization in the daily activities of both government bodies and civil society institutions.

For their effectiveness, the mechanisms for implementing the rule of law should not be limited to the use of proper legal means. In the course of such implementation, other tools, technologies and means (organizational, informational, educational, etc.) can and should be widely used to increase efficiency. Therefore, such mechanisms should be interpreted more broadly.

Prospects for further research are associated with identifying specific ways to improve the implementation of 'rule of law' principles in relation to the conditions of modern Russia, as well as regulatory, cultural and other restrictions connected with the effective functioning of such mechanisms.

Bibliographic References⁶

ANTONOVA, Elena Gennadievna. 1996. The principles of forming a 'rule of law' state. An abstract of thesis for a Candidate Degree in Law Sciences. Moscow, Russia.

DOVBUSH, Timofey Nikolaevich. 2005. The principles of a 'rule of law' state and mechanisms of their implementation. Thesis for a Candidate Degree in Law Sciences. Saint Petersburg, Russia.

FEDERAL LAW NO. 149-FZ. 2006. On Information, Information Technologies and Information Protection. Available online. In: <https://rg.ru/2006/07/29/informacia-dok.html>. Consultation date: 09/09/2021.

FEDERAL LAW NO. 8-FZ. 2009. On Providing Access to Information on the Activities of Government Bodies and Bodies of Local Self-Government. Available online. In: <https://rg.ru/2009/02/13/dostup-dok.html>. Consultation date: 09/09/2021.

6 Some fonts were originally organized in the APA style, for this reason they could not adapt to the standard of this journal.

- GANOEV, Oleg Kazbekovich. 2011. The idea of the rule of law and issues of state and legal transformations in modern Russia. Abstract of thesis for a Candidate Degree in Law Sciences. Moscow, Russia.
- GASANOV, K.K; STREMOUKHOV, A.V. 2004. "Absolute human rights and freedom limitations" In: Pravovedenie. Vol. 1, p. 167-180.
- GDALEVICH, Irina Aleksandrovna. 2008. Political and legal technologies of combating the abuse of public authority in Russia. An abstract of thesis for a Candidate Degree in Law Sciences. Rostov-on-Don, Russia.
- GRIDCHINA, Nelli Evgenievna. 2005. Developing the theory of 'the rule of law' in the Russian science between the 1960s and the beginning of the 21st century. An abstract of thesis for a Candidate Degree in Law Sciences. Moscow, Russia.
- KVACHEVA, Natalia Evgenievna. 1996. The constitutional consolidation of 'rule of law' principles. An abstract of thesis for a Candidate Degree in Law Sciences. Moscow, Russia.
- LAPAEVA, Valentina Viktorovna. 2011. The sociology of law. Moscow, Russia.
- LEONOV, Igor Viktorovich. 2005. "Constitutional and social state: formation issues" In: Pravo i upravlenie: 21 vek. Vol. 2, pp. 122-139.
- MAGOMEDRASULOV, Magomedrasul Musaevich. 2010. The specifics of coercion measures in a 'rule of law' state. An abstract of thesis for a Candidate Degree in Law Sciences. Moscow, Russia.
- MARCHENKO, Mikhail. 2014. Law-governed state and civil society (theoretical and legal research). Moscow, Russia.
- MORDOVTSEV, Andrey; ZHINKIN, Sergey; MAMYCHEV, Aleksey; YAKOVYUK, Ivan; SHESTOPAL, Sergey. 2017. "Legal mentality in national-cultural space: Characteristics of the era of change (Church schism of the 17th Century)" In: Man in India. Vol. 97, No. 23, pp. 295-309.
- NIKITINSKII, V.I. 1971. The effectiveness of labor law. Brava. Moscow, Russia.
- OGNEVA, Margarita Viktorovna. 2012. The regularities of transformations of a 'rule of law' state in theory and practice. Abstract of thesis for a Candidate Degree in Law Sciences. Moscow, Russia.
- PASHKOV, A.S., YAVICH, L.S. 1970. "The efficiency of labor laws (the methodology and methods of sociological surveys)" In: Sovetskoe gosudarstvo i parvo. Vol. 3, pp. 14-39.

RALKO, Olesya Vasilievna. 2011. The concept of a 'rule of law' state and its realization in Russia: historical and theoretical aspects. An abstract of thesis for a Candidate Degree in Law Sciences. Moscow, Russia.

YATSENKO, Olga Vasilievna. 2007. The institute of state and legal responsibility under the post-Soviet modernization. An abstract of thesis for a Candidate Degree in Law Sciences. Rostov-on-Don, Russia.

ZORKIN, Valery Dmitrievich. 2011. The constitutional and legal development of Russia. Moscow, Russia.



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