

Constitutionally-Legal Policy as Base Type of Legal Policy of Russia

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ABSTRACT

The article deals with reasons for formation, nature and specifics of the constitutionally legal policy of modern Russia. The special attention is spared to the exposure of the aim, long-term and short-term tasks, and principles of national constitutionally legal policy. The functions of constitutionally legal policy are separately considered: corrective, predictive, rationalitive, supportive, and integrative. The thesis is grounded on the presumption that constitutionally legal policy is found to be the phenomenon, as it attributes the certain features as follows, base and system forming character; special strategy; original maintenance; own priorities of realization; special principles; possibility of formation and realization not only at the federal but also at the regional levels. Special features of constitutionally legal policy are concluded to be the base type of Russian legal policy. Properties of constitutional and legal policy include: focus and balanced development; availability of own strategy; the possession of a set of characteristic features, main of which is the base position; determined character; totality; implementation by legal forms and by legal methods; the most close relationship with the state policy because of the high degree of politicization of constitutional law.

KEYWORDS

Constitutionally legal policy, constitutional development, the political system principles, legal regulation, legislative recognition

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Introduction

Active introduction of values of constitutionalism in public practice, increase of level of legal culture of population of Russia, development of home legislation in spirit bases of constitutional system puts on an order paper a question about the comprehension, formation and realization of rational, inwardly non-conflicting and systematic strategy and tactics for constitutionally legal development of the country (Osipian, 2014). A constitutional right comes forward formal legal basis for such development (Henderson, 2014). Exactly in its norms a public policy is reflected first of all, that testifies to close intercommunication of constitutional right and politics. According to M.A. Kondratieva (2012), quote, "on the one hand, a constitutional right forms policy

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in the norms, giving it legal character, and, on the other hand, policy substantially influences maintenance of constitutionally legal norms", unquote, in the process of their creation, realization, interpretation and estimation for the purpose of constitutionality.

The mutual interlacing of constitutional right and policy dictates forming necessity for scientifically reasonable system, adequate to the necessities of time span of constitutionally legal policy running and its effective implementation (Sankari, 2016). Actuality of the issue is intensified on a background of current formal legal gaps in the applicable Constitution of the Russian Federation, defects of federal legislation, insufficient level of harmonization between a federal legislation and legislation of subjects of the Russian Federation on the articles of joint conduct of the Federation and its subjects, imperfections of law-making activity at the federal and regional levels. Absence of the conception of constitutionally legal policy and tactics of its successive making reality of assists maintenance of "problem zones" in the area of constitutionally legal adjusting, reduces authority of the Constitution of Russian Federation and current legislation, will disorganize the process of constitution development in Russia and creates barriers on the way of civil society formation.

O. Y. Rybakov & T. M. Priahina (2003) suppose that it is, quote, "making on the basis of the Constitution key conceptual positions in the area of creation and application of rights; activity of public organs, public servants, organs of local self-government, individuals and their associations, sent to confession, observance and protection of rights and individual freedoms, and also on the guard of the constitutional system, provided by legal facilities", unquote. Malko (2010) determines constitutionally legal policy as, quote, "scientifically reasonable, successive and systematic activity of public and municipal organs, and also public associations in creation of effective mechanism of the constitutionally legal adjustment, in optimization of constitutional development of a certain country", unquote. It is obvious that determinations reflect some qualities of constitutionally legal politics, the scope of its subjects and orientation. According to A. V. Malko (2001), constitutionally legal policy is determined as "activity", while the authors of the aforementioned determination contribute conceptual bases formation, ideas in law creation and law application to it. However, there seem to be no contradictions in their distinctions, because "policy" is considered to be complex phenomenon, embracing the complex of aims, types of activity, ideas, and relations (Averianova, 1993; Dunn, 2015; Sabatier & Weible, 2014).

Therefore, fundamentally agreeing with the aforementioned authors, we suppose it is necessary to define the constitutionally legal policy and determine its systematic and reasonable activity for public government and institutes of civil society bodies in forming effective constitutionally legal regulation of public relations and development of Russian society and state.

The category of "constitutionally legal policy" is different from close in their meaning legal concepts of "Constitutional politics", "legislative policy", "public policy in the legal sphere of society life" (Clayton, 2015; Zhovnirchuk, 2016). It underlines its independence and uniqueness. Constitutional policy is focused on perfection of the basic law of the state and is reflected mainly, quote, "in development of projects of the new Constitution of the Russian Federation, in the open and detailed discussion of future constitutional amendments" (Malko,

2010), unquote. Legislative policy is aimed at perfection of constitutional legislation overall, from law making to effective realization of laws. Constitutional and legal policy has more wide semantic scopes, as the optimization of mechanism of the constitutionally legal regulation embraces, including: the Constitution of the Russian Federation, current legislation, normative legal acts, customs, legal positions of the Constitutional Court of the Russian Federation, international agreements with the Russian Federation duly represented as the Party, and acts of international institutes (Sakwa, 2013; Kondratieva, 2010). On other parameters, it is necessary to differentiate constitutionally legal policy with a public policy in the legal sphere of life of society (Barnett, 2014). Not only the state but also public organizations, citizens, organs of local self-government are involved in formation and realization of the first. In addition, a constitutionally legal sphere comes forward as one of the segments of legal sphere of life of society and, accordingly, constitutionally legal policy does not directly spread to other branch spheres of legal life.

It is customary for cognition of nature of constitutionally legal policy to raise a question about its strategic options, id est, aims, tasks, and functions (Harel, 2015). In not numerous scientific publications related to the legal policy construction of the legal state is presumed to be its aims and leitmotif (Matuzov, 2003). Not denying importance of this course, it would be desirable to remind that description of our state as legal is only one of the pillars of constitutional system. Providing effective realization and protection of other pillars of constitutional system of Russia is not of less importance, in this connection effective realization and protection of other pillars of constitutional system must become the aim of constitutionally legal policy (Kozlova & Kutafin, 2014; Rybakov & Priahina, 2003).

Aim of the Study

The purpose of this work is to examine the nature and specificity of the legal category "constitutional and legal policy."

Research questions

What does "constitutional legal policy" mean and what are its distinguishing features?

Method

Study of various characteristic aspects of the constitutional legal policy is possible based on methodologies' combination with the highest explanatory potential, "isomorphic" to the subject of the study and to the source nature. The diversity of social and legal reality, the complexity of the research object require the methodological principles' synthesis for the several sciences.

In addition to widely used methods, such as systematic, historical, legal, axiological, the other methods were used that allow organizing the increasing volume of legal knowledge. They include statistical method, methods of classification and system-structural analysis, synergistic methods.

Data, Analysis, and Results

The set aim is specified in the list of tasks of constitutionally legal policy. Tasks can be very wide on their content and be of long-term nature, id est,



counted on the long-term prospect, and narrowly-short-termed, specified by the conjuncture. Obviously, lists of corresponding tasks cannot be limited. Among the tasks of the first priority, we presume: democratization of public life; providing guarantees for constitutional rights and individual freedoms; providing stable functioning of supreme bodies of the state power; increase in the level of legal culture of public servants and citizens; maintenance of optimal balance of rights and legal interests of the state, society and individual; harmonization achievement with priorities of public policy; development of long term strategy for constitutional law making, among others.

The tasks of the second priority can include, in particular: a number of amendments in Chapters 3-8 of the Constitutions of the Russian Federation; acceptance of certain laws (for example, Federal law "On normative legal acts"); smoothing contradictions between the norms of certain sources of the constitutional right; providing constitutionality of particular normative legal acts; reduction in a number of the norms of the laws of the subjects of the Russian Federation, that duplicate the norms of the federal laws; reception of legal positions of the Constitutional Court of the Russian Federation in law making process; doctrine comprehension of the new constitutionally legal phenomena (for example, Institute of Ombudsmen for Children in the Russian Federation and in the subjects of the Russian Federation).

The enumerated options stipulate the functional prescription of constitutionally legal policy. Set of functions of constitutionally legal policy, as well as the phenomenon of the politics, requires deeper scientific research. Being not in its plenitude, there presumably are the functions as followed: corrective, predictive, rationalitive, supportive, and integrative.

The correcting function allows flexibility for basic directions of constitutional development of the state within the Constitution of the Russian Federation scope, setting priorities for constitutionally legal course, and strengthening political and legal stresses that are urgently necessary in the current period. In other words, this function is the index of flexibility and dynamic quality of constitutionally legal policy. A predictive function is aimed at making ways and recipes for solving potential constitutionally legal problems; it is "called to forestall similar negative situations, offer mechanisms, "working" on forward slip, related to the precise legal planning" (Malko, 2010). A rationalitive function is focused on assisting organization perfection, supreme bodies of state power functioning, and on their cooperation inter se, increase in level of quality of legislation and efficiency of its realization, optimization of relations between the federal center and the subjects of the Russian Federation. A supportive function is directed, mainly, on providing constitutional safety, steady correspondence to the Basic law, and, consequently, guaranteeing safety for the Russian state on the whole. The value of the politics under consideration consists not only of its analytical constituent, but also organizational and material maintenance of the constitutionally legal course prescribed for and able to provide safety of society and its each member. An integrative function includes association of individuals, different task forces, institutes of public power and civil society on the basis of general ideas, values, interests, necessities, focused on fulfillment of the pillars of the constitutional system prescribed by the Constitution of the Russian Federation.

It appears to be reasonable to determine the peculiarities of the phenomenon, allowing defining its special place within the framework of legal policy of modern Russia. Firstly, constitutionally legal policy differs in fundamental and system forming character, being, according O. Y. Rybakov & T. M. Priahina (2003), quote, "regulative and coordinative center for all legal policy in the Russian state" 8. The special meaningfulness of this type of legal policy is conditioned by its being related to provisions of the Constitution of the Russian Federation in much greater degree than other types. Norms of the Constitution of the Russian Federation regulate public relations, making articles of the constitutional right the fields of law, consequently, objectively set limits and parameters for constitutionally legal policy mostly in detail. Accordingly, constitutionally legal policy predetermines efficiency and effectiveness of other branch types of legal policy of Russia (criminal, ecological, financially legal and others).

Secondly, constitutionally legal policy has a specific goal and tasks, as aforementioned.

Thirdly, constitutionally legal policy holds the special content with a set of the special components. These components can be subdivided into kinds by different criteria: sub-industries (institutes) of constitutional right, types of sources of constitutional right, stages of formation of constitutionally legal policy (short-term, medium-term, long-term), directions of realization (doctrine, law making, applicable). Originality of content of constitutionally legal policy is predefined, mainly, by originality of home constitutional right nature.

Fourthly, for constitutionally legal policy is characterized by specific priorities of realization, *id est.*, primary questions requiring an immediate decision. However, they, on their nature, are movable and dynamically changeable under act of different political, economic, spiritual and even subjective circumstances. Presently, the most actual directions of realization of constitutionally legal policy are: strengthening guarantees of realization of constitutional rights and individual freedoms; optimization of further development of the Constitution of the Russian Federation by bringing certain amendments and transformations; overcoming defects of currently applicable legislation, in particular, by means of its constitutionalisation; providing an optimal balance of correlation between federal legislation and legislation of the subjects of the Russian Federation in the field of joint conduct (for example, by means of reduction in a number of norms of the regional legislation, that duplicate provisions of federal normative acts); upgrading law making activity through perfection of anticorruption examination of projects of normative legal acts. It is thus important to work out the system of criteria of constitutionally legal policy realization efficiency. As such criteria can come forward observance of legal provisions of the Constitutional Court of the Russian Federation, operationability and adequacy of realization of messages of the President to the Russian Federation to the Federal Collection of the Russian Federation and others.

Fifthly, constitutionally legal policy should be based on the special principles reflecting its nature and values. O.Y. Rybakov & T.M. Priahina (2003) paid the special attention to this question. Scientists have distinguished ten principles as followed: relevance to the Constitution of the Russian Federation; protection of bases of constitutional system; confession and grant of



constitutional guarantees to realization of basic natural inalienable human rights and freedoms; maintenance of balance and division of state law sphere, relations between civil society and individual life of an individual; division of authorities; maintenance of integrity and inviolability of the territory of the Russian Federation; transparency; unity of legality and democracy; constitutionality; and humanism. The indicated list proved to be disputable, where certain semantic duplication is admitted, in particular, along with constitutionality and relevance to the Constitution of the Russian Federation. Moreover, there is a reiteration of separate bases of constitutional system (division of authorities, maintenance of integrity of the territory of the Russian Federation), that eliminates borders between the bases and principles of constitutionally legal policy. The following base of constitutional system, undoubtedly, is principle and quintessence of constitutionally legal policy, but is hardly reasonable to equate principles of constitutionally legal policy to certain bases/pillars of the constitutional system. In addition, in the brought list some fundamental bases of realization of constitutionally legal policy are unavailable. In our view, it is reasonable for the list to be completed by such principles, as feasibility, harmonization with priorities of public policy, account of public practice, optimal combination of reception of foreign experience and maintenance of home traditions of constitutionalism (to national legal originality), legitimacy, social demand, scientific validity.

Sixthly, the federal state-territorial structure of Russia immanently inherently differentiation of the articles of conduct between the Russian Federation and its subjects and differentiation of competence conditioned to these between federal public authorities and public of the subjects of Federation authorities. The Constitutionally legal realization of public relations is implemented both at federal level and at the level of the subjects of the Russian Federation that predetermines possibility of formation and realization of not only federal but also regional constitutionally legal policy. Indeed, in this plan possibility of existence of the latter will not be original, as in the field of joint conduct of the Russian Federation and its subjects there are quite a few industries of legislation (p. "n", Chapter 1 of the article 72 of the Constitutions of the Russian Federation). According to such logic at the regional level, another branch of policy can be formed (Dunaev, 2005). In this connection, very perspective is a comprehension of features and conformities to law making, maintenance and realization of constitutionally legal policy in the subjects of the Russian Federation. It is reasonable for it to be studied from the point of view of three aspects: determination of general lines of constitutionally legal policy at federal and regional levels, that is proved to be inevitable under the conditions of the prevailing federal power and federal right; cognition of specifics of regional constitutionally legal policy in general, its differences from federal; an analysis of features of constitutionally legal policy in separate subjects of the Russian Federation.

Discussion and Conclusion

A. V. Malko (2001) notes the importance of introducing constitutional and legal policy for the legal consolidation and protection of the constitutional order, within the constitutional-legal policy the regulatory model of reality is assigned and the activities of social actors are directed to achieve it. However, A.V. Malko also says that the Constitution is aimed at achieving "certain political ideas",

but the Constitution itself is not only aimed at achieving political goals, but also at the social sphere, rights and freedoms' protection of the state subjects. Therefore, constitutional and legal policy should be based on the principles stated by O. Y. Rybakov & T. M. Pryakhina (2003) such as humanism, the realization of rights and freedoms, constitutional form of government protection.

Thus, from theoretical and methodological points of view there is the ground for necessity in existence and introduction of the constitutional doctrine and implementation into practice the new legal category of "constitutionally legal policy". In conclusion, for our consideration of bases of constitutionally legal policy of modern Russia, characteristics of this phenomenon can be pointed out. The most significant feature among others is proved to be its state-volitional character: in spite of the fact that the state is involved in formation and even realization of constitutionally legal policy, it is the basic explorer and subject of this policy. Among the number of other features of constitutionally legal policy, there can be highlighted purposefulness and regularity; own strategy availability; the set of features with base provision to be the main; determined character; totality; realization in legal forms and by means of the legal methods use; most close intercommunication with the public policy by virtue of high degree of politicized constitutional right.

Implications and Recommendations

The constitutional and legal policy is directly linked to the Constitution. Constitutional and legal policy determines the efficiency and effectiveness of industry types of legal policy. Constitutional and legal policy includes 10 basic principles of liberal, socio-democratic state. Furthermore, the constitutional legal policy enhances the impact of the Constitution and the constitutional form of government. The main features of this policy are: the totality, deterministic character and balanced development.

Disclosure statement

No potential conflict of interest was reported by the authors.

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References

- Barnett, H. (2014). *Constitutional & Administrative Law*. London: Routledge, 880 p.
- Clayton, C. W. (2015). *The Politics of Justice: Attorney General and the Making of Government Legal Policy*. London: Routledge, 320 p.
- Dunn, W. N. (2015). *Public policy analysis*. London: Routledge, 480 p.
- Harel, A. (2015). Why law matters: A reply to Lorenzo Zucca. *International Journal of Constitutional Law*, 13(1), 311-318.
- Henderson, J. (2015). Developments in Russia. *European Public Law*, 21(2), 229-238
- Kondratieva, M. A. (2010). *Constitutional law and politics in the Russian Federation*. Moscow: AST, 833 p.
- Kozlova, E. I., & Kutafin, O. E. (2014). *Constitutional law of Russia*. Moscow: Nauka, 230 p.
- Malko, A. V. (2010). Constitutional politics as a particular kind of legal policy. *Constitutional and municipal law*, 4, 4.



- Malko, A. V. (2001). Constitutional and legal policy of modern Russia: problems and *solutions*. *Law and politics*, 6, 11.
- Osipian, A. L. (2014). Putin's Russia: Constitutional Order and Arbitrary Arrangements. *European Journal of Sociology*, 55(3), 482-485.
- Dunaev, A. V. (2005). Legal policy of constituent entities in the Russian Federation: problems of formation and implementation. *Legal policy and legal life*, 4, 183-190;
- Averianova, Y. I. (1993). Encyclopaedic dictionary. Moscow: Nauka, 251 p.
- Matuzov, N. I. (2003) Legal policy: essence, concept and reality. Moscow: AST, 77 p
- Rybakov, O. Y., & Priahina, T. M. (2003). Constitutional and legal policy. *Russian legal policy*. Moscow: Academia, 235 p.
- Sabatier, P. A., Weible, C. (2014). Theories of the policy process. London: Westview Press, 432 p.
- Sakwa, R. (2013). *Power and policy in Putin's Russia*. London: Routledge, 262 p.
- Sankari, S. (2016). *The many constitutions of Europe*. London: Routledge, 298 p.
- Zhovnirchuk, Y. F. (2016). Constitutional and Legal Framework Construction of Public Policy Able Territorial Communities. *Management*, 15(1), 147-161.