

CONSTITUTIONALIZATION OF LEGAL POLICY IN MODERN RUSSIA

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The subject. The paper is devoted to the constitutional basis of modern legal policy.

The purpose of the paper is to confirm or disprove the hypothesis that constitutional concept of legal policy is necessary basis of reform of legal relations between constituent entities in federative state.

The methodology of the study includes general scientific methods (analysis, synthesis, comparative method, description) as well as particular academic methods (formal-legal method, interpretation of legal acts).

The main results, scope of application. The emergence and further development of a legal policy based on constitutional provisions and norms continues to impact significantly on the organization of state and local authorities. Democracy, federalism, republicanism and legalism are the four components that can form the basis for the development of the doctrinal conception of legal policy aimed to the strategic development of these constitutional axiomatic postulates. In Russia there is no clearly defined "road map", which is based on the strategic planning of the constitutional system. The Constitution of the Russian Federation contains enough inaccuracies of both legal and technical and substantive nature.

Conclusions. It is necessary to develop a concept of legal policy. Such concept is necessary basis of reform of legal relations between constituent entities in federative state.

1. Introduction.

At present, there is a tendency to constitutionalize certain legal institutions, as well as to give social and political processes and phenomena a "constitutional" character [1-5]. This is largely due to the provisions of the Constitution of the Russian Federation, which for the past 25 years sets the vector of development of the Russian state and society, determines the legal direction of the legislation.

Of course, the value of constitutional norms and provisions is obvious for the modern state, and giving any socially significant processes the property of constitutionality, or as they say "constitutionalization", is not in doubt and needs support and enforcement.

2. The constitutional basis of the doctrinal concept of legal policy.

In this regard, the emergence and further development of legal policy [6-9], based on constitutional provisions and norms, continues to have a significant impact on the organization of public authorities and local self-government [10-11]. The foundations of the constitutional system constitute a matrix of state and legal relations and contain a new model of the domestic organization of public power, which is based on the fundamental postulates, which in turn act as constitutional characteristics. We are talking about the proclamation of the Russian Federation as a democratic, legal, Federal state with a Republican form of government.

Democracy should be manifested, first of all, in the creation of conditions for the development of institutions of direct democracy and other forms of political will of citizens, which ultimately determines the legitimacy of the public authorities formed at various levels. The Republican form of government, being associated with such a legal category as "democracy" is designed to ensure the political will of the majority of voters in the formation of public authorities and local self-government, the turnover, responsibility and urgency of their activities.

However, as you know the definition of what kind should be attributed to the domestic form of government is the subject of scientific debate. Most scientists-constitutionalists consider Russia as "a typical presidential-parliamentary Republic, in the organization of state power which is very peculiar features of both presidential and parliamentary Republic" [12, p. 300]. Nevertheless, the established system of organization of public power in the country should meet not only the property of legitimacy, but

also on the basis of the above to ensure the legality of the procedure as the formation of public authorities, and their own activities.

The transition to real federalism implies a harmonious, balanced division of competence between the Federal center and the regions, the establishment of principles and parameters of interaction between the Federal and state authorities of the subjects of the Federation, the main purpose of which is to create conditions for the stabilization of the political and legal environment, ensuring human rights and freedoms, and the socio-economic situation, contributing to the development of the subjects of the Federation.

The proclamation of the Russian Federation as a legal state means not just recognition of the rule of law and legislation over any other postulates and dogmas of ideological, religious and other nature, capable of undermining the legal order established by the legislation, but the dominance of the idea of law as a social value in society, without exaggeration of course its role and absolutization, in order to avoid another extreme-legal idealism.

Thus, the above-mentioned constitutional characteristics of the Russian Federation – democracy, federalism, republicanism and legalism (in this context, the idea of the rule of law and the rule of law) are four components that can form the basis for the development of a doctrinal concept of legal policy, the purpose of which will be to determine the strategic development of these constitutional axiomatic postulates of the legal system of the Russian Federation.

3. The genesis of the constitutional foundations of legal policy.

Currently, we do not have a clearly defined so-called "road map", which would be based on the strategic planning of the constitutional system. The constitutional concept of implementing the principles of democracy, federalism, republicanism and legalism is now in demand for the further development of these principles in modern Russia. For example, if we take the problems of Russian federalism, it is largely due, in our opinion, to the lack of a clearly doctrinally developed, socio-economic verified, politically sustained such a concept.

The transformation of Federal relations, which began in the early 90s of the last century, led to the destabilization of Federal relations, which was reflected in the separatist tendencies of many republics within the RSFSR in the flesh to the separation and formation of independent States. The stumbling block was the delimitation of powers, which forced the Federal centre to conclude a Federal Agreement with the constituent entities of the Federation on 31 March 1992, which set out the framework for the distribution of their competence, depending on the specific legal status of the constituent entity of the Federation.

The adoption of the Constitution of the Russian Federation in 1993 was also accompanied by political confrontation, which led to an armed clash in October of the same year, between supporters of the President and the Supreme Soviet of the RSFSR.

The work of the constitutional Meeting also cannot be recognized as fully successful and effective, since many issues had to be resolved by choosing a compromise agreed between the various political forces concerned, and some issues after their constitutional consolidation gave rise to an appeal to the constitutional Court for their explanation and interpretation due to the ambiguity caused by the legal and technical content of a constitutional norm (the practice of interpretations by the Constitutional Court was quickly curtailed).

4. Inaccuracies in the Constitution of the Russian Federation, affecting legal policy.

The Constitution of the Russian Federation, as shown by the first quarter of its action, contains a number of inaccuracies of both legal and technical and substantive order [13]. In particular, the text of the Constitution of the Russian Federation lacks a number of important provisions requiring constitutional regulation:

firstly, first of all, the Constitution does not contain rules establishing the basis for the activities of public authorities of the constituent entities of the Russian Federation, including the methods of their formation and the basis of their legal status;

secondly, there are no provisions regulating the grounds, principles and procedure of intervention in strictly defined cases of the Federal center for stabilization of the situation or lawful maintenance of the regime of constitutional legality in a particular subject of the Federation, as provided by many Federal constitutions of foreign countries (Presidential rule in India, Federal intervention in Brazil, Federal coercion in Germany, etc.). In this part the provision of part 4 of article 78 of the Russian Constitution according to

which the President and the Government of the Russian Federation provide implementation of powers of the Federal government in all territory of the country looks too vague;

third, the problem of distribution of competence of the Russian Federation on the one hand and subjects of the Federation on the other, reflected in the three subjects of jurisdiction (exclusive competence of the Russian Federation, the joint competence of the Russian Federation with the subjects and the actual residual competence of the subjects) is a stumbling block on the way of development and modernization of Federal relations. The subjects of the Russian Federation are in fact deprived of their own prerogatives to address the issues of their region directly. In this aspect, it is difficult to talk about any kind of independence of the subjects of the Federation, and the decentralization of public administration in the conditions of federalization. According to the correct remark of M. V. Demidov, "real federalism is impossible without an independent system of public authorities of subjects" [14, p. 67]. The lack of elaboration of the model of Federal structure and differentiation of the subjects of jurisdiction and authority between the Russian Federation and its subjects is caused by the uncertainty of the model of Russian federalism.;

fourth, the effect of "complex" subjects of the Federation, expressed in particular the legal status of the Autonomous districts that make up the region or region;

fifth, the text of the Constitution does not say anything in essence about the fundamentals of the budget, tax and financial policy of the Russian Federation, as well as about the fundamentals of regional policy with a strategic focus;

sixth, the unsolved nature of the national form of government still raises problems of the organization of public power in the country and leads to the emergence of other issues relating to the competent distribution of powers between the highest bodies of state power, and between the Federal and regional bodies of state power. And this is not the whole list of issues that should be regulated and resolved during the drafting of the Constitution of the Russian Federation.

5. Summary.

Thus, a lot of unsolved problems and issues remain today, and delaying their solution only worsens the current situation for the further development of the Federal principles established in the Constitution of the Russian Federation. It seems to be true that the norms of the Constitution should contain the basis of the legal status of public authorities, namely the way of their formation, the principles of functioning and interaction with other public authorities and authorities. The existence of such constitutional norms will ensure a certain stability in the system of state authorities at the Federal and regional levels.

As we can see, the lack of a full-fledged concept of legal policy significantly affects the activities of the state authorities of the Federation and its subjects, the development of institutions of democracy and the embodiment of the idea of the rule of law. We believe that the time has come to develop a concept of legal policy, which will be one of the elements of further reform of Federal relations, based primarily on the domestic experience of the functioning of public authorities and management. For example, the regional legal policy implemented by the Federal center together with the subjects in relation to the subjects of the Russian Federation can be based only on the constitutional principles of the organization of public power, constitutional norms prescribing relations between the Russian Federation and its subjects in the delimitation of the subjects of jurisdiction and powers that need additions and correlation. These and other issues should be reflected in the constitutional text.

It should be noted that, in our opinion, a significant difference in the legal policy pursued during the Soviet period is that at present, such a policy is possible only if it is based on constitutional provisions and norms.

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