

**LEGAL POLICY AS A MEANS TO IMPROVE
LAWMAKING PROCESS**

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Abstract: *Presently the general theory of law does not provide a thoroughly explored definition for legal policy. The material suggested by the authors considers both the discussion on the legal policy itself as a phenomenon of law and state and the analysis of the legal policy possibilities in the sphere of lawmaking improvement. Legal policy being a means of democratic transformations in a society can develop and further achieve many important purposes of strategic nature. The authors use different general and specific scientific methods in conducting their research. However, the study is based on the method of sociological analysis, including the results of the sociological survey carried out with the participation of the Social and Political Research Center in Saratov State Academy of Law and Scientific Educational Center of Federal and Regional Issues in Legal Policy in Saratov Branch of the State and Law Institute of the Russian Academy of Sciences. The paper looks at the nature and the content of the phenomenon from different perspectives. The authors believe that it is impossible to implement all other types of policies in a civilized manner with no legal policy in the modern context. The authors offer to specify policy's special type-lawmaking policy served to be the basis for the comprehensive development of the law system. The features of this phenomenon, the features of its interaction with other spheres of the legal policy and the state policy on the whole are stated. It is concluded that the lawmaking policy plays a special role as a multi-purpose means to improve the lawmaking process in the context of modern Russia.*

Keywords: legal policy, lawmaking, lawmaking policy, legal regulation, state.

The Russian society in the post-Soviet period was characterized by the large scale transformations in all its spheres which resulted in the development of new trends, political legal phenomena and processes, thus attracting the law science in its interests to analyze them. For example, those years gave impetus to the efficient development of the issues in the context of legal policy as a new and multi-faceted in its

nature and structure political legal phenomenon. We would like to note that it is this period when the stakeholders understood that the legal policy having various characteristics and definitions was seen and perceived by the society as, first of all, a lawmaking policy.

Legal policy is a unique phenomenon since, first of all, it objectively belongs both to the law and to the politics. At the very beginning of the 90s in XX century the theory of legal policy experienced a qualitatively new stage of its development. It was inseparably connected with the democratization of the Russian society and state, with the development of a new vision of the law place and role in the life of modern Russia. Legal policy was about to be seen as the most crucial factor to vindicate the natural and inherent rights and freedoms of a person, to form a law-governed state and civic society, to develop a system of the law safety, to implement the social economic and other reforms. Now the legal policy moves at the foreground of the social being since it is impossible to implement other types of policies in a civilized manner without it. Unarticulated and weak legal policy together with the imperfect and problematic juridical base, with the controversies in the legal acts, with the unclear priorities can result in the failures in the social, economic, national policy implementation.¹

Purpose

The experts believe that today every seventh law contains serious errors. Making the same lawmaking errors, such as the lack of consistency between the law acts, their inherent controversial nature and their excessiveness in number, a lot of declarative standards in the legislation not supported by the implementation mechanism, as well as the repetition of the same errors for many years can make us think of their inconsistent nature. What is more, the lawmaking subjects can not fully synchronize the federal, regional and municipal levels of the lawmaking process.

Up till now the state level can't articulate its consistent and well-reasoned approach to the issues of the law strategies and tactics, the scientific analysis and forecast support, the public opinion consideration and a qualified evaluation of the possible consequences of the accepted decisions have not become a standard practice in the procedure of law reform approval. In many cases the legislation can't timely and

¹ A. Malko, „Concept and Reality of Legal Policy in Modern Russia”, in *Journal of Siberian Federal University*, year 11, no. 6, 2013, p. 161.

adequately regulate the already developed public relations, can't stimulate the development of new, necessary social connections. The importance of the scheduled start in the lawmaking process is significantly undervalued.

This evidences the low quality of the lawmaking work, which falls behind the economic, social, political and other needs of the society, this evidences a great number of the lawmaking errors and other mistakes in the legal regulation. It is impossible to deal with above mentioned issues with some single occasional activities. One requires the appropriate coherent regulation-lawmaking policy which differs in its consistent nature, combining many tools of the lawmaking process into an inter-connected mechanism.

Sources and methodology

The present research is grounded on different sources, where the authors take the information on the modern conditions of the legal policy in the Russian Federation-the corresponding parts of the social legal practice and its results, including the materials of the sociological research. As for the latter, special attention should be paid to the results of the sociological survey done with the participation of the Social and Political Research Center in Saratov State Academy of Law and Scientific Educational Center of Federal and Regional Issues in Saratov Branch of the State and Law Institute of the Russian Academy of Sciences within the scientific research project „Content of the Notion and Purposes of the Lawmaking Policy in Modern Russia” with 246 respondents as the project's participants. The respondents were questioned with specially designed software, including the scientific hypotheses, key, checking, direct and indirect questions about the content of the notion and purposes of the lawmaking policy. Anonymous questionnaire with different formalization degree was chosen to be the main method for the research. Five groups of respondents participated in the study: students, students and lecturers from the lawmaking institutes, prosecutors' office, Russian and international law, as well as from the investigative criminalistic Institute in Saratov State Law Academy, law enforcement body employees.

The authors apply different cognition methods due to the specificity of the research. Its general world view is based on the dialectic materialistic approach to the explanation of the phenomena and processes of the political lawmaking activities. First of all, one should

identify the elements of this method as the application of the general principles of the scientific cognition: objectivity and multifacetedness, particular historic approach and the comprehensiveness of the research.

Together with the elements mentioned above and one of the key philosophical methods the paper applied different general scientific methods and methods of logical thinking, such as the analysis and synthesis, induction and deduction, system structural approach, functional, formal-logical one, etc.

Particular sociological method is considered to be a special method, while the dogmatic (formal juridical) method and method of comparative lawmaking belong to the specific scientific methods. Adding to this, the authors asked to use other science-developed and practice-tested general and specific scientific approaches and methods of the study in the political legal phenomena and processes. The application of the specified methods contributes in a number of conclusions of general nature. First of all, these conclusions concern the possibilities of lawmaking with the help of the science-supported lawmaking policy.

Results

When answering the question „What do you believe is meant by lawmaking policy?” some respondents of the given survey (about 22.4% of the surveyed) said that they see it as an independent political law phenomenon, while 67.9% believe the lawmaking policy to be one type of the legal policy.

If the legal policy with the lawmaking policy included has scientific roots and is real, then it can become a national policy and a reliable tool for the democratic transformations. However, here one can see serious side effects and even abusive practices. And the drawbacks of this policy, if found in law implementation, come from the typical errors in lawmaking policy. These errors are critical since being implemented in the laws and other regulatory legal acts they can not be fixed, and at its best they can be slightly rectified during their implementation of the law enforcement policy. The need to overcome these negative trends becomes the basis to study the issues of the lawmaking policy as an important means to improve the lawmaking in our country.

Lawmaking is a crucial component of the legal regulation. It is of significant value for further improvement of the latter and for the role importance rise on the whole. Lawmaking, in its turn, includes a number of the steps, stages, aspects and is influenced by a number of factors of

the social reality which define the essence of this or that legal rule in their mixture and dialectic combination, its content and form, its status in the system, industry or law institute, its purpose and role in the society's life. Lawmaking policy is believed to be one of such determining factors.²

Discussion

S. V. Polenina focuses on this factor. She believes that the lawmaking policy serves to be, first of all, a single political law factor of the legislation (lawmaking) performance. This factor is specific as its (ideally) purpose is to concentrate the most significant interests of all social groups, strata, classes and society on the whole. Being developed under the impact of the dynamics of the economic, national, spiritual moral and other social relations in the society the specified factor reflects the performance of the state bodies, public associations, citizens and legal entities in lawmaking process.³ This is supported by the fact that the lawmaking policy has certain aims, means, forms, methods and is trying to achieve the specific result-to provide the necessary conditions for the lawmaking improvement and ultimately the formation of the science-based balance and non-controversial legislation being consistent with the main criteria of the Russian legal policy.

Thus, the legal policy is ontological ground to develop lawmaking policy since being articulated in the preambles, definitions, law articles and other legislative acts the legal policy acquires clearer and more understandable form for wide observation and acknowledgment.

Lawmaking process, its constant modernization must be of primary concern in the state managerial activities since the lawmaking policy is the way to improve the lawmaking process. This type of policy is necessary to organize non-controversial, inherently coherent, consistent, logical lawmaking process to introduce overall consistency and juridical accuracy.⁴ Hence, we can conclude that the lawmaking process is an object of the lawmaking policy impact. In this context it is quite evident to address the necessity to study the peculiarities, to identify

² A. Mazurenko, T. Tsaturyan, „Contradiction between the Real Public Relations and the Existing System of Law in Terms of Legislative Policy”, in *Journal of Civil & Legal Sciences*, no. 4 (2), 2015.

³ S. V. Polenina, *Lawmaking Policy*, Moscow, Prospekt, 2003, p. 180.

⁴ A. Malko, A. Salomatin, „Comparative Approach in Legal Policy”, in *Law*, volume 1, 2013, p. 5.

the essence and to develop the conceptual basis of the lawmaking policy as an important factor for lawmaking process improvement.

At the turn of the centuries the Russian Federation was characterized by some profound transformations and fundamental changes in the public life. Social relations were rapidly changed, the structure of the state and municipal authorities was adjusted to the challenges faced at that time. An excessive number of the regulatory legal acts approved of in our country at different management levels evidenced that the state was trying to regulate the most crucial sides of the public life. At the same time, as it was rightly noted by A. B. Vengerov, one shouldn't think much of the juridical romanticism, believes that all social problems could be solved through decreeing, approving the laws.⁵ Thus, the law science faces a need to develop close-to-life theories, scientific conclusions, practical recommendations and offers connected with the lawmaking performance and law policy in the sphere of lawmaking improvement.

The literature states that science must study the legal policy not the way it is, but rather work out the science-based provisions of what it must be. In their works the leading representatives of Saratov Law School illustrate a very balanced approach to define the legal policy. For example, N. I. Matuzov believes that legal policy being one of the policy types on the whole (as a generic term) is a set of measures, ideas, tasks, purposes, programs, methods implemented in the sphere of law action and through law.⁶ However, we think that it is not quite reasonable to see the legal policy as a set of ideas, purposes, tasks etc. only. Referring to the Marxism classic authors we may say that „*ideas will never lead us outside the world world order: in all cases they can lead outside the ideas of the old world order. Ideas generally can implement nothing. To implement ideas one needs people who must apply physical force*”.⁷ „*Human activity is necessary for the idea to stop being abstract*”.⁸

We feel that in its content legal policy is a comprehensive phenomenon with a double nature. One the one hand, its meaning is that this is the politics based on law, on the other hand, it is the law used as a means to be powerful and to control in political sphere of society. It

⁵ A. B. Vengerov, *Theory of State and Law*, Moscow, Yurisprudentsiya, 2000, p. 504.

⁶ N. I. Matuzov, „General Theory and Key Priorities of the Russian Legal Policy”, in *Pravovaya politika i pravovaya zhizn*, November 2000, p. 28.

⁷ K. Marx, F. Engels, *Holy Family or Critics of Critical Critics. Against Bruno Bayer and Company*, Moscow, Gosudarstvennoe izdatelstvo Politicheskoy literatury, 1956, p. 132

⁸ V. V. Adoratskiy, *About the State (on the Issue of Research Method)*, Moscow, Gosudarstvennoe izdatelstvo Politicheskoy literatury, 1923, p. 12.

is expressed in the activities of the corresponding subjects whose behavior is determined by the ideas of the strategic nature relative to the progressive law development of the society.

Scientific understanding of the meaning and the amount of tasks fulfilled by the legal policy at the modern stage helps us to conclude that with the political will from the management elite of the Russian state it, being a means of the democratic transformations of the society, can form and then achieve the purposes of the strategic character: 1) to create and develop the grounds of the legal state and civic society; 2) to regulate the complex relations between the society and state; 3) to provide the rights and freedoms of a person and citizen. Lawmaking policy is called for to have a leading role in achieving these purposes.

There are no grounds to liken the terms „lawmaking” and „lawmaking policy” since each phenomenon has its own subject. For example, if the creation of new, change or a ban of the acting legal standards are the subjects of the lawmaking, then the lawmaking policy considers the development and implementation of the strategy and tactics of the lawmaking performance, creation of the necessary conditions to increase the efficiency and improve the lawmaking process to be its subjects. Some scientists go even further. For example, T. A. Zolotukhina believes that the lawmaking process is a component of the lawmaking policy which is wide and includes both the process of creation, change and a ban of the law standards and the performance in the development and management of the lawmaking process, the theory development, lawmaking ideas, priorities, purposes, tasks of the lawmaking activity.⁹ The same is true for E. S. Selivanova who notes that the lawmaking policy should be grounded on a particular theory giving the understanding of the purposes of the lawmaking processes and methods to influence it.¹⁰

This theory is surely required. It must be based on the legal policy theory being its type. This theory should contribute into the modernization of the lawmaking process, into the creation of the necessary conditions to improve modern federal and regional legislation, municipal law systems. These tasks can be implemented in the context of the planned strategic development of political law progress in the lawmaking sphere supported by the science-based principles, priorities,

⁹ T. A. Zolotukhina, „Lawmaking Policy of the Russian State”, in *Istoriya gosudarstva i prava*, no.15, 2008, p. 13.

¹⁰ Ye. S. Selivanova, „Definition and Priorities of the Russian Lawmaking Policy”, in *Pravonaya politika i pravonaya zhizn*, no. 2, 2006, p. 141.

purposes, means and forms of lawmaking policy articulated at the conceptual level.¹¹

To understand the nature of the lawmaking policy better it is reasonable to specify the features of this political legal phenomenon:

a) single political legal factor to improve the lawmaking performance;

b) important type of the legal policy of the Russian state;

c) based on clearly evidenced conceptual factors;

d) characterized by a multi-subjectedness: both the state, its bodies and authorities, as well as many subjects of the civic society participate in its development and implementation;

e) has public nature;

f) multi-levelled: implemented at different steps (levels) of the state and public organization (federal, regional, municipal);

g) about the attempt to achieve mutually agreed, gap-free and comprehensive law system;

h) based on the requirement of obligatory application of the scientific capacity in the law preparation works and in accepting the lawmaking decisions;

i) uses the tools to forecast and to plan, which provide its consistency and predictability;

j) has a consistent character; unites many tools of the lawmaking process into an inter-connected mechanism;

k) is both a strategy and tactics in lawmaking sphere.

When justifying the applied nature of the lawmaking policy issue analyses we should bear in mind that the strategy in the lawmaking sphere is a practical activity aimed to develop general, theoretical political legal approaches and perspective targets (long-term programs) for the development and improvement of the national law system aimed to improve the lawmaking process. Lawmaking strategy and lawmaking policy are inter-connected juridical categories. At the same time, it should be said that they are not equal. We think that the lawmaking policy is a wider term. This conclusion is based on the fact that actually this policy is not a strategy but rather a tactics in lawmaking sphere. Together with planning and forecasting it includes such obligatory elements, as science support, account of the public opinion, expert and methodological provision of the law activity, a consistent approach to

¹¹ A. Mazurenko, O. Diychenko, *Law-making Policy as an Innovative way in Legal Education*, „Global Science and Innovation”, *Materials of the III International Scientific Conference. Chicago (October 23-24, 2014)*, Publishing office Accent Graphics communications, Chicago, 2014, p. 194.

the lawmaking regulation and other, which can solve the tactical tasks faced by it.¹²

Ideally the legal policy should have its own strategy and tactics, clear and justified purposes and the corresponding means to achieve them. The law ideas of the strategic nature may be applicable, if their implementation is considered thoroughly on the basis of the legal policy, decisions, tasks and actions of tactical nature. Therefore, tactically the legal policy solves the nearest tasks.¹³ Considering the fact the legal policy is the essence basis for the lawmaking policy, we may reasonably state that the latter is both tactics and strategies in lawmaking sphere solving some particular applicable tasks in lawmaking improvement. No tactic tasks, as well as no strategic theoretical ideas and purposes based on the long-term forecast, mean no lawmaking policy. In this case there is no policy at all and there can not be. Only an illusion.

Conclusions

The improvement of the lawmaking process is considered to be a process of continuous update, implementation of its ideas and plans, the process which flexibly combines the lawmaking activity with the social economic, political, law and spiritual needs of the society, makes the lawmaking process more flexible and appropriate to the challenges of the time. Science-determined lawmaking policy with the main purpose being the elimination of the deformations in the lawmaking social mechanism, the provision of its fully fledged and objective interaction with other factors with their direct or indirect impact on the lawmaking development is supposed to be the main means of this improvement.

The conducted analysis shows that despite the natural connection with the legal policy the lawmaking policy must have its long-term purposes, be implemented on the basis of special principles, including the ones typical for this policy only, use the specific forms and methods aimed to achieve well-defined results matching the key priorities of the Russian legal policy. Hence, lawmaking policy is, on the one hand, an independent political legal phenomenon, while, on the other hand, serves

¹² A. Mazurenko, *Policy of Law*, „Trends of modern Science”, *Materials of the XI International Scientific and Practical Conference (May 30-June 7, 2014)*, volume 8, Law, Sheffield, Science and Education LTD, 2014, p.15

¹³ N. Isakov, N. Bondarenko, A. Mazurenko, *Politics as the genetic basis of legal police*, „The Fifth International Scientific Conference on Private and Public Law”, *Proceedings of the Conference (January 31, 2015)*, East West Association for Advanced Studies and Higher Education GmbH., Vienna, 2015, p. 28.

to be a special type of legal policy and a powerful tool to improve the lawmaking process.

Lawmaking policy is a complex and controversial phenomenon. Being grounded on the lawmaking activity it aims to improve and to develop the law system in many ways. The secret for the lawmaking policy to be efficient is that being part, the main type of the legal policy, the lawmaking policy uses the tools of the legal policy. At the same time, the independence of the lawmaking policy is determined by a number of the features distinguishing it from other types of the legal policy (law enforcement, law interpretation, law education etc.).

The analysis of the mentioned features states that, on the one hand, the lawmaking policy is a set of the conceptual ideas, programs, plans aimed to improve the lawmaking process, to increase its efficiency to create the non-controversial and consistent law system, while, on the other hand, it is a scientifically grounded, consistent and coherent activity of the state bodies and civic society subjects to develop and to implement the lawmaking strategy and tactics.