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LEGAL POLICY IN THE ECONOMIC SPHERE: CURRENT CHALLENGES AND FUTURE TRENDS

Abstract. The article analyzes the existing definitions of legal policy in the economic sphere and based on their own definition is given, investigated the essential features of the legal policy in the economic sphere of modern Ukraine, revealed the circle of subjects, implementing a legal policy in the economic sphere. Also, the factors which influence the legal policy of Ukraine in the economic sphere were found out and analyzed by the authors, and also the contents of the problems and contradictions arising on their basis were revealed. The authors proposed the priority directions of the legal policy of Ukraine in the economic sphere in the future.

Keywords: legal policy; economic sphere; economic relations; state; legislation; legal regulation; subjects of legal policy in the economic sphere.

JEL Classification M15, A2, M31

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ПРАВОВА ПОЛІТИКА В ЕКОНОМІЧНІЙ СФЕРІ: СУЧАСНІ ВИКЛИКИ І МАЙБУТНІ ТЕНДЕНЦІЇ

Анотація. Проаналізовано наявні визначення правової політики і на їхньому підґрунті наведено власне визначення правової політики в економічній сфері, досліджено сутнісні особливості правової політики в економічній сфері сучасної України, виявлено коло суб'єктів, які здійснюють правову політику в економічній сфері. Також з'ясовані та проаналізовані фактори, що впливають на правову політику України в економічній сфері, а також розкривають зміст проблем і протиріч, які виникають на їхній основі. Авторами запропоновано пріоритетні напрями правової політики України в економічній сфері на майбутнє.

Ключові слова: правова політика, економічна сфера, економічні відносини, країна, право, правове регулювання, суб'єкти правової політики в економічній сфері.

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Introduction. Legal policy occupies a special place in the system of institutions of the modern state and public system of Ukraine. This phenomenon is due to both the level of public discontent with the internal and external policy of the state, which has been growing in recent years, and a certain number of existing problems in society of social, economic, and political nature, and the need to review the current legislation to eliminate conflicts, as well as legal uncertainty in it. The interrelation of legal policy in the economic sphere and law manifests itself in the fact that the policy, including economic policy, is formed in the norms of law and is implemented through them. Since the legal policy in the economic sphere is carried out mainly by the state, and the state affects the economy through the law, the latter is a form of expression and implementation of the relevant policy.

At the same time, it should be noted that despite the relevance of the study of legal policy in the economic sphere, there is no single definition of it in scientific works, which can be explained by the fact that this scientific category refers to both politics and law.

The object and subject of the study. The object of the study is a legal policy in the economic sphere as a special phenomenon of political-legal reality.

The subject of research is theoretical and practical issues of formation and development of legal policy; content and structure of legal policy in the economic sphere; subjects of legal policy in the economic sphere; place and role of legal policy in the economic sphere in the processes of implementation of law in modern Ukraine.

Methods and materials. To solve the tasks the authors comprehensively used structural-functional, formal-legal, comparative-legal, and other general and special scientific approaches and methods, produced by science and tested by practice. The dialectical-materialistic approach to

explaining the phenomena and processes of socio-political and state-legal reality formed the general world outlook basis of the study.

The normative-legal base of the article is the Constitution of Ukraine, as well as other normative-legal acts on the topic of research.

The complex character of the problem determined the use of a wide range of modern literature on political science, theory of state and law, sectoral legal disciplines. When preparing the article, the theoretical basis was formed by the works of Ukrainian and foreign authors on the economic law, history, and theory of law and state, in particular, Dohvert (2019); Muzyka (2021); Harmathy (2021) [9], and others.

Results. In Ukraine, it acquires particular importance considering modernization processes that take place in the social space, globalization trends, and changes in ideological foundations, as well as due to the transition to a new model of development of statehood [9].

Thus, a thorough study of the problem of legal policy of the state in the conditions of transformation of society requires a new approach for modern jurisprudence, which would provide a comprehensive study of strategy and tactics of legal policy, principles, goals, and functions based on already available developments in the theory of state and law and value concepts and methods of other sciences [5].

The level and scale of socio-economic issues, and it is advisable to develop the issues of modernization of the national economic system, the legal economic order, require an essential improvement of the relevant conceptual and operational base [1; 2].

The term «legal policy» is often given different meanings in scientific works, depending on the context and the arbitrary discretion of the researcher. In recent years, there has been a trend that has been very fruitful for the theoretical development of the problems of legal policy. Active development of the theory of legal policy is carried out at the expense of empirical, sectoral research, especially relevant in conditions of intensive modern social dynamics. In recent years, the human rights movement has faced challenges from developments and trends throughout the world, including terrorism, right-wing nationalism, and authoritarianism [10].

Building Ukraine as a democratic, law-governed state requires, on the one hand, the acceleration of state-building processes, and, on the other hand, strict adherence to the supremacy of law, strengthening guarantees for securing and protecting the rights and freedoms of a man and a citizen. The implementation of such a course implies a high level of justice and legal culture [11].

As N.B. Patsuriia rightly notes that as a general conclusion it should be noted that a distinctive feature of modern Ukrainian legislation is that it is formed in a transformational (transitional) economy, which affects the intensity of the law-making process and is due to the need of reforming society, its transition to a market economy and the development of the rule of law [4]. Thus, it should be stated that the current degree of aggravation of the main socio-economic contradictions both in Ukraine and outside of it put in a practical, instrumental plane the problem of establishing meaningful relations between the basic for the organization of economic life categories, which are «constitutional economic order», «economic and economic-legal policy of the state», «legal economic order», «economic power and its types», «mechanism and order of distribution of economic power» and, finally, «ensuring economic power in Ukraine» [2; 3].

It is well known that economic science is the science of economic relations of people, relations of production, exchange, distribution, and consumption of material goods. The subject of legal policy in this sphere is only regularities of legal regulation of such relations. To understand the essence of legal policy it is important to define the subjects of legal policy, which carry out activities in the sphere of legal regulation and (or) implement the policy of the state in this sphere. It is necessary to pay attention to the fact that the expression «legal policy of the state» does not mean that the state is its only subject, but only emphasizes the importance of legal policy for society within a particular state. Thus, the composition of subjects of legal policy in the economic sphere requires clarification and generalization.

Subjects of the political process use positive law as a way to achieve their goals and objectives. It follows that the subjects of legal policy should be understood as citizens and public associations making efforts to influence the legal policy of the state and, under favorable

circumstances, dominate it. An analysis of the threats and failures of the democratization process in Eastern Europe provides important insights into the functioning of political institutions and their interaction with the law [14].

Overall, the large number of competing demands for (limited) public expenditure makes it difficult to ascertain the state's will to take all the appropriate measures to implement all human rights. This difficulty arises from the absence of an agreement as to what human rights should be implemented first [12].

The subjects of state legal policy in the economic sphere must meet the following basic requirements: to be relatively independent, separate persons; to function in the field of law; to have the ability to make decisions; to communicate their decisions to society; to base their decisions on strategic legal ideas; to influence the development of the legal life of society through their actions [3].

The development of jurisprudence continues to grow by the existing laws in the society which is different from the law in legal development. It is not related to the rigid nature of the law which only regulates the general nature, and the process of its formation takes a long time [13].

We can conclude that the main subjects of legal policy in the economic sphere are the state and non-state associations. Legal policy in the economic sphere is a real, objective phenomenon that is in constant development, exists in close connection with the economic, political, spiritual conditions of society, with the nature of man. Legal policy in the economic sphere has its own patterns of emergence and development. Economic policy is a purposeful system of measures of the state in the field of social production, distribution, exchange, and consumption of material and spiritual goods. It is designed to reflect the interests of society, all its social groups and is aimed at strengthening the national economy. Achievement of goals of development, successful modernization of the economy and social sphere presupposes the formation of effective mechanisms of interaction of society, business, and state, aimed at coordination of efforts of all parties, ensuring consideration of interests of various social groups of society and business in the development and implementation of socio-economic policy.

The subjects of legal policy in the economic sphere are characterized by activity, the partnership between society and government structures; each of the subjects of legal policy in the economic sphere is a set of ideas about what should be the legal life, the level of legal development of modern society; availability of necessary resources for the formation of legal policy in the economic sphere.

Subjects of legal policy in the economic sphere contribute to the most civilized and effective solution of practically significant tasks of society, economy, and state, provide reliability and stability of the emerging relations between them, the relationship of subjects of legal policy in the economic sphere with each other when addressing issues of varying complexity, thereby increasing the value and role of law, its potential in preventing conflicts in the economic sphere, because the activities of subjects of legal policy in the economic sphere is purposeful and systematic.

Given that the category of the legal policy refers to both law and policy, we can determine that these specific features are appropriate to classify as legal proper (the presence of a separate sphere of formation and implementation, the presence of legal tools), and political proper (publicity, dynamism, stability, targeted nature and effectiveness, planning, scientific validity), and also to identify the built-in political and legal (systematic, subjectivity, dependence on factors of the external and internal environment).

Law is not directly related to the economy, while politics has a closer connection with the economic basis: because of politics, the requirements of the economic basis determine the content of the law. According to the above, it should be noted that the state's volitional mediation of economic requirements and laws, as well as the formation of certain political programs on this basis, is a precondition for an adequate relationship between the economy and law. Law is a relatively independent phenomenon of social life, which allows it to influence the policy, in particular, and in the economic sphere, set the boundaries of social and economic activities of the state: the state limits itself, as it allows the subjects of civil society, the subjects of the market economy to realize the rights they have in the economic sphere, including the implementation of their business activities [9]. There is wide variation in how countries regulate the legislative and

administrative process, whether in the constitution itself, in acts of parliament that enjoy quasi-constitutional standing, for instance in terms of a qualified majority requirement for amendments, or in 'regular' laws or regulations that are nonetheless applicable for essentially all law-making and administrative decision-making [7].

The legal policy is derived from the policy of the state in certain spheres of society, including the economic sphere. The main task of the state in this sphere is not to interfere in market relations (even though sometimes this is an urgent need), but to promote business development, to protect, on the one hand, the interests of society, each citizen separately, from unscrupulous entrepreneurs, and on the other — entrepreneurs from unwarranted violation of their rights in creating and ensuring entrepreneurial freedom.

It can be argued that the managerial nature of political and legal activities provides legal policy with the status of an instrument for improving legal reality. States have to solve several administrative tasks in the legal and economic spheres — to ensure that the current legislation is updated and to eliminate gaps and conflicts, to develop legal norms for new social, particularly economic, relations, to adopt new regulatory legal acts, to amend and supplement existing regulatory legal acts, to abolish regulatory legal acts that have lost their force and are outdated, systematize legislation, monitor law enforcement, reform the activities of law-making and law enforcement agencies, courts, adjust their goals and objectives by the principles of democracy by the development and change of the content of public consciousness. Taking into account that social relations are dynamic and fast-changing, the law controlling them is also subject to transformation [8].

Legislative activity as an integral part of legal policy at the present stage in Ukraine is significantly limited to work within the legal system: the problems of the economy legislator tries to solve through the improvement of existing regulations. However, the main reason for the imperfection of legislation and its low level of effectiveness is that it does not reflect and does not solve the real needs, tasks, and goals of the economy, legal policy in the economic sphere, and the practice of its application.

The formation of generalized economic and legal categories (economic in content, legal in terms of fixing them by legal norms and giving them legal force) is an important task of law, especially economic law as a complex branch of law that regulates relations arising in the field of economic relations.

Regarding other types of classifications, it should be noted that classifications that use grounds as the goal of legal policy operate with the concept of «direction». Strengthening the judiciary power, the control of the courts, and control of constitutionality, particularly, mainly in situations where being questioned the violation of human rights or the principles of the lawful state, particularly the separation and balance of powers, can be a viable solution to ensure not only the legality of the measures taken by the state authorities but also of their legitimacy [6].

To determine the legal nature of legal policy in the economic sphere, it is necessary to determine its main characteristics. Characteristics are those essential features by which we can identify a particular object in several related objects. The minimum set of attributes must be universal, i.e., characteristic of the legal policy in the economic sphere of any state and any era. This requirement is met by the following group of characteristics of legal policy in the economic sphere: freedom, rational approach, publicity, normativity, coerciveness, consistency.

Will is an attribute of the political sphere, the basis of any power, and without this attribute, it is impossible to indicate the political nature of a particular action. The rational approach means that the will of the subject is directed to specific goals that have a rational character and rational justification, and outside the rational aspect, we are talking about spontaneous unconscious actions, random in nature. Before the emergence of the public sphere, that is, before the emergence of the state, economy, in the modern sense of the word, and positive law, the activity associated with the creation and modification of the latter was impossible — the legal life of the tribal system was based on custom, the essence of which was to repeat as precisely as possible, to reproduce specific patterns of behavior.

The normative nature of legal policy in the economic sphere is associated with the fact that the norms are the object, tool, or goal of the political-legal activity, particularly in the economic

sphere. The coercive nature of legal policy in the economic sphere implies that economic norms are secured by state coercion, and the systemic nature of the economic activity allows us to demarcate simple reactivity from politico-legal actions.

In addition to the universal features of legal policy in the economic sphere, it is possible to identify specific features of the legal policy apart that are characteristic of certain historical periods and regions. An example is the religious (theological) legal nature of the policy of medieval Europe or in the family of Muslim law. However, this feature distinguishes the legal policy of any state in the corresponding chronological and geographical framework, but in the historical and planetary scales, it is not common.

Discussion. In the course of the study, the authors achieved their goals and objectives. The legal policy can be defined as a consistent, with a high level of legitimacy, activities of the subjects of state power to create and implement a legal model, which includes a mechanism of legal regulation and ensures the observance of human rights and freedoms and the formation of legal culture, carried out by public authorities, which, as the main tool that uses regulatory and legal acts.

Legal policy in the sphere of economic activity is a set of actions aimed at influencing or controlling the behavior of the economy. This type of policy is usually implemented and administered by the government, the state. Examples of legal policy on economic activity include decisions about government spending and taxation, redistribution of income from the rich to the poor, and the supply of money. The effectiveness of the legal policy on economic activity can be evaluated in one of two ways, known as positive and normative economics. Positive economics attempts to describe how economics and economic policy work without resorting to value judgments of best outcomes. The hallmark of positive economics hypotheses is that they can be tested and confirmed or disproved. For example, the hypothesis that an increase in the supply of money leads to an increase in prices belongs to the realm of positive economics because it can be tested by examining data on the supply of money and the price level. Normative economics involves the use of value judgments to evaluate the efficiency of the economy and economic policy. Consequently, normative economic hypotheses cannot be tested. For example, the hypothesis that the inflation rate is too high falls within the realm of normative economics because it is based on value judgments and therefore cannot be tested, confirmed or disproved. Not surprisingly, most disagreement among economists concerns normative economic hypotheses. The goals of legal policy in the economic sphere consist of value judgments about what economic policy should seek to achieve, and therefore fall under the category of normative economics. Although there is much disagreement about the relevant goals of economic policy, some are wide, though not universally, accepted. These generally accepted goals include:

1. Economic growth: economic growth means that the income of all consumers and businesspeople (after accounting for inflation) increases over time.
2. Full employment: the goal of full employment is that every member of the labor force who wants to work can find a job.
3. Price stability: the goal of price stability is to prevent the general price level, known as inflation, from rising and the general price level, known as deflation, from falling.

The content of legal policy in the economic sphere should include a set of legal concepts and doctrines that define the priorities of state and public life.

The totality of these priorities (the most important social values that are under the protection of the state) forms a system of state-legal regulation of social, particularly economic relations, both already existing and just emerging.

The main, but not the only subject of legal policy in the economic sphere is the state in the person of state authorities, accordingly, the main feature of the subject of legal policy can be defined as law-making. In the field of legal policy in the economic sphere, the competence of local authorities is limited to law enforcement, as they implement the legal policy developed by state authorities.

Regarding the basic components of the political-legal reality, they can include the goal, the means, the interaction of the subject and the object, the predictable and real results. However, the process of the increasing complexity of social relations affects the components of legal policy and

requires the development of new methodological foundations, as there is a need to review ideas, concepts, and theories, both existing and the justification of emerging.

The form of the legal policy can be defined as a complex of interdependent, although formally separated, relevant taken together regulated relations based on the application of law norms with the help of political techniques to implement the objectives of legal policy in the economic sphere in a particular area of society.

The main forms of legal policy in the economic sphere include law-making legal policy in the economic sphere, expressed in the creation and reproduction using political techniques of necessary and sufficient conditions for the formation and development of legislation in a particular area of law; law enforcement legal policy in the economic sphere aimed at the formation and maintenance of law enforcement practice, observance of the rule of law, human and civil rights and freedoms; supervision and control legal policy in the economic sphere, providing for the creation of political conditions and guarantees for the systematic implementation of the functions of the prosecutor's office, supervision and control bodies in a certain area economic relations; legal support for the functioning of state bodies related to the formation, application of the rule of law in a certain area of social relations, the creation of legal conditions for the implementation of the goals of domestic legislation by these bodies, obstacles to the commission of illegal actions on their part; a legal doctrinal policy in the economic sphere designed to eliminate the contradiction between the current norms of law, as well as between them and possible programs, concepts for the development of certain economic relations in Ukraine; legal policy in the field of organizing scientific activities and education, providing for the creation of a legal basis for conducting fundamental and applied research in a certain area of economic relations (activities of universities, research institutes, implementation of scientific projects and grants).

Conclusions. We can conclude that the legal policy in the economic sphere at the present stage must be adequate to the level and dynamics of development of social relations in Ukraine, during its formation it is necessary to take into account public opinion. Otherwise, there may be difficulties in the implementation of strategic ideas and, ultimately, the goals of legal policy in the economic sphere will not be achieved. The reference point of legal policy in the economic sphere is universal values that are important for the development and existence of society and the state.

The main task of the current stage of implementation of legal policy in the economic sphere in Ukraine is the definition, scientific justification, and normative-legal consolidation of the general concept of development of the legal policy of the state, able to form a strong state of law and civil society.

For modern legal policy in the economic sphere the main values can be found such as the development of a legal country; strengthening civil society institutions; development of legal forms of relations between society and the state; real assurance and protection of human rights; strengthening and preservation of national and cultural traditions; providing social assistance to the population; strengthening state sovereignty under international pressure; building information policy; supporting demographic growth of the population.

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