

Summary

The dissertation thesis *Obstacles to effectiveness of law* points out to the phenomena, processes and approaches which diminish social effectiveness of law. Effectiveness of law is presented in its legal theoretical as well as economical and sociological form. The author does not give priority to any model of effectiveness, but rather examines advantages and weak points of each model while concurrently keeping a considerable distance from economic ideologization of law. Effectiveness studies, however, should always pursue real effect of law and, plainly speaking, they strive to trace the difference between law in books and law in action. As follows from the analysis of abstract effectiveness, effectiveness of law should be seen as a whole, because focus on partial results can diminish the overall effectiveness. Cost effectiveness is not able to produce a satisfactory outcome because it leaves aside a whole group of goals which cannot be expressed by direct financial income. The reflections are made upon processes which take place in society in transition, i. e. a society which has been undergoing a profound change. The transformation of a European state in the XX and XXI century must be realized by means of law; however, this fact *per se* distorts the effectiveness because law is becoming unstable.

Paradoxical sources of ineffectiveness of law can be seen in instrumentalism and the idea of managing society by means of law. Law is not able to fulfil such tasks or rather is able to fulfil them only at the price of high expenses which do not correspond to acquired results. Law behaves as self-producing, self-referential and self-organizing system (autopoietic system) which is resistant to simple manipulation. Thus, a satisfactory level of effectiveness of law cannot be reached if law had been used in disregard of its limited possibilities and qualities. Law also needs to operate with realistic image of real behaviour and motives of the addressees, interpreters and applicators of law; otherwise it will not be effective either.

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Social effectiveness of law is to a great extent affected by insufficient clarification of goals and functions of law. This is an essential condition – it is not possible to make a verifiable assessment of the level of achievement of a goal if the goal has not been set clearly; the reflection on effectiveness is in such case not possible. Effectiveness of law is further diminished by insufficient respect for the importance of judicative function of law and the function of order – in the transformation period the function of law as a tool for social change to which sources are relocated is emphasized, while the abovementioned functions are left out. Furthermore, the use of law as a tool for social change often impedes fulfilment of judicative function of law and the function of order.

A special source of diminished effectiveness in the area of exercise of judicative function is the subconscious use of consensual model of society where conflict is seen as something temporary, something that can be eliminated. In everyday life of pluralist society, however, conflict is omnipresent, which results from different perspectives of view of social reality. Law must be able to resolve conflicts effectively; after all, it was designed as a means of peaceful conflict resolution.

Legal science cannot avoid issues of effectiveness and it is necessary for it to maintain the ability to hold scientific dialogue with other branches of social studies which examine effects of law. Practical issues and practical use of acquired knowledge have traditionally fallen within the scope of legal science research and this applies also nowadays.

An obstacle to effectiveness of law is anything that diminishes or eliminates accomplishment of the aim of legal regulation and the functioning of law.

The paths to enhancement of effectiveness of law are often sought in the improvement of legal conscience, which has no convincing connection to law effectiveness - legal conscience is probably even more difficult to instrumentalize than law itself. The actors use law strategically in order to accomplish aims which do not coincide with aims of law; legal conscience and knowledge of law are also used strategically.

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Social consensus determines the sphere of effectiveness of law at both edges – law does not have the power to enforce attitudes entirely contradictory to attitudes of the society, and imposition of law where norms are observed is harmful because as a result, the legal order becomes uselessly complicated. Complexity of law directly diminishes its effectiveness.

Severity of sanctions is not crucial for the observance of a legal norm; what is more important, is the sufficiency of the enforcement capacities, knowledge of inevitability of sanctions and confidence that law is enforced uniformly.

Law is the most powerful normative system of contemporary society. Nevertheless, law does not need to purposelessly strengthen its privileged position by competing with other normative systems or by hostility towards them. Sensible respect for other normative systems and the use of their action can enhance effectiveness of law both by reducing demands on resources and by use of the results of action of other normative systems in accordance with the aims of legal regulation.

The possibilities of enhancement of effectiveness of law can be sought in the field of application and interpretation of law whereas it is necessary to revise the dominant opinion which views ideas of finality in law with suspicion. The refusal of reflections on the purposes and aims of norms was a style-forming element of socialist legal science which emphasized this traditional element of Austrian and Czech legal science of the first half of the 20th century. A scientific debate on admissible methods cannot ignore comparative knowledge acquired across time and space. Therefore, it is necessary to hold an open discussion on effective setting of the relation between legislative and judicature which is the key to stability of law.

Instability of law might at first sight seem as a serious obstacle to its effectiveness. However, the bicentenary knowledge about the nature of bureaucracy and organised modernity has proved that increased production of legal enactments originates deeply in the nature of contemporary society. In that case it would be difficult to eliminate instability of law - the path to enhancement of effectiveness of law would

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have to lead through the effort to maintain a stable form of structural elements of the legal order.

Obstacles to effectiveness of law are undoubtedly represented by solutions which do not respect the nature of law and its institutions on the one hand, as well as by pursuance of legal solutions which entirely diverge from the nature of social reality and the logic of other systems. This observance applies to the relation of law and politics.

The path to the enhancement of effectiveness of law leads through pragmatic setting of goals, respect for the nature of law and the awareness of the importance of principal functions of law for the society.