

Legal Policy as a Multi-Aspective Concept: General Theoretical Aspect

Vladimir Valentinovich Kozhevnikov

Department of Theory and History of State and Law, Omsk State University Dostoevsky, Omsk, Russia
Email: kta6973@rambler.ru

Abstract:

This scientific article analyzes the concept of legal policy, as well as various aspects of the concept of "legal policy". Noting that the subject of legal policy is the state, its functions in the political sphere are determined. Attention is drawn to the content of some principles of legal policy.

Keywords:

legal policy, law-making policy, political activity, functioning of law, strategy and tactics.

I. Introduction

The relevance of the problem under consideration does not raise any doubts, because legal policy is the basis, a prerequisite in relation to its other types, first of all, law-making policy. Despite this, according to scientists, "legal policy is carried out... in the form of law-making activity of the state, in which the latter, represented by the legislative bodies, directly adopts laws..."[1]. Alexander Vasilievich Malko and Alexey Yurievich Salomatin, speaking about the law-making form of legal policy, write that it "is embodied primarily in the adoption, amendment and repeal of regulations and agreements"[2].

II. Research Methods

1. general philosophical (dialectical-materialistic), which is used in all social sciences;
2. general scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
3. special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
4. private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Results and Discussion

3.1 The concept of legal policy

To reveal the methodological potential of the category "legal policy," one should proceed from a special legal understanding of legal policy (policy of law), which developed in domestic jurisprudence in the second half of the 19th and early 20th centuries. and developed and supplemented by modern researchers. Then, legal policy (policy of law) was understood as a method of criticizing the existing legal system from the position of a certain ideal, given by science and ideology, aimed at further correcting social ills with the help of law [3].

As Grigory Adolfevich Landau wrote, "... the politics of law is a (deontological) science that studies law as it should be in order to realize (or bring closer to the realization) a given goal under given mental states or generally given conditions" [4]. The essence of legal policy as a critical method of assessing and changing the legal order, wrote Gabriel Feliksovich Shershenevich, is revealed through "three successive moments: 1) consciousness of dissatisfaction with the current legal order, in its whole and in parts; 2) setting an ideal as a goal towards which the transformation of law should be carried out; 3) finding appropriate measures for the transition from the existing to the desirable"[5].

It is not difficult to see that pre-revolutionary domestic jurists emphasized that legal policy should be an instrument for the rational construction of legal reality. Even then, it was not considered only as a scientific research activity; on the contrary, in the approaches to its understanding, the practical and transformative aspect associated with the implementation of theoretical and legal developments in real life is clearly visible [3]. An analysis of the legal literature allows us to conclude that the term "legal policy" is used mainly in two senses.

3.2 Legal policy as political activity

In the first sense, it is considered as the political activity of the relevant subjects, which is carried out strictly within the framework of the law, on the basis of existing regulations. In this case, the property "legal" acts as an essential attribute of the policy, regardless of the sphere of public life in which this policy is carried out. Evgeniy Yuryevich Permyakov believes that "if power is based on law, there is every reason to talk about legal policy"[6].

A more detailed description of legal policy from these positions is given by Vitaly Viktorovich Subochev: "legal policy is the most acceptable form of leadership and regulation of social relations, based on the optimal combination of legal means and legal structures, manifesting itself in various forms, mediating all levels of power, corresponding to the developed concept of the state development strategy and pursuing socially useful goals"[7].

Bulat Gumerovich Yumadilov, understanding legal policy as an active and dynamic legal activity, writes that "legal activity in legal policy lies in the fact that it is not the individual activity of an individual..., but some organizational form of collective behavior of social groups. For example, legal policy in the field of lawmaking presupposes the general joint legal activity of such subjects as deputies, the bureaucratic apparatus of the State Duma, the Government, scientific and expert groups, representatives of the media, etc."[8].

There are quite a lot of supporters of considering legal policy as a political activity. Thus, according to Konstantin Valentinovich Shundikov, legal policy consists in the adoption by the state of relevant regulatory legal acts and the implementation of law enforcement activities on their basis [9].

This interpretation of legal policy narrows its content, reduces political activity in the field of law to the results of law-making and law enforcement activities of state authorities and administration. At the same time, "outside the subject and content of legal policy are the development and implementation of the concept of legal regulation, the development of methods and means of legal regulation of social relations and other significant issues of the development of law and legal relations"[1].

From the point of view of Inna Sergeevna Morozova, legal policy is the activity of the state to create legal conditions for the creation and functioning of processes and changes taking place in society that are beneficial to the state[10].

Andrey Petrovich Mazurenko and Yulia Aleksandrovna Titenko define the concept of legal policy in more detail, according to whom legal policy is “a multi-level and complexly structured phenomenon of legal reality, expressed in scientifically based, systematic and consistent activities aimed at creating the necessary legal and political conditions for achieving strategic goals and solving tactical problems of the country’s legal development”[11].

One of the authors of this position, Andrei Petrovich Mazurenko, previously proposed a slightly different definition of legal policy: “legal policy should be understood as a complex phenomenon of legal reality, formed as a result of scientifically grounded and systematic activities of government agencies and civil society entities, aimed at developing and implementing strategic goals and tactical tasks of legal regulation and political leadership of society”[12].

It seems more promising in this regard to consider legal policy as a special activity of subjects of the political system of society, aimed at developing principles of legal regulation of social relations, consolidating them in the adopted rules of law and reflecting them in the law enforcement activities of subjects of law.

In this aspect, the content of legal policy is revealed by Alexander Vasilyevich Malko, who writes that “legal policy is a scientifically based, consistent and systematic activity of state and municipal bodies to improve the effective mechanism of legal regulation, the civilized use of legal means and the achievement of such goals as the most full provision of fundamental rights and freedoms of man and citizen, strengthening of discipline, legality and order, the formation of legal statehood and a high level of legal culture in the life of society and the individual”[13]. This interpretation of legal policy is also supported by Viktor Aleksandrovich Zatonsky[14].

Alexander Vasilyevich Malko identifies two groups of features of legal policy - general and special. Among the general properties are those that can be inherent in any type of state policy: economic, social, informational, national, demographic, military, etc.: state-volitional and power-imperative nature; integrative and formal character; consistency; fundamentality; conceptuality; realism; publicity; dynamism and stability; planning; dependence on external and internal environmental factors, etc.[15].

Alexander Vasilyevich Malko identified the following as special features of legal policy:

1. this is always an activity in the sphere of legal life of society;
2. this activity aimed at improving the quality of the legal life of society, and therefore at improving the law, at progressive changes in the legal system, at the appropriate legal development of society, at improving the legal culture of citizens and officials;
3. this is an activity that expresses the attitude of subjects of legal policy to the most important problems of the development of the legal life of society, changes and renewal of its most significant segments;
4. this activity, carried out both with the help of legal means (tools and technologies), and a system of special means of legal policy (concepts, programs, legal techniques, planning, forecasting, legal monitoring, legal expertise, systematization of legislation, etc.) , which are designed to organize the legal life of society

5. this is an activity related to the development and implementation of legal ideas of a strategic and tactical nature, which act as the basis and prerequisite for legal policy and are aimed at organizing the legal life of society;
6. this is an activity carried out primarily by subjects who are in the thick of the political and legal life of society, engaged in political and legal practice (that is, they are carriers of professional political and legal consciousness), political and legal science (that is, they are carriers of doctrinal political and legal consciousness) and having the appropriate knowledge, skills and abilities (a certain level of political and legal culture), or having a specific political and legal status[15].

Alexander Vasilyevich Malko and Alexey Yurievich Salomatin draw attention to the following principles of legal policy in the Russian Federation:

1. a clear identification of the priorities of legal activity, which should follow from the goals and objectives of the Russian state;
2. anticipation of future legal “moves” of political subjects and their corresponding implementation;
3. focus on goals achievable in a given situation and the use of real legal means;
4. integrated and mutually supporting use of forms of implementation of legal policy (law-making, law enforcement, law interpretation, doctrinal, legal education);
5. the result of legal policy should be an increase in the quality and level of legal life of society and the individual, which is expressed in the confidence of citizens, in the security of their status, in the ability to plan their life activities for the future, in the coordination and predictability of government actions [2].

We should agree with the point of view of Sergei Aleksandrovich Komarov and Guzeli Makhmutovna Aznagulova, according to which “this approach is in principle legitimate, but it cannot be used when studying political activity in the sphere of functioning of law itself, since it does not make it possible to identify a specific type of policy aimed at determining essential properties of the law itself, i.e., it does not allow us to develop methodological tools for analyzing and assessing conceptual problems of the formation and implementation of law”[1]. The consideration of legal policy as an activity is also criticized by Madi Amangeldyevich Shakenov, who sees it as “a guide to the implementation of state legal activities to achieve a high level of legal culture and legal order”[16].

3.2 Legal policy as a specific type of policy

In the second sense, legal policy is considered as a specific type of policy carried out in the sphere of functioning of law. The definition of “legal” no longer denotes an attribute of policy, but the scope of its application.

Thus, Alexander Petrovich Korobova believes that “legal policy... is appropriate to interpret as state policy in the sphere of law, as policy in the legal space, legal reality, or, more specifically, as a strategy for state activity in the field of legal regulation”[17].

Nikolai Ignatievich Matuzov wrote that legal policy is “a complex of ideas, measures, tasks, goals, programs, principles, guidelines, implemented in the sphere of law and through law, i.e. legal policy is the area of relations, connections and interests covered the concept of “legal space” and objectively in need of regulatory mediation (streamlining) on the part of public authorities. Without legal policy, other types and varieties of policies cannot be implemented”[18].

Even earlier, Nikolai Ignatievich Matuzov, also defining legal policy, wrote that its main task is the legal support of ongoing reforms, and its most important property is its state-volitional nature, imperative content. Scientists have noted that legal policy is called legal, that, firstly, it is based on law; secondly, it is carried out by legal methods; thirdly, it covers mainly the legal sphere of activity; fourthly, it is reinforced, when necessary, by force, coercion; fifthly, it is public, official; sixthly, it differs in normative and organizational principles. In all cases, law acts as a basic and cementing element of legal policy[19].

From the position of a scientist, the basic principles of legal policy, on the basis of which it should be developed and implemented, are the following: 1) social conditionality; 2) scientific validity; 3) stability and predictability; 4) legitimacy, democratic character; 5) humanity and moral principles; 6) justice: 7) publicity; 8) combination of interests of the individual and the state; 9) priority of human rights; 10) compliance with international standards, and the methods of legal policy are persuasion and coercion, which cover a wide arsenal of means of influencing the consciousness and behavior of people (education, punishment, responsibility (positive and negative), sanctions (incentive and negative), prevention, legal education , introduction of legal culture, increasing legal awareness, etc.) [19].

3.3 Legal policy as a strategy and tactics of state behaviour

Vladimir Ivanovich Chervonyuk believes that legal (legal) policy is the strategy and tactics of state behavior in relation to law; intentions, statements and actual use of legal instruments by the state to achieve the goals and objectives of general policy. In this regard, according to the scientist, legal policy can be interpreted as a system of measures aimed at establishing legal order in social relations. In a more general form, legal policy represents principles, strategic directions and practical ways of creating and implementing norms, institutions and branches of law, strengthening the regime of legality and public safety, organizing the prevention and fight against offenses, forming Citizens have a developed legal culture and the ability to use legal means to satisfy their interests.

Thus, the author summarizes, “the goal of legal policy is to use the potential of law to establish social peace and harmony in public life, to teach the population and state officials civilized behavior, i.e., the ability to achieve the actual goals of their activities by legal means.” [20]. In the content of legal policy, the scientist identifies two interdependent sides: 1) conceptual and 2) organizational-practical, activity-based.

1. The conceptual scientific-cognitive side of legal policy, characterizing first of all the level of scientific validity of legal policy, formulates the goals and general content of the development of legislation, the ways and directions of implementing legal reform in the field of justice, scientifically substantiates the direction and strategy of organizational work in the field of law, i.e. . performs a methodological function in relation to the legal activity of the state to law.
2. The organizational and practical side of legal policy is associated with the direct implementation of its goals and objectives. Of decisive importance here is the diverse practical activities of the state in the law-making sphere, the field of application of law, the organization of the administration of justice and the fight against crime[20].

Attention should be paid to the author’s statement that these aspects are closely interrelated. Scientific knowledge of law must precede the implementation of tactical measures (for example, in the field of lawmaking). At the same time, scientific knowledge of law must be subordinated to the goals of legal practice. “To implement legal reforms in the law-making sphere, in the field of justice, we need both scientifically based proposals and political will,

readiness and ability to implement these measures. Otherwise, legal policy acquires an imitative character and, in essence, represents nothing more than quasi-politics”[20].

Vladimir Ivanovich Chervonyuk notes that the practical side of the state’s activities in the legal sphere has a reverse impact on the methodological side of legal policy and plays the role of feedback information. “By absorbing the practicality of state activities in the legal sphere, legal policy thereby ensures the realism and vitality of this policy, its social necessity and effectiveness”[20].

Understanding legal policy as “a special type of social practice aimed at the formation and development of a mechanism of legal regulation and the formation of legal consciousness that meets the interests of the subject of legal policy,” Sergei Aleksandrovich Komarov and Guzel Mukhametovna Aznagulova note that the subject of the latter is the state, which, in the person of state authorities, performs the following functions:

- a. determines the political, social and economic goals of the development of society; ranks goals into strategic, tactical, priority, current, etc.; enshrines them in legislative and by-laws, thereby giving them a universal character;
- b. ensures the integration of society by using a mechanism for identifying and coordinating the wills of social classes, layers and groups and forms a system of law based on the general will;
- c. regulates socio-political and socio-economic activities in society, establishing such rules of behavior and activities of people that would ensure respect for common interests and the sustainability of the development of social relations;
- d. has a holistic management impact on the processes of legal formation and enforcement, on the functioning of the legal system of society through the adoption and implementation of political decisions;
- e. has a targeted impact on the processes of formation of legal consciousness [1].

IV. Conclusion

Considering the controversial nature of the issues of legal policy considered, we believe that this article will serve as an impetus for scientific publications by other scientists on this complex issue.

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