

PROBLEM OF THE CORRELATION OF THE CATEGORY «EFFICIENCY» AND RELATED CONCEPTS IN THE GENERAL LEGAL THEORY

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Статья посвящена исследованию соотношения понятия «эффективность» с другими смежными категориями с целью уточнения понятийно-категориального аппарата общей теории права. На основании анализа правовой литературы выяснены особенности применения понятий «оптимальность», «полезность», «экономичность», учитывая их смысловую связь с термином «эффективность».

Ключевые слова: общая теория права, эффективность, оптимальность, полезность, экономичность.

Articolul este dedicat studiului corelației conceptului de „eficiență” și a altor categorii conexe pentru a clarifica aparatul conceptual și categoric al teoriei juridice generale. Pe baza analizei literaturii juridice, particularitățile aplicării termenilor „optimitate”, „utilitate”, „economie” sunt clarificate având în vedere legătura lor semantică cu termenul de „eficiență”.

Cuvinte cheie: teoria juridică generală, eficiență, optimitate, utilitate, economie.

The article is devoted to the study of the correlation of the concept «efficiency» and other related categories in order to clarify the conceptual and categorical apparatus of the general legal theory. Based on the analysis of the legal literature, the peculiarities of the application of the terms «optimality», «usefulness», «economy» are clarified in view of their semantic connection with the term «efficiency».

Key words: general legal theory, efficiency, optimality, usefulness, economy.

Formulation of the problem. Existing approaches to understanding effectiveness view this category only as a quantitative value that has no clear boundaries with related concepts. This understanding of effectiveness requires revision. Another factor that determines the relevance and necessity of research on issues related not only to the problem of the mechanism of legal regulation, but also the question of its effectiveness is the lack of systematic scientifically based methods for assessing the effectiveness of the mechanism of legal regulation, improving its components and internal relations.

The state of the study. Analyzing the works of scientists on efficiency, we can state that today there is no single, acceptable for all branches of knowl-

edge definition of the term «efficiency». This makes it difficult to study the effectiveness of legal science. Therefore, there is a need to clarify this category. In the context of the chosen issue, the development of a number of scientists is worth noting, such as: M. Alexandrov, S. Alekseev, A. Abramova, A. Bobilov, V. Isakov, A. Malko, O. Melnyk, B. Nazarov, P. Rabinovych, R. Khalfin, V. Shundikov, L. Yavych and others.

The purpose of the study is to analyze the correlation of the category «efficiency» and related concepts in order to streamline the conceptual and categorical apparatus of the general legal theory.

Presenting main material. Given the realities of today, we note that the socialization of the con-

cept of effectiveness of law, i.e. its extension to the entire social sphere, caused the loss of «purity» of the concept of «efficiency» and created a basis for its unconditional use in various meanings. Therefore, the issue of distinguishing efficiency from related categories, such as: optimality, usefulness, etc., becomes especially relevant.

At a time when legal science was just beginning to discuss the effectiveness of law, this concept was identified with the optimality, correctness, validity, expediency [1, p. 31; 2].

The legal literature has repeatedly pointed out that the study of efficiency should always be supplemented by the study of optimality. I. Ikonytska on the example of the study of the effectiveness of the rule of law notes the dissimilarity of these categories. According to her, the optimal rule of law potentially includes efficiency, which can be realized under certain conditions [3, p. 24], i.e. optimality is a feature that characterizes the rule of law in statics, and efficiency - in the dynamics. R. Rosen characterizes the optimal solution as follows: the optimal solution is a decision that satisfies all the established requirements, i.e. performs the task in the given conditions at minimal cost [4, p. 17–18]. I. Morozov rightly notes that optimality is a kind of «top» of efficiency to which the legislator aspires, and the probability of its achievement largely depends on compliance with the general conditions of efficiency [5, p. 41].

There is also a scientific position of identifying the concepts of optimal and social value. As noted by I. Samoshchenko, V. Nikitinsky, A. Vengerov, in specific conditions there may be a need to assess all the properties of legal norms in a synthesized form, homogeneously, completely. Such a universal, complex, synthesized property of the action of legal norms is called optimality [6, p. 13].

We, for our part, consider it appropriate to believe efficiency as an indivisible, comprehensive characteristic of action. For example, the effectiveness of the mechanism of legal regulation contains in a synthesized form such indicators as: a) effectiveness, b) the ratio of social and other values of the goal, c) cost-effectiveness, considered as achieving the goal with minimal costs, d) the balance of interests of different social groups and state, e) social values of purpose and result, e) stability of the result, g) mobility of action, i) adequacy of action to the environment, etc.

Optimality, in our opinion, is the most rational compromise at a certain time, the ratio of the levels of all system indicators to solve problems focused on a long period of time. Efficiency contains the same system elements as optimality, but has a different meaning. Thus, if we think only within the category of «efficiency», then increasing the rate of return of any of the efficiency indicators leads to increased efficiency. The concept of efficiency does not define the boundary when an increase in one indicator can sharply reduce another indicator, and hence efficiency in general, i.e. does not take into account the so-called critical point. The purpose of efficiency is to strive to maximize all its indicators, and optimality is to balance them. The task of optimality is to balance all indicators so that the growth of some does not cause a sharp decline in others. Therefore, the highest state of optimality should be considered the limit of quantitative changes in the object with its constant quality.

Therefore, the term «optimal efficiency» proposed in the literature implies the predictability of all possible circumstances and the choice taking into account the overall increase in efficiency [7, p. 7]. Thus, optimality and efficiency are independent equal concepts that do not absorb each other.

In order to correctly and comprehensively disclose the meaning of the concept of «efficiency» it is necessary to distinguish it from «expediency». The term «expediency» is usually understood as compliance with the goal, reasonable, practical, useful or interpreted as the compliance of a phenomenon or process to a particular state, material or ideal model of which serves as a goal, i.e. interpreted as a form of causation.

«Expediency» is an evaluative category and the human factor plays a leading role in its understanding. A reasonable share of subjectivism in giving an object, phenomenon or action a sign of expediency suggests the absence of strictly objective criteria in its evaluation. A person draws conclusions about the expediency, guided by the objective achievement of the goal, while emphasizing the concomitant receipt of positive manifestations that are most valuable and important for him. The result of the assessment of the phenomenon as appropriate will be influenced by the degree of negative, again from the point of view of a particular person, side effects of the existence of the analyzed phenomenon or ac-

tion. It is important to keep in mind that even the existence of universally recognized human values does not make them equally important to the subjects. The social role of the subject, the level of culture, consciousness, personal goals serve as a prism in assessing the appropriateness of actions and phenomena.

The above allows us to state that the evaluative nature, the lack of clear stable indicators of expediency, the determining role of the subject in its assessment combine the categories of «expediency» and «effectiveness». This fact, however, only indicates the existing similarity, i.e. it does not mean that these categories are identical. We believe that the subject can make a conclusion about the expediency or in expediency of the phenomenon, action through thinking. A special role in mental activity is played by the fact of achieving the predicted goals. Thus, if the intended results have not been achieved, the corresponding phenomenon automatically leaves the group of appropriate.

At the same time, it is inexpedient to apply such an uncompromising rule with regard to the means of achieving goals. The latter are subject to a comprehensive analysis, with the greatest emphasis on the proportionality of the goal and the means to achieve it. It seems that it is not correct to differentiate the phenomena into more or less expedient ones. Thus, among single-order actions, the presence of one expedient refers the rest to the category of inexpedient, thereby automatically depriving them of signs of expediency. Therefore, the rule of law «expediency» is a property that gives this rule the right to exist, the recognition of the reasonableness of such existence.

There is no reason to consider expediency as a criterion of efficiency together with such definitions as: usefulness, social value, economy. In our opinion, the concepts of «expediency» and «efficiency» have different meanings, but do not absorb each other.

Finally, there is no denying the possibility of the relationship of these categories. The expediency of a rule of law in no way diminishes its effectiveness, at the same time the effectiveness of the rule of law can act as an additional indirect argument in favor of its expediency. We emphasize that the concept of «expediency» has less stability compared to the term «efficiency». The category of «expediency» in

law, in contrast to the category of «effectiveness» in the legal field, is tied to the circumstances, the tasks of a particular situation, also as close as possible to the subject. In our opinion, the assessment of a legal phenomenon, action as effective or not can be given by an entity with special knowledge.

Considering the relationship of the concept of «efficiency» with other related categories, it is interesting to turn to the understanding of the concept of «usefulness». S. Shlykov points out that usefulness and efficiency characterize different properties of the legal norm. Efficiency is a key component of utility. It is impossible to imagine a situation in which the effect of a legal norm would be useful, but not effective [8, p. 21].

We consider this approach unfounded because it narrows the scope of the concept of «efficiency». In our opinion, the scope of the concept of «usefulness» does not cover the meaning of the concept of «efficiency» and is not even one of the criteria of efficiency. In view of this, the position of praxeology, according to which efficiency and usefulness are considered as different properties of action (activity), seems quite convincing. Praxeology understands the usefulness of the ratio of expected results and the results of side effects that arise beyond the prediction of the current subject. These side effects are either beneficial or harmful. Their relationship to the expected or obtained within the purpose of the results and characterize the usefulness of the action [9, p. 28].

In the category of «usefulness» there is no reference to the goal set by the functional orientation of the phenomenon, the action, which is characterized by the considered category. Thus, if we talk about the usefulness of a particular legal act, we can within the meaning of the term «usefulness» to list all its positive manifestations, in particular the value of this normative act in the development of logical thinking of our lawmakers [10, p. 192]. Usefulness as a sign does not characterize the internal properties, qualitative state, does not give a quantitative assessment of the phenomenon or action denoted by it. The considered category is more focused on the external effect than on the internal properties of the phenomenon.

If for the category «efficiency» it is important to realize the functional orientation of the phenomenon as «well» as possible, then for the category

«usefulness» such a task is not provided. An object or process can be considered useful for its rather small positive effect. It is important that the category of «usefulness» has a different effect. This effect is not necessarily associated with the manifestation of the core properties of the phenomenon, in the absence of which the very essence of the phenomenon may be lost. This fact affects the inability of the category «usefulness» to be a criterion of effectiveness, because the harmful effects of the process do not deny its effectiveness. The presence of negative consequences indicates side effects and does not detract from the most successful manifestation of the phenomenon of its functional orientation.

Despite the specific effective but harmful phenomenon considered in this case, there is an effective phenomenon of another nature, designed to eliminate undesirable for society processes, which can include consequences. If there is no phenomenon in the implementation of the functions of which eliminate the undesirable consequences arising from the achievement of their fundamental goals by other phenomena, the problem can be solved by introducing a new process in public relations, giving it the necessary functions. Therefore, in a number of cases, by introducing additional regulations, it is possible to eliminate the undesirable negative results of other legal norms.

The category «usefulness», as well as the category «efficiency», is evaluative. However, in contrast to the effectiveness of the question of the usefulness of the subject, the action is decided in accordance with the subjective assessment is not objective indicators, and the assessment made on the basis of personal perception of the consequences of an action.

For a deeper study of the concept of efficiency, it is interesting to turn to the analysis of the category of «efficiency». Science knows different understandings of it. In most definitions of cost-effectiveness, the emphasis is on the degree of cost in achieving the goal. The meaning of the concept of «economy» in relation to the rules of law in such cases is equated with the meaning of the concept of usefulness of legal norms, which is specified taking into account the amount spent at all stages of the mechanism of legal regulation of material resources, human energy, time and other indicators. We believe that the basis for assessing the effect of the legal norm, in terms of its cost-effectiveness, is not the absolute value of the re-

sult and not the absolute value of the costs incurred, but their ratio. The point is not to set costly goals, but to achieve them with minimal means. If, in fact, every legal norm must be effective, then efficiency is a property of action only of those of them that have corresponding economic goals.

Conclusions. Modern science, in particular legal science, widely uses the concept of «efficiency». It is expedient to apply it to science in general, its independent directions, as well as certain categories, including legal ones. This gives grounds to consider «efficiency» as a general scientific category of evaluative nature, which is not of constant importance. However, it can be argued that its content is always positive.

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