THE METHODOLOGY OF LAW ENFORCEMENT POLICY

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The subject of the paper is methodology of law enforcement policy, elements and relevance for law enforcement activity.

The main aim of the paper is to confirm or disprove the hypothesis that meth-odology of law enforcement policy is a system of intellective elements and a part of the higher level system of law enforcement policy simultaneously.

The description of methodology. The methodological basis of research is sys-tematic approach. Authors analyze the methodology of law enforcement policy as a combination of elements influencing on each other. The dialectic and for-mal-legal methodology is also used when the authors analyze trends in judicial practice.

The main results and scope of their application. Law enforcement policy is a state strategy that defines the main directions, methods and means of imple-mentation of legal regulations. From the standpoint of a systematic approach, law enforcement policy is a system of managerial type that consists of three elements: subject, object and means (methods). The methodology of law en-forcement is a system of interacting elements, such as: modeling the main di-rections of the implementation of the law; specification of the general strategy for the implementation of legal regulations; identifying trends in law enforce-ment; correction of law enforcement practices; scientific and methodological support of law enforcement policy. The authors analyze each of the listed ele-ments of the law enforcement policy, pointing out their role in improving the practice of law enforcement. The proposed analysis may become a crucial point for research in the field of law enforcement methodology. The results of re-search may be used as the basis of correction of methodology of law enforce-ment practice.

Conclusions. The authors conclude that methodology of law enforcement policy is a system of intellective elements. Methods of information systems theory can be used in the field of law enforcement policy modeling. The methodology of law enforcement policy has a close connection with legal policy in general, so we need to recognize the exceptional importance of legal declarations for the law enforcement.

1. Introduction.

Law enforcement policy, according to a fair remark N. N. Voplenko focuses on the main trends in the theory and practice of law enforcement [1, p. 96-97]. Meanwhile, in the theory of legal policy it is not given due attention, which actualizes the need to Supplement the theory of developments in the field of methodology of law enforcement policy.

The specificity of the methodology of law enforcement policy as a whole is justified by the need to distinguish between its theoretical basis and the actual practical component. Certain considerations on the criteria for such separation are already laid down in the legal doctrine and can be restored from it. In this regard, of considerable interest are The works of G. Kelsen [2], as well as the works of representatives of the American sociological school of law – realistic theory of law, in particular, R. pound [3]. At the same time, the reality of the current Russian trends in law enforcement requires the use of such an explicative approach with great caution, since there may be more particularities than the regularities revealed on the basis of early theoretical works.

It should be noted that the practical component of the law enforcement methodology is under-stood by us in a fairly simple form, as a kind of answer to the fundamental practical questions "what to do?"and "how to do?". And this understanding practical methods of policy enforcement are an active part of her functional capacity, due to which she needs to move out of state a purely theoretical construct of the value-orientation of purpose in a position of strength, driving initially haphazard and sporadic enforcement to do productive work. It is this approach that makes it possible to use purely theoretical concepts to better understand any aspect of legal reality.

It should also be noted that sometimes legal science does not use the full potential of both compo-nents of the methodology of law enforcement policy, but only sometimes uses it to give advice to legal

practitioners on what their actions and decisions should be in order to comply with the legal system. As a rule, this is justified by the fact that the ultimate goal of legal doctrine is to focus on practice rather than theory. However, the practical significance of law enforcement policy will be demonstrated when its explanatory potential is fully utilized.

Thus, we emphasize once again the importance of considering the theoretical and practical in the methodology of law enforcement policy as dialectically related categories, such as the establishment of legal prohibitions and control over their implementation. It should be noted that the interconnectedness can be seen in the fact that certain methods of theoretical orientation are used to understand the content of the law; the result of such activities, in turn, is the basis for purely practical solutions based on the theoretical root cause analysis [4, p. 130-141].

Taking into account the above, we summarize that under the methodology of law enforcement policy we understand the system of methods:

(a) modelling the main directions of the implementation of the law;

b) development of a General strategy for the implementation of legal regulations;

C) identification of trends in law enforcement practice;

d) correction of trends in law enforcement practice;

e) scientific and methodological support of law enforcement policy.

2. System approach as a methodological basis of law enforcement policy.

Analysis of law enforcement policy in the framework of a systematic approach requires the definition of its place among related categories. In this regard, it should be pointed out that the enforcement policy is an integral part of the legal policy affecting the implementation of the law. As a rule, legal policy is understood as a system of principles, strategic directions and practical ways of creating and implementing legal norms, strengthening the rule of law and security [5]. However, this approach to determining the essence of legal policy is criticized on the grounds that it pays considerable attention to the theoretical aspect, relegating to the background the issues of lawmaking and law enforcement [6, p. 42]. In this regard, the most reasonable to us is the definition of social and legal policy of the state, given VN. Kudryavtsev and V. E. Eminov, according to which it can be defined as a strategic (General) line developed by the state, defining the main directions, methods, means of legal impact on crime, in particular, through the development and improvement of legislation, practice of its application, as well as the development and implementation of measures of anti-criminal impact [7, p. 131]. On the basis of this concept we define the law enforcement policy as a state strategy that defines the main directions, methods and means of implementation of legal regulations.

It should also be noted that this part of the state's legal policy, despite its narrower content, is not of a secondary, optional nature, since it is the practice of applying the law that plays a decisive role in assessing the legal system as a whole. This is quite consistent with the provisions of the Marxist philosophical school of practice as a criterion of Truth. So, K. Marx wrote that " the question of whether human thinking has a substantive truth is not a question of history, but a practical question. In practice, a person must prove the truth, that is. the reality and power, the objective reality of their thinking" [8, p. 383]. And the Truth in jurisprudence is synonymous with justice, so "leaving" it is undermining the Foundation of jurisprudence, its constructive foundations, a kind of ideological sabotage. When law begins to serve the interests of a narrow group of people, not the people, as the bearer of sovereignty, it becomes an anti-right [9].

From the standpoint of a systematic approach, law enforcement policy is a system of management type, in which three elements are distinguished: the subject, the object and the means (methods).

From the point of view of the subject composition of the law enforcement policy is carried out, respectively, by all three branches of government:

- legislative bodies-Federal Assembly of the Russian Federation, representative bodies of subjects of the Russian Federation and municipalities;

- Executive bodies-the Government of the Russian Federation, ministries, law enforcement agencies;

-courts;

- specific subjects-the President of the Russian Federation, his administrative apparatus.

These actors defines the legal basis of the enforcement policies by the adoption of regulatory legal acts dealing with separate aspects (for example, regulating the issues of monitoring of law enforcement, what will be said-but below) either to consolidate the fundamental and strategic assumptions, as well as through the adoption of organizational and administrative documents concerning their activities.

The main burden of law enforcement falls on the shoulders of law enforcement and judicial bodies. Here we must distinguish between the stages of the legal response to the legal deviation from the "input" to the system of justice (registration of statements and messages) to "exit" from it (the execution of legal decisions and the elimination of legal consequences).

The objects of law enforcement policy are the activities of state authorities and local self-government bodies. So, it affects:

law - making activity – through justification for the op-some respects, the law-making work on the creation, modification or abolition of legal rules; by providing the necessary information in the process of preparation of drafts of regulatory legal acts; as well as contributing to the formulation of conceptual bases of legal regulation of certain social relations (for example, by defining the strategy to combat offences;

- activity of public authorities and local self – government-by definition of the main directions of implementation of the powers by them (according to their competence);

- law enforcement - justifying the limits of legal regulation and determining the priority areas of activity of law enforcement entities through the identification of the main trends in the practice of their application of substantive and procedural law.

The objects of law enforcement practice are also legal and physical persons: both in terms of positive legal liability and in situations of legal response to their offenses.

3. Modeling of the main directions of realization of the right.

The study of the designated area of the methodology of law enforcement policy related to conceptual modeling in the legislation can be conditionally structured from the point of view of legal policy in General and law-making policy in particular. This will allow in the course of further research activities to identify new opportunities for the use of modeling in the study of these phenomena.

Our research approach includes the following main positions that constitute its axiomatics:

- application of law is an integral part of legal policy;

- modeling of law enforcement policy is based not only on the application of law, but also on law-making activities (otherwise, the allocation of such a methodological subsystem as modeling, in General, is impractical);

- modeling as a method of law enforcement policy consists of four main stages: development and development of the method, development and development of the model (the concept, which is included in the framework of law enforcement policy); forecasting the results of its implementation; testing the developed model; evaluation of the result.

Note that the structure of transfer of modeling methods is determined by the theory of information systems, in which the above principles are given in relation to a particular stage of modeling [10, p. 18-24]. Thus, the main attention should be paid to such interdisciplinary methods as metamodeling, multi-perspective modeling, reference modeling, etc.

A distinction should be made between the modeling of law enforcement policy in accordance with these stages:

1. Development and development of the method. This stage is characterized by the development of methods for modeling law enforcement policy through the creation of a system of approaches to the development of such models, their adaptation to the conditions of legal reality.

2. Development of the model. If in relation to law-making policy the method involves the development of legislation through the design and management of variants of models of laws [11, p. 724], in the law enforcement aspect, it means the use of these models in the context of legal practice.

3. Legal forecasting, which, firstly, involves expanding the range of existing practice of legal expertise of normative legal acts and their projects (in particular, anti-corruption expertise). Such extensions can be realized by introduction to the legal practice of full-fledged Institute of criminological expertise [12].

Secondly, any significant decision in the field of law enforcement also requires a Pro-Gnostic assessment: in particular, obtaining answers to the questions: what bodies will implement the legal require-

ment; whether it will be necessary to increase their staffing, change the organizational structure, training and training; how much will be interested in the active implementation of the law enforcement establishment; the probability of blocking their activity by the actions of offenders (bribery, blackmail, threats), the solution in this regard, the problems of security of employees of the competent authorities, control over their behavior.

4. Method application. In law-making policy, the considered stage of modeling is implemented at the level of creation of certain legal standards, i.e. models focused on the implementation of the guidelines approved by one or another direction of legal policy as a whole. This implementation in this aspect is presented in the form of a law. Law enforcement policy at this stage of modeling is embodied in the controlled use of the created model through the official interpretation of law (through, for example, acts of higher courts, for example, decisions of the Plenum of the Supreme Court of the Russian Federation in criminal cases). At the same time, the relevance of the relevant interpretations should be confirmed by stable law enforcement practice, otherwise there was either an incorrect interpretation of the legal norm, or there is a need to move to the initial stage of modeling or to create a new legal text (law) on the basis of the created model.

5. Result estimation. Verification of the developed model on the basis of the results of its primary application by clarifying issues such as ensuring its high quality in the development. In the aspect of law-making policy, the quality of the model should correspond to the quality of the adopted law, which is studied by assessing its legality, compliance with the rules of legal technique, timeliness and relevance of the law, etc. a poor-Quality model will lead to defective law-making or to a non-legal law [13]. For law enforcement policy, this quality is manifested in the legality of decisions of public authorities, the enforceability of such decisions and the real positive impact on the regulation of public relations.

The procedure of modeling individual law-regulating practice and interpretation of law by subjects of law enforcement as constituent parts of law enforcement requires a special reservation. Thus, in the activities of public authorities and local self-government planning of their control and Supervisory activities should be built just on the basis of interrelated modeling, firstly, the interpretation of law by law enforcement entities (for example, supervised organizations), and secondly, the practice of applying the law in the aspect of the modeled image of a particular subject of the rule of law. Taking into account the possible shortcomings in the interpretation of certain mandatory requirements will allow to focus on certain areas of activity of the supervised organization within the scope of regulation of an incorrectly interpreted legal act. The importance of modeling methods of law enforcement practice here lies in the fact that they make it possible to create a system of peculiar indicators, upon detection of which the official directly carrying out the inspection can establish that there are violations of mandatory requirements.

This mechanism clearly affects the law-making activity, since in the construction of the rule of law it is necessary to foresee the mechanism of its application, i.e. to determine the potential subjects of law enforcement, the addressees of the legal prescriptions contained in the norm and their structure (socio-demographic, geo-graphic, etc.) [14, p. 10-12]. In this regard, the objective of the law enforcement policy methodology is that it:

- makes the selection of random elements of modeling and forecasting, and as it discards all that does not fall into the scope of its attention;

- collects in a single system designated a priori disparate elements of activity on the construction of models of law enforcement policy, in connection with which this aspect of the methodology and allows not only to analyze the existing objective reality, but also to determine the future state of practice of the right.

4. Concretization of the General strategy of implementation of legal regulations.

During the development of a certain direction of legal regulation, the subjects of legislative initiative sometimes have to resort to such a technique as the creation of acts, the main purpose of which is to consolidate the guiding principles of legal regulation in a particular area. For example, the Concept of counter-terrorism in Russia, approved by the President of the Russian Federation on October 5, 2009, as follows from its text, defines the basic principles of state policy in the field of counter-terrorism in the Russian Federation, the purpose, objectives and directions of further development of the national system of counter-terrorism in the Russian Federation. As a rule, such strategies (concepts, plans) represent a set of fundamental ideas, which, firstly, reflect the current state of law enforcement practice, and secondly, assess the

immediate prospects for such a state. It is assumed that such concepts are one of the main guarantees of the integrity of the legal system, since they are to some extent an obstacle to both rash lawmaking and un-systematic rule-making work of state and municipal authorities, which predetermines the characterization of such a method as restrictive. At the same time, within this aspect of the issue, the method of specifying General legal concepts should be strictly separated from the issues of forming such strategic documents, since its tasks are to demonstrate how a particular document of a conceptual nature works, as well as to explain what kind of law enforcement or legislative work requires a particular provision of this document.

Thus, one of the options for specifying the legal documents of a strategic nature is the means of implementing the provisions of the legislation in practice. The historical practice of the Soviet period shows that such means can be campaigns (campaign against non-labor income, etc.), which are characterized by positive features determined by a specific direction of influence and concentration of legal policy in one area, and negative (this means of legal implementation can have a pronounced political selectivity). Note that the need for such an approach should be determined by the real state of the situation, for example, wartime conditions.

Universally applicable conceptual models should generally be the most complete reflection of best practice. At the same time, the political component is inherent in legal regulation, since the law as a whole is based on state coercion, the boundaries of which are determined, in particular, by the form of the state structure. At the same time, consideration of law as a way of organizing social order through the use of force by the state raises a number of questions about on the basis of what and in whose interests such force is used. It seems that the opinion of those scientists who connect this problem with the concept of free will is quite fair. Due to the fact that free will is understood as an anthropological constant that charac-terizes the essence of man, the law must necessarily be derived from free will [15, p. 40-43]. Socialist and Communist doctrines of the nineteenth century in this issue are based on the class character of the state and law. The latter was seen as a means of maintaining the order of social relations in which the ruling class is interested. Thus, exploitation was presented as the deep essence of the will of the legislator, in connec-tion with which the law was distinguished class-volitional element. It should be noted that the considera-tion of law through the prism of the will of the ruling class, the legislator, the political will has significant objective grounds (historical experience of political censorship, suppression of the working class through law). It should be noted that political will may also be influenced by external factors (in democratic States public opinion often plays the role of such a factor). Russian law-making and law-enforcement practice is often free of such factors in words, which causes both justified claims from the public and criticism of scien-tists. Declaratively fixed possibilities of science to influence law-making practice are not always really taken into account by the legislator in law-making activity. The impact of scientific developments on law en-forcement policy has been reduced to zero.

5. Identification of trends in law enforcement practice.

In assessing the current state of law enforcement policy and trends in its further development, as well as in the analysis of available resources of law enforcement activity, it is necessary to investigate the practice of implementation of legal norms by determining its dynamics. This direction of the methodology of law enforcement policy is closely related to the issues of law enforcement monitoring, the legal basis of which is defined by the decree of the President of the Russian Federation of May 20, 2011 № 657 "on mon-itoring of law enforcement in the Russian Federation". Thus, under the monitoring of law enforcement is understood as a coherent and planned activities undertaken by Federal Executive authorities and Executive authorities of constituent entities of the Russian Federation (within its authority) for the collection, compi-lation, analysis and evaluation of information for the purposes of adoption (publication), modified or recognition become invalid for laws and other normative legal acts. From the point of view of the subject composition, law enforcement is monitored by the President of the Russian Federation, the Government of the Russian Federation, the Federal Executive body in the field of justice, Federal Executive bodies, the In-vestigative Committee of the Russian Federation, public authorities of the Russian Federation on a planned basis. In addition, the constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the Prosecutor General's office and others have the right to monitor law enforcement on an initiative basis. In the literature, assumptions are made about the incompleteness of the subjective part of the activities of the enforcement monitoring [16, p. 123-129].

The objects of such monitoring are normative legal acts, including normative legal acts of the President of the Russian Federation, the Government of the Russian Federation, Federal bodies of Executive power, other state bodies, public authorities of the subjects of the Russian Federation and municipal legal acts.

It should be borne in mind that law enforcement as such is objectified in the materials of investigative and judicial practice, the practice of prosecutorial supervision, the activities of Federal and regional public authorities. An obvious problem is the openness of the activities of these bodies (although in a certain respect there is a tendency to improve the situation, as evidenced by the creation of the Prosecutor General's office of the Russian Federation information and telecommunications service "Ether", through which the analytical information of the Prosecutor's office is placed [17]).

Generalization of the main trends of law enforcement practice is based on:
- determining the main objectives of such a generalization;
- selection of objects of study;
- development of basic research tools (questionnaires, collection of acts of law enforcement, etc.));
- classification of the information received, its distribution according to various criteria;
- analysis and comparison of the information received.

Legal monitoring, which is defined as a complex activity on the analysis, assessment, generalization and forecast of the state of legislation, which can be aimed at controlling the provision and consolidation of important elements of preparation, creation, adoption and enforcement of regulatory legal acts (procedural monitoring); to monitor the implementation of additions, changes, cancellation of the current regulatory legal act (production monitoring) should be distinguished from the monitoring of law enforcement aimed at studying the state of the implementation of the law.); also, legal monitoring can be focused on identifying the links of the controlled regulatory legal act with the existing rules on identical relations (system-structural monitoring) [18, p. 38].

6. Correction of trends in law enforcement practice.

Configuring policy enforcement mechanism is possible through the integration of the results produced in the framework of enforcement policy and analytical activities in law-making, and by changing the vector of activities of public authorities. For example, the results of the state systematization of the results of law enforcement should be considered information and analytical documents of the Prosecutor General's office of the Russian Federation and other authorities, reviews of judicial practice and newsletters of the courts of the Russian Federation and the Supreme Court of the Russian Federation, which contain indications of defects in the practice of law. It should be noted that the systematization carried out by the state bodies is the basis of the methodology of law enforcement policy, since only it has the greatest potential both in terms of the collection and synthesis of information, and from the standpoint of the implementation of the results of such systematization in law enforcement practice. The results of the analysis of the practice of law enforcement carried out by other non-state actors should be taken into account by these bodies in the implementation of relevant activities. This allows us to say that this aspect of the methodology of law enforcement policy has a pronounced information function, as it allows the subjects of law to accurately determine what their behavior should be in order to meet the requirements of the law. "It is no coincidence that practicing lawyers are guided by the practice of not less than the normative legal information" - indicates Panchenko [19, p. 6-9].

The above issues of law enforcement monitoring as an integral part of the methodology of law enforcement policy are closely related to more specific problems of monitoring, evaluation and forecasting of social phenomena in the context of criminal policy. In this regard, the objectives of such monitoring are not only to obtain comprehensive information on crime, its causes, the results of the fight against it, but also to adjust the relevant conclusions [20, p. 46].

Meanwhile, the practice of correction of law enforcement policy testifies to the limited use of the results of law enforcement monitoring, which is often reduced to the study of official statistics. So, Babayev M. M. and J. E. Pudovochkin noted that "the decisions of the legislator about the transformation of the criminal law, dressed in clothes of humanization and liberalization of the deprived, thus, the real social and economic reasons, and because you can't shake the feeling that they are in fact unjustified and premature" [21, p. 194]. This provision is justified by the role of official statistical reporting, from which it follows that if

the existing rate of crime reduction is maintained, it should disappear by 2020 [21, p. 195]. The use of such" results " in determining the course of criminal policy and in making management decisions compromises such legal policy as a whole.

7. Scientific and methodological support of law enforcement policy.

The methodology of law enforcement policy will be clearly incomplete without the introduction of legal research methods. At the same time, this approach opens up a discussion on which direction of the methodology of legal science should be used in the framework of law enforcement policy. Thus, it is quite viable not only traditional for the domestic science areas of methodology, but also the traditions of foreign jurisprudence, such as positivism, exegetic legal tradition (aimed at identifying the true will of the legislator), interdisciplinary approach (consideration of legal prescriptions in the context of related both legal and other social institutions), sociology of law, constructive ideas of postmodernism, etc. the Choice of an approach, in our opinion, is determined by such factors as:

- communication of specific approaches and methods in different types of research;
- a deeper study of one of the approaches (methods) in the aspect of a specific legal study.

At the same time, scientific and methodological support as a method of law enforcement policy is expressed in various legal studies, such as:

- methodological-study of the question of whether the law really works and whether the mechanism of its action is consistent with the moral, political, economic goals laid down by the legislator;
- commentators-disclosure of the law;
- empirical-determination of the mechanism of action of the considered law and determination of the most adequate legal means to achieve the goals defined by this law in specific social and legal conditions;
- search-study of new areas of legal research on the basis of identified problems and trends in law enforcement practice;
- expert research - legal examination of the legal act, its assessment from the standpoint of its legality, legal technique, the rules of the Russian literary language, the requirements of formal logic.

It should be noted that although doctrinal research varies from descriptive, containing comments on a number of regulations to in-depth theoretical work focused on the systematization of the existing normative material and practice of its application, this does not mean that a less complex study is less valuable. On the contrary, they form the basis for fundamental research, the importance of which is great both for domestic legal regulation and from the international political point of view. In particular, the importance of Russian criminal law thought for the formation of international criminal policy is predetermined by many factors, since it contains arguments justifying the policy of combating crime in the format in which it is justified from the point of view of the interests of the Russian Federation [22, p. 183].

The second side of the considered element of the methodology of law enforcement policy is the issue of training of qualified personnel, capable in their professional qualities to perform work to ensure the implementation of law enforcement policy. To date, legal education makes an attempt to combine as much as possible, the study of the actual practice of law and internal analysis of the legal system, isolated from any external context (which is more typical of the French doctrine of legal education). At the same time, the law is largely removed from the real state of social relations, and social problems are presented as purely legal, that is, potentially solvable exclusively by law and nothing else. Of course, this approach leads only to the formation of students ' idealized and artificial ideas about the real practice of the law, where the formulated problems are solved without the necessary connection with reality. However, V. Yu. Panchenko notes that the application of law, unlike many other activities in the legal sphere, is close to the economic, political, social and other needs of people and organizations [19, p. 7]. A more fruitful approach is to take into account the real dimension of social science, which includes the formation of the skill of carrying out complex, interdisciplinary research. This is possible, among other things, through the full study of such disciplines as criminology, legal sociology, legal psychology, legal anthropology, methods of evolutionary analysis in law, as well as through the liberation of modern legal education from the paradigm of spontaneity, chance and attention to the insignificant, characteristic of postmodern culture in General, the ephemeral nature of which is confirmed by its deconstructive nature.

The considered directions of the methodology of law enforcement policy, as it is presented, reflect the complexity of this phenomenon, formed and law enforcement practice, and its needs. This determines the need for further definition of different sides of the methodological basis of law enforcement policy in the course of scientific discourse, as well as a more complete definition of its place in the structure of legal policy as a whole.

8. Conclusions.

1. Law enforcement policy is a state strategy that defines the main directions, methods and means of implementation of legal regulations.

2. From the standpoint of a systematic approach, law enforcement policy is a system of management type, which distinguishes three elements: subject, object and means (methods).

3. The methodology of law enforcement policy includes a system of methods:

(a) modelling the main directions of the implementation of the law;

b) development of a General strategy for the implementation of legal regulations;

C) identification of trends in law enforcement practice;

d) correction of trends in law enforcement practice;

e) scientific and methodological support of law enforcement policy.

4. The necessary consideration of modeling as a method of law enforcement practice raises questions about what methods of development can be used to create new models in the field of legal regulation, as well as which of the existing methods are applicable to the implementation of law, but can be adapted to the creation of models of law-making policy. The main idea here is to ensure the transfer of methods of information systems theory in the field of modeling of law enforcement policy.

5. The methodology of law enforcement policy has a close connection with legal policy in General, which gives reason to recognize the exceptional importance for the law enforcement of legal declarations recognized by mankind.

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