Studia Iuridica 102
ISSN 0137-4346; e-ISSN 2544-3135

https://doi.org/10.31338/2544-3135.si.2024-102.9

Mateusz Pękala
Ignatianum University in Kraków, Poland
e-mail: mateusz.pekala@ignatianum.edu.pl
ORCID: 0000-0002-1389-2664

EX-POST ANALYSIS AS AN INTEGRAL PART OF THE LEGISLATIVE DECISION-MAKING PROCESS

Abstract

The paper presents the theoretical arguments and practical benefits of developing a system of ex-post evaluation of regulatory impact by studying the actual effects of the decisions of legislative decision-making bodies. The individual issues under consideration involve: the analysis of general assumptions of the decision-making approach in legal studies and its application to the problems of a law-making policy; presentation of the stages of the legislative decision-making process, with a particular emphasis placed on the effects of such decisions; and discussion of the conditions of a contemporary law-making policy, from both the theoretical and practical points of view, based on a distinction of several dimensions of legislative decision-making (instrumental, axiological, power game, social conflict, discursive, social normative system, economic, and temporal). For each dimension, ex-post evaluation criteria are proposed.

KEYWORDS

legislation, law-making policy, law effectiveness, evaluation

SŁOWA KLUCZOWE

legislacja, polityka tworzenia prawa, skuteczność prawa, ewaluacja

I. INTRODUCTION

The purpose of the paper is to define the role that a system of ex-post evaluation of law-making decisions can play for a more effective application of legislative instruments. The arguments for introducing a comprehensive system for evaluating such decisions based on theoretical premises of the Lawmaker's Decision Field Model, which is a proposal for a novel theoretical approach to the study of a rational law-making policy,[1] will be analysed in detail. The legislative decision-making process can be defined as the overall intention of a legislator as an institution to create new or amend or repeal existing normative acts. The discussion will take into account both the general conditions of the law-making processes occurring in modern democracies and the specific conditions of the law-making policy in Poland. It is beyond the scope of the paper to analyse the current Polish legal regulations on the law-making procedures by authorized bodies, but the commentary presented below and the practical conclusions that follow from it may provide a basis for further analyses focused on formulating *de lege ferenda* postulates.

The first part outlines general principles of the decision-making approach in the legal sciences, as that research perspective allows analyses of legislative decision-making processes using the findings of other social sciences, primarily managerial science. This is followed by a discussion of the theory of the legislative decision-making process, with special attention paid the importance of the implementation stage and the effects of legislative decisions. Next, I characterize the eight dimensions that make up the legislative decision-making process, and outline the importance of the different factors for the validity and effectiveness of ex-post analyses. The final part of the discussion consists of conclusions regarding further theoretical and legal research, recommendations for law-making institutions, and comments on the practical aspects of developing a system of legislative evaluation in Poland.

[1] Mateusz Pękala, *Pole decyzyjne ustawodawcy* (Akademia Ignatianum w Krakowie, Wydawnictwo WAM 2016).

II. DECISION-MAKING APPROACH IN LEGAL STUDIES VS THEORETICAL MODELS OF LEGISLATIVE POLICY

The main theoretical perspective of this discussion is the decision-making approach (the decision-making conception of law), which basically assumes that:

> [A]t least part of social reality can be captured and interpreted as decision-making processes or the products of these processes: decisions. This is reflected in key conceptual categories, including the concepts of decision-making situation, decision-making process, decision-maker (decision-making centre), participants in the decision-making process, and the decision and its implementation. Accordingly, the main research issues falling into this approach include, at the very least: studying the decision-making situation as a necessity or possibility (permissibility) of initiating a decision-making process; identifying the conditions and regularities in the course of the decision-making process and the possible phases of the process; locating the decision-making centre; identifying the participants in the process, their roles in the decision-making process, and analysing the communication between the decision-maker and the other participants; and description of the actions taken to implement a decision and evaluation of the actual effects of the decision made and implemented.[2]

The advantage of this perspective is that it offers analytical tools for studying and designing various types of decision-making processes, including law-making decisions, drawing on the findings of many social science disciplines, in keeping with the idea of creating a unified conceptual framework for intradisciplinary studies, especially those concerning the social functioning of various systems of social norms, and therefore also legal norms.[3] The focus is on the law-making process, understood as one of the ways for state institutions to create binding models of behaviour, and the main inspiration for determining the validity of conducting ex-post analyses are normative models of decision-making processes built on the grounds of managerial science (the systemic approach and situational models of decision-making processes developed within its framework). In addition, the output of sociology and social psychology will also be used.

This approach views a decision as a process related to a given subject's (decision-making centre) conscious choice of a certain course of action or inaction to achieve some specific goal from among mutually exclusive options, and to carry out the chosen option (in this case, the decision of an institutionally defined leg-

[2] Henryk Groszyk and Andrzej Korybski, 'Podejście decyzyjne w prawoznawstwie (zarys problematyki)' in Wojciech Witkowski (ed), *W kręgu historii i współczesności polskiego prawa* (Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej 2008) 532–33.

[3] Stanisław Ehrlich, *Dynamika norm: Podstawowe zagadnienia wiążących wzorów zachowania* (2nd edn, Wydawnictwa Szkolne i Pedagogiczne 1994) 37, 40–41.

islator to introduce or amend a selected normative act).[4] Consequently, a decision is a process in which the main role is played by the body of information that the decision-maker possesses and 'processes' according to their analytical skills. The phase of transforming information into decisions (in this case, normative decisions) can be regarded, for example, as: a function of factual information; a consequence of meta-decisions that limit the decision-maker's choice; a process activated under the influence of various factors of cognitive nature, i.e. stored messages and values; or a process of establishing a hierarchy of values ranging from short-term goals to fundamental goals.[5] Deciding on a particular alternative (determining the decision-maker's intended goal) is further contingent on a number of other choices regarding, for example, the sources of information on which the decision-making centre will rely and the internal and external values that will have to be factored in at further stages. Information analysis is not a one-time act but should be carried out continuously at all stages of the primary decision-making process and during secondary decision-making processes (e.g. related to the implementation of a particular normative act).[6] Moreover, in the course of implementing a decision (in this case, in the application of and compliance with legal norms), one deals with the analysis of information which should provide feedback to the primary decision-maker, mainly in order to verify and possibly correct the diagnosis of the decision-making field made at the preparatory stage.[7]

A normative decision is a decision type that is binding on the behaviour of other subjects, which limits the decision-making freedom of the addressee(s) by regulating their obligatory or permissible ways of behaviour through imposing obligations or granting powers.[8] The implementation of a normative decision, i.e. conscious behaviour in accordance with its disposition, can be defined as the transformation of a normative statement into 'social concreteness'.[9] With regard to legal norms, this involves various types of 'formalized decision-making sequences', which can be described as a 'chain reaction of state bodies implementing the law'.[10]

Let us note that the approach presented above rests on different assumptions and includes a much broader perspective than the traditional concepts based on legal theory. One of the main benefits of the decision-making approach is that it provides the tools to comprehensively analyse both factors that influence legislative decisions one way or another and to determine how effective they actu-

[4] Stanisław Ehrlich, *Wiążące wzory zachowania: Rzecz o wielości systemów norm* (Wydawnictwo Naukowe PWN 1995) 17, 41, 45, 47.

[5] Ehrlich, *Dynamika norm* (n 3) 65.

[6] ibid 66.

[7] ibid 58.

[8] See ibid 29; Ehrlich, *Wiążące wzory zachowania* (n 4) 103; Stanisław Ehrlich, *Norma, grupa, organizacja* (Wydawnictwa Prawnicze PWN 1998) 33, 37ff.

[9] Ehrlich, *Dynamika norm* (n 3) 103.

[10] Ehrlich, *Norma, grupa* (n 8) 113, 73.

ally are in influencing social reality. In practice, 'decision-making sequences can be blocked, distorted, and extinguished (annihilated)',[11] which may have to do with the fact that normative acts are often implemented by a variety of entities independent (or only indirectly dependent) on the main decision-making centre, whose activities are not in any way (or only minimally) coordinated. Therefore, broadly defined law-making cycles can be referred to as (at least partially) ergodic, i.e. outside the control of those actors that started them.[12] However, this does not change the fact that, in line with the decision-making approach, both the legislative decision and the decisions to apply and implement certain legal norms are 'sequences of facts, empirically verifiable macro-social processes',[13] formed by typical situations in which the same decisions are repeated.[14] Comments on the limited possibilities to comprehensively control the implementation of law-making decisions provide the first and basic argument for the important role that post-decisional analyses play in increasing the effectiveness of legislative decision-making processes.

III. STAGES OF THE LEGISLATIVE DECISION-MAKING PROCESS

The process of law-making is 'a set of orderly, consecutive activities (both factual and conventional), beginning with a specific subject's intention to make specific changes in society by establishing legal norms and fully embracing the preparation and adoption of a given law-making act'.[15] It should be emphasized that this is therefore always a certain process, i.e. a sequence of decisions 'overlapping, although not limited only to the (legislative) law-making procedure'.[16] The politics of law, construed as one of the branches of legal science whose main field of research are law-making processes, uses two research perspectives: descriptive and directive. The former is intended to 'formulate a set of assertions about the law-making process, e.g. assertions about the societal consequences of the establishment and validity of norms with a certain content, about the effectiveness of certain institutions that draft legal acts, about the consequences of

[11] Ehrlich, *Dynamika norm* (n 3) 12.

[12] Ehrlich, *Wiążące wzory zachowania* (n 4) 211.

[13] ibid 33, 40.

[14] Ehrlich, *Norma, grupa* (n 8) 29ff, 33, 37ff.

[15] Sławomira Wronkowska, *Problemy racjonalnego tworzenia prawa* (Wydawnictwo Naukowe UAM w Poznaniu 1982) 16. See also Ewa Kustra, *Polityczne problemy tworzenia prawa* (Wydawnictwo UMK w Toruniu 1994) 16.

[16] Leszek Leszczyński, *Podejmowanie decyzji prawnych: Tworzenie i stosowanie prawa* (Wyższa Szkoła Zarządzania i Administracji w Zamościu 2003) 59.

editing legal texts in such and not another way'.[17] On the other hand, the latter, which is employed in this paper, has main goal of developing normative models of legislative decision-making processes, which indicate, among other things, the indispensable changes that should be introduced in the operation of legislative decision-making centres.

Classical concepts of the politics of law indicate the need to clearly distinguish (at both the functional and the institutional level) a stage involving axiological decisions (about values/objectives) from a stage involving instrumental decisions (evaluation of alternatives and selection of legal means to achieve the objectives) and from a codification stage (formulation of a decision in the legal language and in conformity with other regulations in force in a given legal system).[18] The last stage often entails choosing between competing projects or combining elements of different projects.[19] Maria Borucka-Arctowa proposes a more detailed distinction:

- a decision on the selection and implementation of a specific goal,
- a decision to use law as an instrument of influence, taking into account the limits of law 'determined not only by the criteria of the effectiveness of law but also by accepted moral and political principles … and by the evaluation of legal measures in relation to other social measures',
- a decision to choose a particular branch of law and method of influence (in other words, criminal, civil, administrative, and mixed methods),
- a decision on the method of direct influence (i.e. by establishing a legal standard) and indirect influence (i.e. by establishing a standard that introduces legally regulated economic incentives, increased control, procedural simplification, and greater accessibility of law),
- a decision regarding a specific 'stage of impact', aiming at a preventive or corrective impact,
- a decision to place emphasis on coercive or persuasive measures, and
- a decision to place emphasis on certain functions of law.[20]

The Lawmaker's Decision Field Model, on the other hand, distinguishes the following main stages of the legislative decision-making process:

- identifying the (already recognized or predicted) decisional problem and a comprehensive diagnosis of various dimensions of the decision-making field,

[17] Andrzej Redelbach, Sławomira Wronkowska and Zygmunt Ziembiński, *Zarys teorii państwa i prawa* (Wydawnictwo Naukowe PWN 1992) 166.

[18] See Wronkowska, *Problemy* (n 15) 182; Anna Michalska and Sławomira Wronkowska, *Zasady tworzenia prawa* (2nd edn, Wydawnictwo Naukowe UAM w Poznaniu 1983) 47; Redelbach, Wronkowska and Ziembiński (n 17) 174; Leszczyński (n 16) 17; Pękala, *Pole decyzyjne* (n 1) 294ff.

[19] Leszczyński (n 16) 17.

[20] Maria Borucka-Arctowa, *Świadomość prawna a planowe zmiany społeczne* (Zakład Narodowy im. Ossolińskich 1981) 116–17.

– determining the values/objectives which the new regulation will serve (defining the axiological underpinnings of a legal act), identifying and evaluating decision-making alternatives, and making a choice,
– wording of the text of a legal act, enacting it, and promulgating it, and
– implementation of the decision, monitoring of its effectiveness, and taking any corrective action.[21]

This concept views ex-post analysis as one of the basic stages of law-making.

According to the tenets of the decision-making approach, one of the essential components of any law-making process is to organize and analyse information on a specific decision-making situation. The detailed structure of the lawmaker's decision-making field, as well as the list of factors based on which it should be analysed, will be discussed later in the paper. At this point, let me just mention that, according to Jerzy Wróblewski, the decision-making centre should at least have knowledge about the following:

– the content of law in general and in the area covered by the legislation, in particular,
– the practice of applying the law in force, that is, about the decisions regarding the application of the law (validation decisions, interpretative decisions, evidentiary decisions, and decisions on the choice of consequences),
– the effects of law in society, both directly and through decisions to apply the law,
– any social relations relevant to law-making,
– assessments and social rules that apply to phenomena regulated by the legislator, and
– the legal writings related to *de lege lata* and *de lege ferenda* issues as relevant to the legislature.[22]

Equipped with such information, the legislator is able, at least at the most general level, to identify the role that legal regulations can play in resolving a given decision-making problem. It is then also possible to decide on the necessity (or lack thereof) of intervening by legal means in the social order, and thus it is a matter of 'deciding to decide'. It should be remembered, though, that failure to take normative action can also have a significant impact on the social order (and sometimes can be part of sham activity). The impact by means of legislative instruments on a certain sphere of social life can be classified into one of three categories: necessary and sufficient (when the behaviour in question is and should be regulated by law, without the need for any other type of regulation in this respect), necessary and insufficient (when legal measures should be supplemented by other societal factors or when moral, customary or religious norms are dominant, and law acts as their 'ultimate safeguard'), and unnecessary (or

[21] Pekala, *Pole decyzyjne* (n 1) 295.

[22] Jerzy Wróblewski, *Teoria racjonalnego tworzenia prawa* (Zakład Narodowy im. Ossolińskich 1985) 99.

impossible).[23] It should be noted that this typology can also be successfully used in ex-post analyses.

At the implementation stage, information about the decision-making situation should be analysed continuously, while keeping in mind any changes that may be required due to the dynamics of the various dimensions of the decision-making field. Implementation of the decision and monitoring of its effects should include at least the following stages: planning and organizing the implementation; the implementation itself and ongoing tracking of the implementation work; and monitoring and evaluating the results and making necessary adjustments.[24] Management science offers a great deal of guidance in developing implementation schedules, defining time frames for various stages, gathering necessary resources, and making necessary preparations. The growing importance of analysis conducted during the implementation of public decisions has also been highlighted in public policy research. For example, Giandomenico Majone notes that 'analysts have finally realized that the effective delivery of public services requires not only the preparation of some theoretically optimal program. It is even more important to know how the implementation of the program actually proceeds, who benefits and who loses from it, whether the program achieves its intended goals, and, if it does not, how it can be improved or discontinued'.[25] Relating the detailed instructions of managerial science scholars to the problem of implementing legislative decisions is beyond the scope of this paper, and it is one of the most difficult challenges facing the study of politics of law, if only in the context of the ergodic nature of legislative decision-making processes mentioned earlier. After all, in law-making (as in the management of large organizations) each time it is imperative to check whether the chosen course of action is appropriate, and therefore to carry out evaluative research in order to determine whether a given law-making decision that has been made in a methodologically rational way is also rational in practical terms.[26]

Many scholars studying law-making issues have expressed this opinion. By way of example, let us list the law-making principles formulated by Lesław Grzonka: constitutionality (rule of law, competence); compliance with international law; stability and continuity; reality; justification of normative acts; non-repressiveness; adequate time for discussion; effectiveness; avoiding contradiction with moral, social, or religious norms; minimal interference (not encroaching on law where it is not necessary); holding public consultations; openness; clear com-

[23] Borucka-Arctowa (n 20) 82.

[24] Henryk Bieniok, Henryk Halama and Marian Ingram, *Podejmowanie decyzji menedżerskich* (Wydawnictwo Akademii Ekonomicznej w Katowicach 2006) 36.

[25] Giandomenico Majone, *Evidence, Argument, and Persuasion in the Policy Process* (*Dowody, argumenty i perswazja w procesie politycznym*, Dariusz Sielski tr, Wydawnictwo Naukowe Scholar 2004) 248.

[26] Jerzy Supernat, *Techniki decyzyjne i organizatorskie* (2nd edn, Kolonia 2003) 248.

munication; adequacy of a means to an end; and periodic analysis of the effects of the law in order to eliminate ineffective norms.[27] It is worth noting that this listing could also provide the most general framework for a system of ex-post evaluation of legislative decisions. After all, both the pre-decision stage and the implementation stage should be based on consistent assumptions about the very purpose and organization of the entire process (so-called meta-decisions that shape the context of the decision-making situation). Management science makes the supposition that the decision-making centre must strive to adapt to changing external and internal circumstances. This adaptation, however, does not consist only in reacting to phenomena occurring in the decision-maker's environment but primarily in shaping the decision-making situation independently. This is done mainly by making meta-decisions about the context of the decision-making process. In public management terms, this issue is referred to as *setting the agenda*. The Rational Law-Making Model does not provide any specific recommendations in this regard, other than to point out that it is the legislator who takes responsibility for the way in which the legislative decision-making process is organized (as it determines the organizational structures, identifies the participants in the norm-making process and their tasks, and defines their material and procedural framework for action). Some scholars have analysed the organizational rationality of the law-making decision-making centre in this context.[28]

IV. THE DIMENSIONS OF THE LEGISLATOR'S DECISION-MAKING AND THEIR ROLE IN EX-POST ANALYSES

The decision-making approach puts in focus the analysis of internal factors (such as the structure of the decision-making centre and the formal and informal rules of its functioning) and external factors (such as the broader institutional context or cultural factors). Some of these factors are dependent and some are independent of the decision-making centre, and all of them together make up the general category of the 'decision-making field'. This term was borrowed from the managerial sciences by Stanisław Ehrlich, who used it to describe 'the situation (in its various interrelationships) in which a decision is to be made or executed (once made)'.[29] Thus, the legislator's decision-making field can be defined as the

[27] Lesław Grzonka, *Legislacja administracyjna: Zarys zagadnień podstawowych* (CH Beck 2011) 18–30.

[28] Sławomira Wronkowska, 'Prawodawca racjonalny jako wzór dla prawodawcy faktycznego' in Sławomira Wronkowska and Maciej Zieliński (eds), *Szkice z teorii prawa i szczegółowych nauk prawnych* (Wydawnictwo Naukowe UAM w Poznaniu 1990) 125.

[29] Ehrlich, *Norma, grupa* (n 8) 27.

totality of conditions that should be accounted for at the stages of both preparation and implementation of a law-making decision. In his monograph entitled *Pole decyzyjne ustawodawcy*[30] Mateusz Pękala proposes a model that groups these factors into eight dimensions: instrumental, axiological, power game, social conflict, discursive, social normative system, economic, and temporal. Each of them is characterized below from the point of view of the role they should play in ex-post analyses.

The first, instrumental, dimension relates to the conditions that make it possible to pinpoint the problem and potential solutions. In accordance with the pragmatic principle, the starting point in the process of formulating normative regulations (as in any other decision-making process) should be the precise identification of the given area of the social system in which there are dysfunctions that require intervention by legal means. Defining the actual social problem (and not just its symptoms) and identifying the critical factors lay the foundation for further stages and are subject to review in the evaluation of decision-making alternatives and in the subsequent evaluation of the chosen solution. The key is the ability to acquire and analyse information; and in the ex-post evaluation, the data should be updated, taking into account any changes in the degree of structuring of the decision-making problem in question (and therefore the relationship between knowledge of the current state of affairs and the desired state in the context of transforming the former into the latter).

Pre-decisional and post-decisional analyses proceed differently for open and closed decision-making problems, and depending on whether they can be quantified and objective criteria applied, as well as whether the problem is legal or non-legal in nature. Regarding the choice (and subsequent evaluation of this choice) of legal means available to the law-making decision-making centre in a given situation, it is necessary to point out the general limits of the effectiveness of law, which include a limit on the quantity of regulations and the quantitative communication barrier, which when exceeded leads to 'legislative inflation'.[31] These factors lead to the conclusion that the omnipotence of legal means should not be viewed as a sufficient way to adequately shape the social system. Instead, one can consider various ways of intervening in the behaviour of addressees, e.g. through penalties and rewards, economic incentives (concessions or subsidies), or administrative procedures (permits, certificates or declarations), that is, with the methods of *hard law* and *soft law*: law-making decisions that, depending on the degree of freedom left to the addressees, form a continuum from those based on guidance, through coordination, management, and occasional supervision, to the deliberate waiver of any regulation. The ways in which norms are expressed

[30] In English *The Legislator's Decision Field*.

[31] Krzysztof Pałecki, *Prawoznawstwo: Zarys wykładu. Prawo w porządku społecznym* (Difin 2003) 154, 162, 167.

in legal texts in an inseparable way include injunction, prohibition, permission, right, authorization, and claim.[32]

The second dimension of the legislator's decision-making field is the axiological dimension. Every public decision, and therefore also every law-making decision, is determined to some extent by a prior choice regarding the values that it is to embody. Indeed, one of the limits of legal regulation in general is the axiological limit, which is crossed when the axiological basis of a given normative act is not consistent with the preferential scales of the addressees of the norms.[33] Moreover, the axiological basis fulfils important functions in the processes of rationalizing, interpreting, and evaluating legal norms. It is also crucial for the social legitimacy of political power and the legal system itself.[34] To date, theoretical studies on the axiological choices made by legislators have most often been restricted to formulating idealistic suppositions about the perfect legislator, i.e. one whose preferences are asymmetrical and transitive and who additionally follows a system of values approved on the basis of the ideology in force in a given socio-political system.[35] One way to overcome the difficulties of analysing the axiological dimension, inspired by the organization theory, may be to introduce a three-level classification of public decisions into strategic, tactical, and operational.

The third dimension, the power game, centres on the fact that legislative decision-making processes are influenced by their political context, which is tied to the mechanisms of gaining and maintaining power in the state. There is no denying that such conditions as, for example, the term of office of authorities or the need to solicit the support of voters, have impact on the actual law-making policy. Instead, the democratic mechanism of competition for public support should be included in research on the law-making policy.

Moreover, not only is the dimension of the power game negative, but the connection between politics and law (in this case, the power game and legislative activity) is so strong that some researchers postulate the use of the term political/legal power in reference to modern social systems.[36] Moreover, it is the decision-making problems, so strongly linked to these two spheres, that often constitute the most difficult problems facing legislative decision-making centres. According to Tadeusz Biernat, the so-called *hard case* in legislation requires, first of all, a 'political opening', i.e. an agreement on the solution of the problem (*policy*); thus, it is necessary 'to define the standards related to targeted political

[32] Redelbach, Wronkowska and Ziembiński (n 17) 144.

[33] Pałecki, *Prawoznawstwo* (n 31) 158.

[34] Tadeusz Biernat, *Legitymizacja władzy politycznej: Elementy teorii* (Adam Marszałek 2000) 108.

[35] Wronkowska, *Problemy* (n 15) 124.

[36] Tadeusz Buksiński, *Prawo a władza polityczna* (Wydawnictwo Naukowe IF UAM w Poznaniu 2009) 222.

action and re-evaluation of political goals, and with it the strategy of action'.[37] What is vital here is the decision-making centre's self-awareness of the best leadership style under the given circumstances and the skilful use of various forms of power.

Legislative decision-making processes always involve specific contradictions in a given social system, and are also always a potential source of new conflict-generating situations – these issues are accounted for by another dimension of the legislator's decision-making field. One of the core social functions of law is that of an arbiter 'in the manifold conflicts that must inevitably arise in any politically organized society'.[38] Therefore, the Model of the Lawmaker's Decision Field contains a diagnosis of the various ways in which the legislator performs the role of a 'social arbiter', that is, an entity that (at least partially) manages how social conflicts unfold. In order to choose the most effective conflict management strategy, the legislative decision-making centre should first ascertain what kind of conflict it is dealing with in a particular case: whether it is, for example, a structural, interest, value, relationship, or data conflict; what are the attitudes of parties to the conflict; whether it is bipolar or multipolar; whether it is destructive or constructive; whether it is axiological (concerning the choice of values/goals to be realized) or cognitive (concerning the means of realizing the chosen values/goals); and whether it is real (e.g. when it concerns conflicting interests) or irrational (e.g. when it is the outcome of irrational emotions). The role of the legislative decision-making centre is to create suitable conditions for successful communication between all parties, with the caveat that deliberation is not an end in itself.

The discursive dimension encompasses those activities that the legislative decision-making centre undertakes as one of the participants in the public debate on the current state and future changes to existing legal regulations; here, it is a party to the dialogue with the addressees that comes up with its own initiative, and advocates the adoption of the most effective solutions to a particular decision-making problem (such as those developed by experts). These are mechanisms for reconciling rationality between the legislative decision-making centre and the future addressees of normative acts, building and using the infrastructure and capacity for cooperation between different social partners, and anticipating their reactions, possibly while preventing or mitigating the negative effects of their resistance. These issues are closely related to discussions of the public legal awareness, and in particular, the authority (prestige) of the law and the mechanisms of legitimizing the legal system.

---

[37] Tadeusz Biernat,'"Trudne sprawy" w procesie tworzenia prawa. Pole dyskursu legislacyjnego' in Agnieszka Choduń and Stanisław Czepita (eds), *W poszukiwaniu dobra wspólnego. Księga jubileuszowa Profesora Macieja Zielińskiego* (Wydawnictwo Naukowe Uniwersytetu Szczecińskiego 2010) 489.

[38] Pałecki, *Prawoznawstwo* (n 31) 198.

In management science, the degree of acceptance on the part of the addressees is one of the indicators used to assess the quality of decisions. The first step in diagnosing this dimension of the legislator's decision-making field is establishing how ready the addressees are to participate in the decision-making process and whether participatory methods should be used or not, whereby participation in the social debate is not related to the institutional legislator's surrender of the power it holds. Rather, it is a matter of listening to all parties and weighing the various arguments that may be pertinent to the effectiveness of the legislation (and therefore suitable as criteria for post-decisional analysis). It is also important to create a good social 'atmosphere' for new normative acts and to provide the addressees with a sense of security. Of key significance here are the communication strategies used by the legislative decision-making centre, whether rational, persuasive or emotional.[39] Thus, when it comes to this dimension, it is necessary for the institutional decision-making centre to have a good reputation and credibility in the eyes of the citizens.[40]

What distinguishes the social dimension of the normative system is the fact that the law is not the only type of social norms that regulate the behaviour of individuals and groups and that any normative decision is an interference in the broader world of social normativity. Thus, here again we should reject the notion of the omnipotence of legal measures, i.e. the possibility of introducing effective normative acts with any content in all spheres of the social order. Additionally, we must repudiate the concept of legal imperialism and the view of the autonomy of legal norms content.[41]

The model of the Lawmaker's Decision Field stipulates that any law-making process should include a diagnosis of the norms governing a given sphere of human relations and assumptions made about the constitutive or declarative nature of a new legal regulation. Among other things, customary, moral, and religious norms should be considered, as well as other types of norms found in certain social environments. It is most often pointed out that there can be relations of compatibility, incompatibility, or indifference between different normative systems.[42] Compatibility boosts the effectiveness of particular types of norms, even if it is not full compatibility. Incompatibility, on the other hand, often causes societal tensions, contributes to a loss of prestige of both types of norms, and can pose a serious threat for the effectiveness of law. Researchers suggest moderation and preference for such legal solutions that are supported by other types of

[39] Mateusz Pękala, 'Ustawodawca jako organizator i uczestnik prawotwórczego procesu decyzyjnego' in Konrad Oświecimski, Aleksandra Pohl and Mirosław Lakomy (eds), *NetoDEMOkracja: Web 2.0 w sferze publicznej* (Akademia Ignatianum w Krakowie, Wydawnictwo WAM 2016).

[40] Majone (n 25) 70ff.

[41] Pałecki, *Prawoznawstwo* (n 31) 105.

[42] Grzonka (n 27) 25.

social norms.[43] Tadeusz Biernat further notes that 'difficult cases are born on the grounds of law clashing with other normative systems'.[44] This primarily refers to value/objective conflicts (axiological basis), justifying different types of social norms that regulate the same matter. Another issue that is part of this dimension of the legislator's decision-making field is the need to maintain the coherence of the legal system: with the rapidly increasing number of legal acts, which are also becoming more and more detailed, it is increasingly difficult to avoid collisions between new regulations and existing ones and to predict the impact of legislative decisions on the functioning of legal acts already in force.

At this point, it is worth citing some of the directives formulated so far in the legal policy relating to the determinants of law-making discussed above:

- Legislating should be undertaken only if there is reason to believe that it will increase the likelihood of the desired behaviour of the addressees and that this behaviour will lead to the intended goals.
- Enactment of legal norms should be initiated when it is possible to enforce observance of these norms without damaging the prestige of the law.
- Legislative acts should be issued only when the proper management of society is no longer possible with the existing regulations and when a change in the interpretation or application of existing regulations is not sufficient.
- Successive, overlapping changes to individual regulations should be avoided; the necessary changes should be based on common principles and uniform terminology, without compromising the consistency of existing regulations.
- Criminal, administrative, and civil means of influence should be used complementarily and should ensure a concerted interaction in guiding the conduct of the addressees of the norms.[45]

The economic dimension of the lawmaker's decision-making field includes analyses of the costs of introducing and enforcing legal regulations, which is important from the point of view of the growing legislative inflation resulting, among other things, in the situation where addressees find it hard to efficiently exercise their rights and fulfil their obligations.[46] In the sociology of law, a state in which excessive regulation requires excessive costs from monitoring and social compliance is defined as exceeding the economic limit of legal regulation. The dimension in question is thus determined by 'the economic capacity of a given society to bear the costs of implementing its laws'.[47] As for financial incentives, they are traditionally regarded as means of indirect influence on the behaviour of the addressees.

[43] Ewa Kustra, *Podstawy teorii legislacji* (Wydawnictwo UMK w Toruniu 1983) 138. See also Borucka-Arctowa (n 20) 85ff.

[44] Biernat, 'Trudne sprawy' (n 37) 480.

[45] Michalska and Wronkowska (n 18) 62ff.

[46] Pałecki, *Prawoznawstwo* (n 31) 167.

[47] ibid 162.

The economic dimension reveals another facet of the 'rationalized effectiveness' of the law, while providing further criteria that can be used in ex-post analyses. To some extent, the costs of a regulation can (and should) be expressed quantitatively, and calculated according to specific algorithms. However, this cannot be done with regard to, for example, addressees' psychological discomfort caused by the violation of their dignity or a sense of threat from the new regulations. Other costs are related to analysing historical data, establishing and maintaining relationships, acquiring and enhancing skills, and communicating with others involved in the decision-making process.[48]

The issue of the political costs of legislative decisions has been discussed above in relation to the dimensions of the power game. On the other hand, the intangible (although to some extent quantifiable) payoffs for both the legislative decision-making centre and for the addressees of the law can include saving time, reduced burden of administrative procedures, and increased comprehensibility of legal texts.[49] The authors of the report 'Reform of the law-making process' rightly state that 'the cornerstone of an effective law-making system in today's complex economic environment is a combination of the ability to analyse the economic effects of proposed solutions and the opinions of a wide group of entities affected by a given regulation'.[50] A comprehensive system of regulatory cost control should comprise, for example, periodic reviews of normative acts aimed at evaluating their effectiveness, if only material effectiveness.[51]

The last dimension of the lawmaker's decision-making field allows for the fact that each stage of the decision-making process should be placed on a timeline and the legislative decision-making centre should have the ability to manage its time as an intangible resource. The amount of time available for decision-making affects, in particular, the ability to gather or expand the knowledge about the origin of the decision-making problem and the related action. Time also has a bearing on the decision-making procedure that can be adopted. Stanisław Ehrlich argued that:

> Every decision must be made – if it is to be implemented – within the period determined by the totality of behavioural conditions, i.e. within socially useful time. This also applies to carrying out a decision. A decision made prematurely will be worse or will derail its impact, and furthermore may cause conflict. The same can be said

[48] Erwin Rausch and Charles Anderson, 'Enhancing Decisions with Criteria for Quality' (2011) 49(5) Management Decision 722ff; Gregory S Parnell, Patrick J Driscoll and Dale L Henderson (eds), *Decision-Making in Systems Engineering and Management* (2nd edn, John Wiley & Sons 2011) 145.

[49] Krzysztof Pałecki, 'Legal Policy: The Attempt of Reinterpretation and New Legislative Fields' in Tadeusz Biernat and Marek Zirk-Sadowski (eds), *Politics of Law and Legal Policy: Between Modern and Post-modern Jurisprudence* (Wolters Kluwer Polska 2008) 63–64.

[50] Piotr Rymaszewski, Piotr Kurek and Paweł Dobrowolski, 'Reforma procesu stanowienia prawa' (2004) 72 Zeszyty BRE Bank – CASE 7–68.

[51] ibid 12–13, 19.

> about a delayed decision. This is a major conclusion because time is a factor in the political process that no political decision-making centre should ignore. Seemingly, it is only a matter of individually evaluated facts and not scientific directives.[52]

Let us add that time is an irrecoverable asset: 'The inappropriate use of time has the same consequences as the inappropriate use of people, raw materials or machines'.[53]

There is a whole continuum of attitudes toward this dimension: from obsession with time to complete indifference to it, while it seems that a moderate approach to specific decision-making problems is justified in the legislative field. As for the time frame, it is possible to adopt a short-term or long-term perspective, and it is optimal to combine the two. When we look only at the most recent events, we are often unable to identify the 'critical factor' that is the cause of the problem, while when we place importance only on remote past issues, this can contribute to unforeseen consequences due to unresolved decision-making problems. Another issue related to the temporal dimension is the attitude of the legislative decision-making centre toward the future, which may consist of passive waiting for the upcoming effects of a decision or monitoring them on an ongoing basis and shaping further stages of the decision-making process. The issue of the institutionalization of time has a special significance with regard to legislative decision-making processes: after all, overly frequent normative changes are some of the main causes of legislative inflation. Legal norms can be in force for an indefinite period (i.e. until they are amended or repealed or until the occurrence of *desuetudo*) or for a fixed period.

Decision-making is only an intermediate step, not the end of the process, and ex-post analyses of this issue are essential for evaluating and possibly adjusting legislative decisions. Theorists agree that the possibilities for rapid social change through legislative decisions are largely limited. A diagnosis of the temporal dimension of the legislator's decision-making field should help determine the appropriate *timing* for the drafting and implementation of specific normative acts. Premature normative innovation takes place when the decision-making centre anticipates that the state of affairs which needs to be regulated by law will occur, but in reality it does not occur or occurs in a different form than anticipated. Normative lag, on the other hand, consists in failure of legal norms to keep pace with social change, i.e. 'the persistence of legal norms officially in force, or only the belief that norms once established for past social situations that no longer exist must always be valid and observed in social practice'.[54] Both phenomena should be avoided.

---

[52] Ehrlich, *Dynamika norm* (n 3) 184–85.

[53] ibid 192. See also Pałecki, *Prawoznawstwo* (n 31) 157.

[54] Pałecki, 'Legal Policy' (n 49) 156.

V. CONCLUSIONS AND RECOMMENDATIONS

In view of the above discussion on legislative activity as one of the many varieties of decision-making processes conditioned by various factors, and especially in view of potential benefits of post-decisional review of the eight dimensions in the legislator's decision-making field, it should be stated that a comprehensive system for ex-post evaluation of law-making decisions in Poland should be introduced due to its crucial importance for improving the quality and efficiency of legal regulations. This is a necessity that has been neglected for years and is conditioned both historically (political transformation) and practically (socioeconomic development). It would not be difficult to cite here a number of scholarly works pointing to the advantages of instituting such solution. Giandomenico Majone, taking a practical view, stresses that 'decision-makers need retrospective analysis at least as much as they need analysis of expected effects (i.e., pre-decisional), and probably even more so'.[55] Moreover, some cases justify the use of even 'multiple evaluations' of law-making decisions, which should be conducted using a variety of criteria and viewpoints.[56] With this postulate in mind, let us review examples of the criteria that should be taken into account in an ex-post analysis of the various dimensions of the legislator's decision-making field.

Table 1. Criteria for evaluating dimensions of the legislator's decision-making field

Dimensions of the legislator's decision-making	Examples of ex-post evaluation criteria
Instrumental	– Accuracy of the diagnosis of a given social problem and critical factors associated with it – Extent to which the causes of a given decisional problem can be eliminated; the extent and timeliness of the knowledge about a given area of social life used at the pre-decision stage – Role of experts – Choice of means of legal intervention in society and their effectiveness
Axiological	– Transparency of the preferential scale of the legislative decision-making centre and its relevance to the social preferential scales in the context of the problem at hand – Ways to eliminate discrepancies between these scales (public consultation, participation, and deliberation) – Consequences of ignoring these discrepancies – Dynamics of addressees' preference scales

[55] Majone (n 25) 108.
[56] ibid 250.

Power game	– Existence of public and institutional support for a given form of legislation – Making a decision at the right moment in the democratic political cycle – Political limitations on the effectiveness of a given normative act – Possibility of reaching a political agreement to solve a given problem – Effectiveness of the decision-making strategies used to gain public and/or political support for the solution
Social conflict	– Effectiveness of the diagnosis of social contradictions associated with a particular normative act – Effectiveness of determining the attitudes and interests of various parties to the conflict – Impact of a normative decision on conflict dynamics – Role of the legislative decision-making centre in conflict management – Social dialogue tools and their effectiveness
Discursive	– Effectiveness of the analysis of societal consent to the introduction of particular solutions to a given decision-making problem – Accuracy of predictions about the behaviour of addressees of the law – Addressees' degree of willingness to participate and actual participation in the decision-making process – Methods used to overcome their resistance to change; validity and effectiveness of the forms of participation – Effects of the communication strategy – Impact of the regulation on the public image of the legislator and the authority of law in general
Social normative system	– Accuracy of the assessment of the previous way of handling the problem in question; the main effect and side-effects of the social impact of the regulation – Effectiveness of the decision in the context of the objective and subjective boundaries of the regulation; legitimacy and effectiveness of the use of references in the normative act to other types of social norms – Consequences of ignoring the norms operating in the social system that deal with the issue in question – Compliance of the normative act with the basic principles of the legal system and other applicable normative acts – Effectiveness of the implementation of the normative act, practice of interpreting it at the stage of application, and implementation of norms by the addressees – Compliance of the normative act with binding international regulations
Economic	– Quality and relevance of the analyses carried out on the material and societal costs of implementing a given solution to a decision-making problem and its side effects – Impact of a given normative act on the organizational costs of the institutions applying the law; costs of monitoring and enforcing a given solution – Material and societal benefits of the solution – Importance of a particular normative act in the context of legislative inflation – Selection and use of economic impact assessment tools
Temporal	– Effectiveness of time management at different stages of the decision-making process – Impact of time on regulatory efficiency – Reasonableness of the schedule of consultations and legislative work – Legitimacy of the decision-making mode in terms of efficiency of the process – Effectiveness of the solutions adopted for the duration of a normative act – Developed schedule for monitoring the effects of a normative act and its implementation

Source: Elaboration by Mateusz Pękala 2024

The effectiveness of the post-decisional analysis is dependent on a number of other factors. The most important of these is the way in which pre-decisional analyses are carried out, which should be the principal source of assumptions for the secondary evaluation of legal regulations. Referring to one of the recommendations in this study, it can be added that ex-post analyses, too, should be based on a clear distinction between the evaluation of decisions on the choice of public policy, the choice of means to achieve a goal, and the 'translation' of political decisions into the language of legal acts. In the absence of precise objectives for drafting new regulations, ex-post analyses will be significantly hampered.

Each of the dimensions of the lawmaker's decision-making field requires a more in-depth analysis than merely one that is guided by 'common sense', i.e. based on common knowledge. The latter usually comes from the decision-maker's own experience or information about the experiences of others, but is certainly not sufficient. Zygmunt Ziembiński claims that:

> [O]ften the actual participants in the legislative process rely on very fragmentary knowledge of social reality, and legal dogmatics when deciding problems from a specific narrow area of law frequently ascribes such knowledge only to the 'lawmaker' it has constructed (which can lead to significant praxeological errors in the construction of the legal system as a whole), yet in more general matters it becomes necessary to ascribe to the 'lawmaker' knowledge based on a specific theory of social life. Given the contemporary complexity of legislative tasks relative to the increasingly complicated problems of social life, associated not only with revolutionary political transformations, but also, for example, with the population densification and growing ecological threats, it becomes indispensable for actual legislators, and correspondingly also for the 'perfect legislator' to rely on a specific theory of social phenomena.[57]

It should be added that the diagnosis of the lawmaker's decision-making field should not be a one-time undertaking but a dynamic process. The idea that it is necessary to constantly monitor potential decision-making problems and refine law-making decisions corresponds with the tenets of pragmatism and relativism adopted on the grounds of the situational decision-making theory. Since there is no single best way to make decisions (either in managing organizations or in 'managing' social systems) – because there is no single universal and best solution to every decision-making problem – the decision-making centre should focus on self-improvement, enhancing the effectiveness of its decisions and constantly seeking ways to adapt to new circumstances. One method of such improvement could be, for example, the use of time-limited regulations that will expire if not renewed intentionally (upon prior appropriate evaluation). It would

[57] Zygmunt Ziembiński, *Wstęp do aksjologii dla prawników* (Wydawnictwo Prawnicze 1990) 178.

also be reasonable to adopt relevant provisions obliging public authorities to review the decision-making problem after a period of time.

Certainly, the introduction of a system for ex-post evaluation of law-making decisions would increase the effectiveness of legal regulations, understood as efficiency in shaping the social order, for example, by introducing targeted innovative interventions into social reality.[58] The decision-making approach makes it possible to apply the findings of many different fields of social science in the law-making practice, in particular politics of law, which deals with a wide range of phenomena involving the causal chain starting from the complex process of formulating legal norms to end in individual acts complying with them. The latter, in turn, may itself be tantamount to the achievement, multiplication, and/or protection of a certain social value, or may lead to such a goal.[59] The proposed model goes beyond the traditional cost-benefit analysis using exclusively economic criteria and applies axiological and praxeological criteria in the analysis. For it to be complete, the proposed model should be supplemented with specific instruments for transparent, authoritative and objective ex-post evaluation, which would be crucial for its credibility. In addition, the said criteria need to be operationalized. At a later stage, it would also be necessary to take into account such criteria as consistency of the legal system.

The introduction of the evaluation system for law-making decisions would contribute to raising awareness of the institutionally understood legislative decision-making centre, which would gain the opportunity to accumulate and use its 'organizational memory' that enables the processes of 'learning' and increases the efficiency of future actions, even if the previous ones proved unsuccessful. It is often emphasized in management science that making a mistake in the decision-making process does not necessarily mean failure, and at most causes some delay in proper problem resolution.[60] Of course, such an approach, which is vitally needed in the law-making policy, will only have a chance to materialize if the legislative decision-making centre develops the ability to learn from its previous experience; but this will not be possible without the ability to conduct post-decision analyses.

[58] Pałecki, 'Legal Policy' (n 49) 58–59.

[59] Krzysztof Pałecki, 'Polityka prawa – próba reinterpretacji' in Elżbieta Kremer and Zygmunt Truszkiewicz (eds), *Rozprawy i studia. Księga pamiątkowa dedykowana profesorowi Aleksandrowi Lichorowiczowi* (Wydawnictwo Uniwersytetu Jagiellońskiego 2009) 180.

[60] Parnell, Driscoll and Henderson (n 48) 227.

Let us conclude with a summary of potential benefits that can be gained by initiating a broader debate and carrying out well-defined organizational work to introduce mechanisms into the Polish legal system that would allow ex-post evaluation of legislative decisions.

Table 2. Potential benefits of introducing a comprehensive system of ex-post evaluation of legislative decisions

Social actors	**Potential benefits**
Policy-makers	– Increased effectiveness of public policy actions – Opportunity to use expertise in drafting new regulations – Increased efficiency in identifying the real causes of social problems – A broader perspective on the solutions possible in any decision-making situation – Obtaining criteria for assessment when legislative intervention is needed and when it is not necessary – Gaining more control over the context of law-making processes – Obtaining a reliable rationale to justify the necessary institutional changes – Limited number of legal acts whose content will be challenged on the grounds of unconstitutionality or incompatibility with international law – Developed tools for determining tangible and intangible costs of regulations – Developed tools for effective planning of the decision-making process – Making legislative decisions credible (by referring to scientific knowledge) – Improved quality and form of public debate between political actors and between government and citizens – Knowledge about the society's axiological system – Increased efficiency in defining and resolving societal conflicts – Gaining tools to overcome public resistance to change – Opportunities to improve time management skills

Legislative institutions (legislative decision-making centres)	– Basing the law-making process on a coherent theoretical concept (interdisciplinary decision-making approach) – Obtaining a theoretical framework to appropriately organize the law-making process – Separation of the political decision-making stage from the codification stage – Determining the responsibility of various actors for particular stages of the law-making process – Defining specific criteria for assessing the impact of regulations – Gaining the possibility for organizational 'learning' by using the conclusions of ex-post analyses when drafting subsequent normative acts – Increased quality of legislation – Reduced risk of legal inflation – Developed tools for managing the context of law-making processes (meta-decisions) – Increased participation of social partners in decision-making – Development of instruments and justification for communication with addressees of the law and better prediction of their reactions to new regulations – Acquiring and improving knowledge management skills in the field of regulatory development – Developed tools for coordinating the process of implementing normative acts by other institutions – Obtaining the ability to periodically monitor the quality of legislation and to eliminate redundant, dead, or ineffective regulations – Breaking the stereotype about the omnipotence of legislative measures – Basing legal regulations on precisely defined axiological premises (interpretation of legal norms made easier) – Increased social legitimacy, authority, and prestige of law – Developed tools for determining tangible and intangible costs of regulations – Developed tools for effective planning of the decision-making process
Addressees of legal norms (citizens and their associations, civil society)	– Increased transparency of government operations – Broader opportunities to participate in law-making processes and influence their outcomes – Increased quality of legislation – Reduced administrative burden imposed on the addressees of law – Gaining the ability to evaluate legislative actions – Better understanding of the mechanisms of law-making institutions – Accessibility of information on the rationale considered by the institutions of power when making legislative decisions – Knowledge about the general axiology of the legal system and its various branches – Knowledge about the axiology of policy-makers – Resolving social conflicts in a well-organized debate between the parties – Availability of information on tangible and intangible costs of law-making decisions

Source: Elaboration by Mateusz Pękala 2024

REFERENCES

Bieniok H, Halama H and Ingram M, *Podejmowanie decyzji menedżerskich* (Wydawnictwo Akademii Ekonomicznej w Katowicach 2006)

Biernat T, *Legitymizacja władzy politycznej: Elementy teorii* (Adam Marszałek 2000)

— — '"Trudne sprawy" w procesie tworzenia prawa. Pole dyskursu legislacyjnego' in A Choduń and S Czepita (eds), *W poszukiwaniu dobra wspólnego. Księga jubileuszowa Profesora Macieja Zielińskiego* (Wydawnictwo Naukowe Uniwersytetu Szczecińskiego 2010)

Borucka-Arctowa M, *Świadomość prawna a planowe zmiany społeczne* (Zakład Narodowy im. Ossolińskich 1981)

Buksiński T, *Prawo a władza polityczna* (Wydawnictwo Naukowe IF UAM w Poznaniu 2009)

Ehrlich S, *Dynamika norm: Podstawowe zagadnienia wiążących wzorów zachowania* (2nd edn, Wydawnictwa Szkolne i Pedagogiczne 1994)

— — *Wiążące wzory zachowania: Rzecz o wielości systemów norm* (Wydawnictwo Naukowe PWN 1995)

— — *Norma, grupa, organizacja* (Wydawnictwa Prawnicze PWN 1998)

Groszyk H and Korybski A, 'Podejście decyzyjne w prawoznawstwie (zarys problematyki)' in W Witkowski (ed), *W kręgu historii i współczesności polskiego prawa* (Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej 2008)

Grzonka L, *Legislacja administracyjna: Zarys zagadnień podstawowych* (CH Beck 2011)

Kustra E, *Podstawy teorii legislacji* (Wydawnictwo UMK w Toruniu 1983)

— — *Polityczne problemy tworzenia prawa* (Wydawnictwo UMK w Toruniu 1994)

Leszczyński L, *Podejmowanie decyzji prawnych: Tworzenie i stosowanie prawa* (Wyższa Szkoła Zarządzania i Administracji w Zamościu 2003)

Majone G, *Evidence, Argument, and Persuasion in the Policy Process* (*Dowody, argumenty i perswazja w procesie politycznym*, D Sielski tr, Wydawnictwo Naukowe Scholar 2004)

Michalska A and Wronkowska S, *Zasady tworzenia prawa* (2nd edn, Wydawnictwo Naukowe UAM w Poznaniu 1983)

Pałecki K, *Prawoznawstwo: Zarys wykładu. Prawo w porządku społecznym* (Difin 2003)

— — 'Legal Policy: The Attempt of Reinterpretation and New Legislative Fields' in T Biernat and M Zirk-Sadowski (eds), *Politics of Law and Legal Policy: Between Modern and Post-modern Jurisprudence* (Wolters Kluwer Polska 2008)

— — 'Polityka prawa – próba reinterpretacji' in E Kremer and Z Truszkiewicz (eds), *Rozprawy i studia. Księga pamiątkowa dedykowana profesorowi Aleksandrowi Lichorowiczowi* (Wydawnictwo Uniwersytetu Jagiellońskiego 2009)

Parnell GS, Driscoll PJ and Henderson DL (eds), *Decision-Making in Systems Engineering and Management* (2nd edn, John Wiley & Sons 2011)

Pękala M, *Pole decyzyjne ustawodawcy* (Akademia Ignatianum w Krakowie, Wydawnictwo WAM 2016)

— — 'Ustawodawca jako organizator i uczestnik prawotwórczego procesu decyzyjnego' in K Oświecimski, A Pohl and M Lakomy (eds), *NetoDEMOkracja: Web 2.0 w sferze publicznej* (Akademia Ignatianum w Krakowie, Wydawnictwo WAM 2016)

Rausch E and Anderson Ch, 'Enhancing Decisions with Criteria for Quality' (2011) 49(5) Management Decision 722

Redelbach A, Wronkowska S and Ziembiński Z, *Zarys teorii państwa i prawa* (Wydawnictwo Naukowe PWN 1992)

Rymaszewski P, Kurek P and Dobrowolski P, 'Reforma procesu stanowienia prawa' (2004) 72 Zeszyty BRE Bank – CASE 7

Supernat J, *Techniki decyzyjne i organizatorskie* (2nd edn, Kolonia 2003)

Wronkowska S, *Problemy racjonalnego tworzenia prawa* (Wydawnictwo Naukowe UAM w Poznaniu 1982)

—— 'Prawodawca racjonalny jako wzór dla prawodawcy faktycznego' in S Wronkowska and M Zieliński (eds), *Szkice z teorii prawa i szczegółowych nauk prawnych* (Wydawnictwo Naukowe UAM w Poznaniu 1990)

Wróblewski J, *Teoria racjonalnego tworzenia prawa* (Zakład Narodowy im. Ossolińskich 1985)

Ziembiński Z, *Wstęp do aksjologii dla prawników* (Wydawnictwo Prawnicze 1990)

— — 'O problematyce badawczej nauk prawnych' in S Wronkowska (ed), *Z teorii i filozofii prawa Zygmunta Ziembińskiego* (Wolters Kluwer Polska 2007)