



Legal Policy, Legal Order and Civic Oversight in the Penal System

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Abstract. *Introduction:* the study of the state of legal order in various branches and institutions of Russian law is both a theoretical and an applied issue. Finding a solution to this issue affects the efficiency of organizing legal regulation of civic relations. The categories of legal policy and legal order are of key importance in this regard. They are not only mutually dependent, but also necessary for understanding the ways to improve the efficiency of civic oversight of the penitentiary system. *Methods:* we use dogmatic and legal analysis of scientific theoretical and legal concepts and formal and legal analysis of the current legislation. *Results:* legal order stems from the implementation of legal policy of the state in the system of legal norms, procedures for their implementation and results of their fulfillment. The use of philosophical categories such as “form” and “content” allows us to identify characteristic features of legal policy as a scientific concept. We prove that it is advisable to distinguish legal policy forms depending on the stages of regulation rather than on the types of legal activity. The stage of rational law-forming process corresponds to the “non-normative” form of legal policy, which consists in the adoption of various concepts and strategies for development; law-making as a stage at which the rule of law is established launches the mechanism for its general application and is accompanied by the “normative” form; the implementation of norms is seen as a final stage of regulation, which is characterized by the presence of casual legal policy. The content of legal policy constitutes a unity of goals, means and principles of activity. *Discussion:* we focus mainly on analyzing the content of normative legal policy in the sphere of civic oversight of the activities of Russia’s penal system. Content-related specifics of this form of legal policy are determined by the features of the subject and method of regulation and are viewed as principles that are not directly enacted in the legislation, but follow from its “spirit” and meaning. These principles allow us to form an objective view of the content of legal order.

Keywords: legal policy; legal order; civic oversight; penal system of the Russian Federation; non-governmental monitoring commissions.

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Introduction

Studying legal order in various areas of legal regulation is of great theoretical and applied importance. Civic oversight of the activities of Russia’s penal system is no exception. Legal regulation of civic oversight has become system-wide since 2008 [9], but the practice of norms implementation has revealed a number of issues that reduce the level of legal order. It seems possible

to understand the nature of some of those issues through the prism of legal policy.

Legal policy directs legal life onto the right track, modifies and improves it in accordance with the goals, objectives and priorities that the state faces at this stage of society development [5; p. 41].

Legal policy embodies the unity of legal ideals, law and the practice of its application. We

agree with Sarah Armstrong who points out that politics is an important means by which human rights are guaranteed in prison. Human rights violations in prison are often caused by poorly implemented or absent policies, but questions rarely arise about the technical aspects of policies and how they shape the concrete means for implementing the ideal of law [16]. That is why legal policy is of great methodological importance in studying the state of legal order.

Legal science has different approaches to the concept of “legal policy”. We share the viewpoint of E.A. Bogoslavskii and A.G. Ertel’, who argue that the modern understanding of the category “legal policy” is multifaceted and is used in legal science in several different semantic contexts. Having analyzed scientific opinions on this subject, we can speak of legal policy as a special type of state policy, a special phenomenon and in general – a powerful means to transform civic relations [2; p. 30].

Let us consider some approaches and formulate our own point of view.

N.I. Matuzov puts forward an extremely brief, but succinct definition. Thus, the researcher believes that legal policy is a set of goals, measures, tasks, programs, and attitudes implemented in the field of law and through law [7; p. 34].

A.V. Mal’ko proposes a more detailed definition. According to the researcher, legal policy is a scientifically based, consistent and system-wide activity of state bodies and civil society institutions, and its goal is to create an effective mechanism for legal regulation and use legal means in a civilized manner to achieve such goals as the most comprehensive protection of human and civil rights and freedoms, formation of legal statehood and a high level of legal culture and legal life of society and the individual [6; p. 41].

If we compare the two definitions, we can see that the former is neutral, while the latter has a more social orientation. A.V. Mal’ko emphasizes the need to achieve the most important humanistic goals of law. On the one hand, this aspiration deserves approval, but at the same time it draws an idealistic picture of legal policy, the idea of it as a kind of ideal. In our opinion, this can be a serious flaw in the assessment of actual politics, since it does not always correspond to high moral ideals.

In our opinion, in understanding legal policy it is important to proceed from the following features: first, legal policy can be considered a separate type of state policy; second, legal

policy is based on, and at the same time determines, legal regulation; third, legal policy reflects the ideals and values that serve as a reference point for the creation of legal norms; fourth, the existing norms serve as an embodiment of legal policy. Based on these most general characteristics, we put forward the following definition: legal policy is a policy that the state implements in the field of planning, organizing and implementing legal regulation through program-ideological, regulatory and individual legal prescriptions.

Legal order is a specific result of the action of law, and in this sense it reflects the extent to which legal policy goals are achieved and the adequacy of the use of legal policy means in the legal life of society. Speaking about the essence of legal order, we think that it should be seen as a multidimensional phenomenon, which characterizes the system of legal norms (public legal order), their implementation (legal procedure, i.e. the legal order of interaction between subjects) and the results of their actions, which have both social and legal nature.

Research methods

We use dogmatic analysis of the set of definitions and terms, examine theoretical approaches to the concepts of “legal policy” and “legal order”, identify the strengths and weaknesses of theoretical approaches, and form our own position. We also use the formal-legal method of analyzing the legislation that regulates the implementation of civic oversight of the activities of Russia’s penal system.

Results of the dogmatic analysis of the form and content of legal policy as a theoretical and legal category

Legal policy precedes the emergence of norms or determines the nature and general direction of their implementation, and, therefore, is essential for understanding the prerequisites for the emergence of legal order, as well as the specifics of the content of legal order.

In order to form a comprehensive understanding of how legal policy and legal order are interrelated, it is necessary to consider the specifics of the form and content of legal policy. Using paired dialectical categories “form” and “content” we can describe the legal phenomenon in its entirety, reveal its features, internal connections, as well as the features of external expression and organization of the content.

Legal policy forms depend on the stages of legal regulation. The first (pre-legal) stage

characterizes the processes of law formation, that is, the origin of the legal norm. The second stage characterizes the creation of the legal norm (law-making) and its action. Thus, on the one hand, it is necessary to distinguish the form that precedes the emergence of legal norms and is expressed in a set of ideas, values and goals enacted in program documents (strategies, concepts, plans, etc.). This form of legal policy can be conditionally called “non-normative”, since it precedes the emergence of specific norms of law. On the other hand, we should note that current legislation is also an expression of legal policy. The system of legal norms ensures stability and order in civic relations and acts as a conductor of the state will. By defining the subject and method of legal regulation, the state expresses its political interest in the development of a particular social relationship. It can be said that legal norms reflect the prevailing legal policy, which can be conditionally designated as normative.

In legal science, there is an opinion that law making and law enforcement are the main forms of legal policy. Thus, R.V. Puzikov notes that the law-making form consists in a scientifically-substantiated type of activity of state structures and civil society, which determines the strategy and tactics of law making. Law-enforcement policy describes management activities in the sphere of law implementation by using special political and legal means and is expressed in the set of program and policy measures, management tools and directions of law-enforcement practice [12].

We think that R.V. Puzikov mixes the form and type of legal policy. Law making and law enforcement are the types of legal activity within which legal policy is implemented. Therefore, it is more reasonable to consider law-making and law-enforcement policies as specific types that will be distinguished on the basis of such criterion as the type of legal activity.

Normative and non-normative forms of legal policy are of a general nature, since they are addressed personally to an indefinite range of actors. The content of general legal policy on the whole and in the sphere of civic oversight is revealed in such activities as rational law formation (that is, the publication of various concepts, development strategies) and law making.

At the same time, it is necessary to define casual forms of legal policy, which are initially related to the consideration of specific cases, and which subsequently manifest themselves as trends (precedents) in such activities as law

enforcement, law implementation and law interpretation.

For example, in Russia, the courts are now less likely to pass custodial sentences. According to the Judicial Department of the Supreme Court of the Russian Federation, incarceration in 2019 constituted only 30% of all criminal penalties [3].

Legal policy that shapes trends in law enforcement practice may not always contribute to the strengthening of the rule of law. For example, in the UK, it is common practice to impose a sentence of imprisonment for a short period of three to six months. Sarah Armstrong and Beth Weaver studied the effectiveness of short prison sentences and concluded that they were ineffective.

According to the scientists, law enforcement policy does not take into account that short prison sentences lead to a paradoxical situation. Thus, these terms seemed too easy and too harsh for the convicts, that is, they caused both little and too much pain due to the long repetition of short-term experience. The paradox of the situation is similar to that depicted in the movie *Groundhog Day*. But unlike the film, where the protagonist reacts slightly differently to the same brief moment until he reaches an epiphany that changes his life, these prisoners relived identical moments of overwhelming monotony that offer few opportunities for a successful continuation of life. Thus, the researchers consider it necessary to adjust the law enforcement policy in the direction of increasing the number of public punishments that are not associated with isolation from society [15; p. 300]

Law implementation characterizes legal policy locally, at the level of individual institutions. We agree with Harry Annison, who points out an inextricable link between “external structural changes” and “individual understanding” of legal policy [13, p. 309].

The policy-making process is random and non-linear. Unexpected events occur, and ongoing political battles set certain political goals. Belated concerns, “ostensibly about small details”, can “fundamentally affect the nature of the resulting policy”. The decision of a junior civil servant, or the impact of one parliamentary statement, can alter dramatically the course of penal policy [15; p. 313].

This leads to an important conclusion that legal policy should affect not only the sphere of external changes, in this case the system of legal regulation (regulatory and individual lev-

els), but also the sphere of legal culture of employees involved in the implementation of penal norms.

In the same context, a collective article by Alison Liebling, Ben Laws, and other scientists who analyzed the experience of HM Prison Warren Hill, is of interest. The authors note that HMP Warren Hill is a small prison on the Suffolk coast with a distinctive ethos and a unique regime. Most of the 244 prisoners are serving imprisonment for public protection (IPP) or life sentences. The experience of the prison illustrates the fact that politics, as a combination of individual beliefs of prison staff in the value of norms and trust in prisoners can influence the nature of law enforcement practices. The authors of the article point out that staff were in control of the prison, and prisoners were aware of rules and boundaries, but the regime did not feel oppressive or stifling. Authority was deployed through relationships founded on mutual respect. The regime helped prisoners find individual and meaningful routes for change, through the arts, groupwork and projects [14; p. 106]

Staff knew their prisoners well, were able to recognize subtle changes in their demeanor, and had the emotional confidence to broach concerns empathetically. This signaled to prisoners that their feelings mattered, and conveyed a sense of 'true care' [14; p. 113].

Thus, the attitude of staff toward their professional duties indicates the level of their legal culture and inevitably leads to the formation of casual legal policy as a certain set of principles and ideas that serve as the basis for decision-making at the local level of an individual institution.

Legal interpretation activities are also related to legal policy. The case-law decisions of the European Court of Human Rights (hereinafter referred to as the ECHR) can serve as a vivid illustration.

For example, in foreign legal literature we can find wide discussions of a decision of the ECHR that alters dramatically the legal policy in the implementation of the European Arrest Warrant.

The Court recognized that in cases of a serious risk of inhumane treatment in the prisons of the issuing Member State, the transfer procedure in the executing Member State should be suspended until sufficient additional information reduces this risk [19; p. 103]. Jannemieke Ouwerkerk draws attention to the fact that this decision undermines mutual trust among Euro-

pean countries; in addition, there is uncertainty about the duration of a person's detention and the possibility of release if there is no data on the absence of a threat of torture and other serious human rights violations.

In Russia, the precedent-based nature of the ECHR decisions also affects prison policy. For example, the ECHR Judgment of June 30, 2015 "Khoroshenko v. the Russian Federation" (complaint No. 41418/04) considered the complaint of an applicant serving a life prison sentence against restrictions on contacts with family members provided for by the strict regime of detention in a special regime colony. The ECHR concluded that "the strictly punitive and isolationist goals of the contested legislation of the Russian Federation on the inmate visitation right of a prisoner are illegal. ... Given the systemic effect of this Regulation in the national system of the Russian Federation, it is also important for the respondent State to bring its legislation on the inmate visitation right of prisoners in line with international standards" [4].

Subsequently, a decision of the Constitutional Court of the Russian Federation [11] was adopted, as well as the Federal Law [8]; these regulations introduced the necessary changes in the RF Penal Enforcement Code and provided convicts with additional warranties. For example, prisoners serving sentences on a strict regime in prisons are allowed to have one long-term visitation during the year (in addition to two short-term ones).

Having considered the forms of legal policy that may be non-normative, normative and casual, we will proceed to the analysis of the content of legal policy.

The notion of "form" reveals specific features of organizing legal policy, and the notion of "content" characterizes the whole range of its constituent elements. In this regard, the content of legal policy is related to the most general guidelines and principles. In this way legal policy differs from the norms of law and individual legal regulations. Due to the fact that legal policy always reflects the ideals, values and goals of development, its content is characterized by variability and uncertainty.

We believe that the unity of the goal, means and principles of activity can be considered as a universal content of legal policy.

The non-normative form of legal policy does not have direct legal significance; it cannot generate legal consequences in legal practice, but at the same time it serves as an important source of law formation. On a system-wide ba-

sis non-normative legal policy in the sphere of civic oversight of the activities of the Russian penal system is defined in the Concept for development of the penal system until 2020 [9].

The comprehensive and system-wide nature of the Concept is provided by the ideological unity of the goal, tasks and means of their achievement. Taken together, they form the content of non-normative legal policy. Conceptual ideas, i.e. development ideas, are the means to achieve the goal and fulfill the tasks. In relation to current legislation they act as principles and fundamental ideas for its improvement.

Humanizing incarceration conditions, as a goal of the Concept, is a prime strategy for development of the Russian penal system, in the framework of which the civic oversight institution plays a major role. Specifying the goal of the Concept, one of its tasks provides for the need to ensure transparency of the penal system and expand cooperation with civil society. This task is specified in Paragraph 6 of Section 3 "Major directions for development of the penal system"; having reviewed this paragraph, we distinguish the following principles in the content of non-normative legal policy: first, the necessity to develop diverse forms of participation of civil society institutions in the work of the penal system; second, organizing and implementing cooperation between civic oversight and cooperation institutions; third, the need to develop public assessment of the functioning of the penal system, which should become one of the indicators of its performance efficiency.

The content of normative legal policy is revealed through the set of basic norms that define regulation goals and principles. For example, according to Part 1 of Article 6 of the Federal Law "On civic oversight of human rights protection in detention facilities and on providing aid to persons held in detention facilities" [10], the purpose of civic supervisory committees is to promote the implementation of governmental policy in the sphere of human rights protection in detention facilities. Part 1 of Article 4 of the Law defines the following principles of this activity: priority of human rights, voluntary involvement, equality, objectivity and legitimacy.

In Western Europe, reintegration is becoming the main principle of legal policy. For instance, Sonja Meijer points out that reintegration is a positive obligation of the state, it expresses the essence of legal policy of the state and applies to all prisoners, even those who are sentenced to life imprisonment [18; p. 149]. The author

makes this conclusion based on the analysis of decisions of the European Court of Human Rights and constitutional norms. For instance, under the Constitution of Spain, prison sentences should be focused on re-education and social rehabilitation of criminals [18; p. 152]

In Germany, social reintegration is based on the fundamental provisions of the Basic Law. Thus, resocialization principle is derived from the idea of constitutional respect for human dignity: people have the right to dignity and the right to the free development of their personality (Articles 1 and 2 of the Basic Law). In addition, social reintegration is considered as a goal that the penal system should aspire to achieve in accordance with the constitutional principle of the "welfare state" [18; p. 153]

At the same time, Sonja Meijer points out the heterogeneity in the understanding of social reintegration principles. For example, in The Netherlands, this idea differs significantly from that in Germany and is not applied to everyone, but only to prisoners who are interested in reformation and who take part in rehabilitation activities [18; p. 154].

These provisions indicate that the content of the state's normative legal policy in the penal sphere is inextricably linked with legal principles that do not generate specific legal relations directly, but are important for understanding the spirit of legislation and its actual meaning.

The content of casual policy is defined by the level of legal culture of subjects and by the amount of discretionary powers that determine the possibility of issuing individual determinations for convicted persons. Beliefs in the need for ideas of justice, equality, and the rule of law form constructive attitudes among the staff and contribute to the observance of the rights of convicts and maintenance of legal order. The content of casual policy is formed by new and supported precedents that serve as the basis for development of further law-enforcement and law-implementing activities in correctional institutions. In this regard, an essential analysis of casual politics would be very interesting on the basis of the interpretive approach proposed by Harry Annison as a combination of belief, tradition, dilemma, and practice [13].

Discussion of the relationship between legal policy and legal order in the field of legal regulation of civic oversight of Russia's penitentiary system

While discussing the relationship between legal policy and legal order, we would like to focus on certain controversial and ambiguous issues.

Earlier we noted the presence of a close connection between normative legal policy and current legislation; moreover, we argued that the initial norms of law form its most important aspect of content. However, the content of normative legal policy cannot be reduced only to them. Normative legal policy manifests itself in the norms of law in an abstract manner, as a certain feature of the general model of legal regulation.

Having analyzed the legislation, we identify a number of principles of legal policy that are not directly enacted, but proceed from the spirit of law and from the nature of the subject and method of regulation. These principles allow us to assert that it would be wrong to identify directly the content of legal policy with the content of legal norms. The content of the principles described below expresses the political will of the state and characterizes the most important parameters of legal order. We believe that the strengthening of legal order is directly related to consistency in the implementation of these principles, and we would like to mention some of them: 1) subjectivity; 2) advisory nature; 3) autonomy; 4) constructiveness; 5) coordination and cooperation; 6) openness. Let us try and elaborate on these principles in the context of substantive aspects of legal order.

Subjectivity. The existing legal order is based on a significant restriction of civic oversight actors. We believe that restricting the range of actors that exercise civic oversight should not be considered as a violation of civil society interests. The presence of a special actor indicates a desire to streamline civic oversight, to ensure its constructive role in the functioning of state machinery.

The diversity of non-governmental organizations that are interested and involved in monitoring the penal system in one way or another required that a decision be made to streamline oversight actors. The state cannot provide a legal opportunity for any actor to monitor and check the activities of the penal system, as this will lead to significant distraction from the implementation of major tasks and thereby destabilize the system. In this regard, the ability to implement civic oversight is assigned to those entities that are defined in the legislation; these entities are non-governmental monitoring commissions (hereinafter referred to as NGMCs), civic chambers, and civic councils. At the same time, we should note that according to certain special norms (for example, Article 23 of the RF Penal Enforcement Code), NGMCs and their members are civic oversight actors; this fact indicates some inconsistency in the legislation.

To form a holistic vision of the problem, one should distinguish between the formal and the factual side. From the formal and legal side, civic oversight actors can only be those subjects that are directly specified in law. At the same time, we should point out that oversight can, in fact, come from other entities, for example, from the mass media. The publications about torture in correctional institutions of the Yaroslavl Oblast which were published in *Novaya Gazeta* newspaper are a telling example in this regard [1]. It should be noted that the facts of human rights violations were not revealed either by the Commissioner for Human Rights in the Yaroslavl Oblast or by the non-governmental monitoring commission.

Foreign literature also emphasizes the important role of the mass media in the sphere of civic oversight. In some cases, relevant activities of the mass media can alter the penal policy [17].

Jamie Bennett notes that people use knowledge they obtain from the media to construct a picture of the world, an image of reality on which they base their actions. This process is sometimes called “the social construction of reality”, [17; p. 99]. At the same time, one of the means of forming the impact is the so-called prison films. As an example, the author considers the film *I am a Fugitive from a Chain Gang* (1932), which led to specific changes in the Georgia prison system. Such films demonstrate the power of the media in strengthening the accountability of the prison system, highlighting government misconduct and improving justice. To some extent, the media represent the wider social context, since they act as a shorthand for the social and political conditions prevailing in a particular community. They can not only illustrate the processes taking place in society, but also give an impetus to the development of new forms of interaction in society, including those based on fictional and false artistic images [17; p. 103].

Advisory nature. Legal order is based on the principle of the soft right of civic oversight. In other words, the decisions of civic oversight actors are not legally binding on state bodies. The advisory nature of their recommendations is due to the fact that the NGMCs and other actors belong to civil society institutions rather than to the state machinery, so they are not (and cannot be) given powers of authority. The binding nature of their decisions should be based on personal and moral authority, which is combined with the possibility of wide publicity of the violations identified.

Autonomy. The state of legal order is based on the consistent implementation of the idea

of financial and organizational independence of non-governmental monitoring commissions. On the one hand, the autonomy of NGMCs enables the independent and free exercise of civic oversight; on the other hand, organizational independence also determines financial independence, which in practice leads to material and financial problems in the work of NGMCs.

However, civic oversight cannot and should not replace state bodies, so the state cannot and should not support civic oversight actors at the expense of the federal budget. It should be taken into consideration that the main function of ensuring human rights in correctional facilities should be assigned to the institutions of departmental control and prosecutor's supervision. Civic oversight is an additional and subsidiary means. It should also be borne in mind that this institution manifests the activity of civil society, its independence and the absence of control on the part of the state. That is why the state cannot and should not directly finance the activities of public monitoring commissions. Otherwise, civic supervision would be governmentalized, it would lose its social nature and transform into an element of the state machinery.

Optimal forms of support for civic oversight could include grant assistance or the legislative consolidation of the right of members of non-governmental monitoring commissions to have an unlimited number of civic assistants.

We should point out that the autonomy of civic oversight is of great importance. Sarah Armstrong argues that it is not sufficient to declare human rights formally and consolidate them in criminal law and politics. We find this idea very interesting and noteworthy. Moreover, it is human rights that can contribute to the bureaucratization of the prison system, and ultimately create new opportunities for literal and symbolic violence [16]. Only independent civic oversight can prevent such negative trends.

Constructiveness. The state of legal order is based on the fact that civic oversight institutions benefit both a particular person and the state as a whole. Civic oversight of correctional facilities should contribute to ensuring human rights. At the same time, the activities of NGMCs cannot and should not be political in their essence. When exercising civic oversight, members of NGMCs should be guided by the idea of the supremacy of human rights, enshrined in Article 2 of the Constitution of the Russian Federation. Members of NGMCs should objectively and impartially assess the human rights situation in places of forced detention. In the course of

their activities, members of NGMCs should not only identify possible violations, but also formulate proposals for improving the work of the administration of a correctional facility. In this regard, it is quite natural that one of the tasks of NGMCs is "to prepare decisions in the form of conclusions, proposals and appeals based on the results of civic oversight".

Coordination and cooperation. The state of legal order in the sphere of civic oversight is determined by the idea of cooperation and trust between the state and civil society. While allowing NGMCs to exercise civic oversight, the state also endows them with broader tasks. In particular, NGMCs, in accordance with Part 3 of Article 6 of Federal Law 76 should seek to provide "assistance to the cooperation between non-governmental associations, socially oriented non-profit organizations, administration of correctional facilities, state authorities of constituent entities of the Russian Federation, local governments, other bodies carrying out the powers to ensure legitimate rights and freedoms and the decent conditions of detention of persons in detention facilities within the territory of the Russian Federation". Thus, we can argue that civic oversight is an element of a comprehensive system of cooperation and interaction between the state and society. Only on the basis of cooperation, implemented in various forms, can we successfully move forward in the reform of the penal system of the Russian Federation, ensuring a high level of human rights observance.

Civic oversight actors should not be perceived solely as a supervisory entity. Their purpose is to activate and coordinate the efforts of civil society in the field of ensuring the rights of convicts and their successful re-socialization. In this regard, it is of interest to recall the foreign experience of mentors who provided informal support in the field of art and artistic creativity. Mentors are artists who received specialized training and who work in a variety of artistic fields (painting, drawing, sculpture, film and animation, illustration) [20; p. 488]

Mentors sought to help mentees reframe their identity from ex offenders to artists. Mentors' voluntary status was used as a means to emphasize their genuine care for the cause. [20, p.494].

Taking into account the impact of lengthy prison sentences and the difficulties that mentees are facing when adapting to life in the outside world, the work of mentors played an im-

portant role in reintegrating individuals back into society [20, p. 499].

In the Russian legal system, there are no legal grounds for introducing the institution of mentoring in the above-mentioned version. In our opinion, such an institution could prove effective in achieving the goal of convicts' rehabilitation. To return to society means to be socially useful. Convicts should have a desire for personal growth, which can be helped by mentors from the fields of art, sports, business, and so on.

Openness. The state of legal order depends on the effectiveness of civic oversight, and openness is one of its important conditions. Society is interested in obtaining objective and comprehensive information about the penal system of the Russian Federation and other government-related subjects that exercise the functions of legal responsibility. In this regard, it is for a reason that NGMCs are endowed with an informational and educational function: the objectives of NGMCs are related not only to the implementation of civic oversight, but also to informing the public, as well as other interested state bodies, about the results of the inspections. The openness of the procedure and results of civic oversight help to increase people's trust both in the state and in NGMCs. Otherwise, lack of information about NGMCs in the public domain contributes to the distortion of their essence.

Civic oversight should not only seek to prevent, detect and suppress human rights violations in places of forced detention. The activities of the subjects of civic oversight should also contribute to the formation of civic assessment of the functioning of the penal system. In order to strengthen legal order it is necessary to have a methodology, criteria and indicators for civic assessment of the penal system. A unified methodology for civic assessment can be developed both by the civic oversight actors themselves and with the help of the Federal Penitentiary Service of the Russian Federation

and its subordinate educational and scientific organizations.

The presence of a single methodology would help to deal with several problems in the field of strengthening legal order: first, it would help to obtain objective information about the state of legal order (mandatory publication of informative and detailed reports is an essential condition for the implementation of civic oversight); second, it would promote continuity of activity between the composition of non-governmental monitoring commissions; third, it would help to raise the professionalism of members non-governmental monitoring commissions due to the presence of clear guidelines for their work.

Conclusion

Close relationship between legal policy and legal order should always be in the limelight of researchers' attention. Ignoring this circumstance may lead to an erroneous interpretation of the state of legal order. For example, in some cases one may think that the legislator has missed some fragment of legal life and thus contributed to the emergence of a gap. However, in reality, the will of the legislator was formulated in such a way for a reason, due to the need to achieve a legal effect. For example, in the theory of law there is such a phenomenon as the "qualified silence of the legislator"; open lists are a vivid manifestation of this phenomenon.

Our analysis suggests that the specialization of civic oversight actors, their autonomy and independence are not a flaw in legal order, but, on the contrary, an expression of the state will, which determines the specific content and boundaries of public legal order, with the help of "qualified silence" too.

Thus, the issue of legal policy is important, since it allows us to see the vector of development of law-making activity, the application and interpretation of law. Legal policy has its own form and content, the analysis of which contributes to the formation of a comprehensive view of the state of legal order.

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