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THE TOPICAL ISSUES OF ADMINISTRATIVE-LAW REGULATION OF STATE STRATEGIC PLANNING AND PREDICTION IN TODAY'S RUSSIA

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Here is noted that the civil-law nature of the regulation of public relations in the sphere of public law is a precondition for corruption in the activities of public authorities and officials. The disadvantage of such order of legal regulation envisaging discretion and freedom of will for the subjects of economic relations is that it eliminates public-law nature of social relations with the participation of state bodies, local self-government and their officials.

The author argues that the legislative regulation of managerial relations in the field of predicting and planning largely does not comply with the needs of modern economic development of Russia.

A detailed critique of the basic definitions of the draft law "On State Strategic Planning" is given in the article. Here is also noted reference and blanket nature of the presentation the norms of the proposed draft law and rather abstract nature of proposed wordings.

Keywords: administrative-law regulation, state strategic planning, state strategic predicting, state economic policy, public administration.

Analysis of federal legislation gives grounds to state that currently there is no sufficient legislative basis for the implementation of comprehensive systematic predicting and planning of economic development and its modernization in the Russian Federation, subjects of the federation and bodies of local self-government. At the same time, achievement of positive results of the economic development of Russia in the implementation of market mechanisms is possible only if provided a comprehensive and systematic planning and predicting, determining the strategic directions of economic policy of the state, which takes into account the interests of the state, business and population, developed through a combination of federal and regional principles.

It seems that the economic policy of the state is inherent not only to the planned economy, but also to market economic relations. This is due to the need of the State to implement its economic and social functions. In this regard, the economic policy of the state should be of a generally binding nature for all the structures and participants of the state mechanism, what is achieved through its legal consolidation. Economic policy, which is defined in the programs of political parties that won a majority in elections, through its normative and legal consolidation through state mechanisms gets the nature of the legal economic policy of the state.

In a legal state (Russia as such is defined in article 1 of the Constitution of the Russian Federation) the law must be the primary regulator of social relations, displacing subordinate acts from the sphere of legal regulation. Unfortunately, it must be noted that currently this provision has largely programmatic nature, since the role of subordinate acts in the regulation of the socio-economic sphere of society and the state is excessively large. In this case, the existing legislative regulation often has a blanket nature, laws often relegate the issues of establishment the mechanism of their implementation to the competence of the Government of the Russian Federation.

In modern Russia economic relations are generally considered through private-legal aspect and regulated by the rules of civil law, even in the case of participation of bodies of state power and local self-government, state and municipal institutions. Practice shows that in itself a civil-law nature of regulation of public relations in public-law sphere is a corrupt condition in the activities of public authorities and officials. This is partly due to the absence in the Russian civil law of a concept of a legal person of public law, the assigning of the whole sphere of economic relations to the civil-legal regulation and the use of civil-law regulation methods. The disadvantage of such an order of legal regulation stipulating optionality and freedom of the will of the subjects of economic relations is that it

eliminates the public-law nature of public relations with the participation of state bodies, local self-governments and their officials, the need to implement in them state-meaningful goals, interests and motivation of behavior of the parties involved in legal relations, vested with public powers. Practice shows that there is lost socially useful motivation of subjects of legal relations, not fulfilled the requirements on the intended purpose and use of material resources of state and municipal nature as objects of civil-law contractual relations when takes place civil-law regulation of social relations, which have state-law and municipal-law nature and status of subjects. The consequences of this can be observed in cases involving "Oboronservis", where state property ceased to be used in the interests of strengthening the defense capability of the State, after being transferred to a holding company by way of some privatization manipulations changed its state-legal nature and was sold at reduced prices, becoming the object of interests of individuals and companies [7].

Describing the state of legislative regulation of managerial relations in the field of predicting and planning, it should be noted that in many respects it does not meet the requirements of the modern economic development of Russia, because it does not cover the whole spectrum of economic, social and political public relations, all levels of managerial relations, which require a systematic analysis and accounting in the development and adoption of plans and forecasts that are strategic in nature. Currently, public relations in the field of strategic planning and predicting are regulated by a number of regulatory legal acts, including: Federal Law No. 115-FL from July 20, 1995 "On State Predicting and Programs for Socio-economic Development of the Russian Federation"; Fundamentals of strategic planning in the Russian Federation, approved by the Decree of the President of the Russian Federation No. 536 from May 12, 2009; Concept of a long-term socio-economic development of the Russian Federation until 2020, approved by the Order of the RF Government from November 17, 2008; Order of the Ministry of Regional Development of Russia No. 14 from February 27, 2007 "On Approval of the Requirements to the Strategy of Socio-economic Development of a Subject of the Russian Federation" and a number of other substatutory documents called as strategies. Unfortunately, neither the provisions of law nor orders approved in violation of the procedure established by the federal constitutional law "On the Government of the Russian Federation", which are not legislative in nature, provide a sufficient level of normative-legal regulation of social relations in the field of planning and predicting.

The most important current strategic documents in the field of socio-economic development, having a comprehensive nature and defining the main directions of the state policy at federal level in the long term, are Fundamentals of strategic

planning in the Russian Federation [5]. However, their sublegislative nature also does not provide the necessary legislative level of regulation of this quite important for the state and society sphere of social relations that define the main directions of their development and the state of economic, environmental, political, and social security.

To the resolving of this task is directed the adoption of a federal law regulating the issues of strategic planning and predicting. The State Duma of the Federal Assembly of the Russian Federation is considering the draft Federal Law No. 143912-6 "On the State Strategic Planning" submitted by the Government of the Russian Federation and passed in the first reading on the 21st of November, 2012. The draft law is prepared by the Ministry of Economic Development. According to the authors of the draft, the main idea of the document is to create a legal framework for the development, building and operation of an integrated system of state strategic planning of socio-economic development, designed to meet the challenges of improving the quality of life of the population, growth of the Russian economy and ensuring national security. It aims to harmonize the various planning documents, such as the National Security Strategy of the Russian Federation Territorial planning schemes, military doctrine, and others [10]. It aims to harmonize the various planning documents, such as the National Security Strategy of the Russian Federation, Territorial planning schemes of the RF, Military doctrine, and others [10].

Of course, the prepared draft is objectively necessary, its adoption would solve many issues of planning and predicting of the main directions of socio-economic development of the Russian state, strengthening its political and economic sovereignty and defense potential. However, it should be noted that the draft does not solve the tasks of legislative regulation and providing a mechanism of state socio-economic predicting and long-term planning. While, they are quite effective means of public administration in the economic sphere that are designed to ensure stable social-oriented development.

The authors of the draft law define a quite wide range of actors involved in strategic planning. The draft is replete with new concepts and categories, which have an uncertain legal nature and content, and have not been previously applied in normative legal acts. The wordings of the draft do not meet the requirements of legal technique, as well as of the concepts and categories worked out in the theory of administrative law.

As follows from part 2 article 1 of the draft law, it regulates relations arising between the participants of state strategic planning in the process of predicting, result-oriented and territorial planning, as well as monitoring of the implemen-

tation of state strategic planning documents, including in development, approval and adjustment of state strategic planning documents. That is, the object of legal regulation is social relations in the sphere of predicting, planning and monitoring, the participants of which are the organs of state power and management. Should be noted that predicting, planning and monitoring have different target value. Predicting and planning define strategic directions of activities of state bodies in various spheres of public administration, while monitoring at its core is an observation and evaluation of activities' results in order to achieve goals.

The designated in the draft law approach replaces main concepts developed in the theory of public administration and administrative law. In article 3 the draft law defines key concepts used in the law. So, state predicting is defined as "regulated by the legislation of the Russian Federation activity of federal bodies of state power, bodies of state power of the subjects of the Russian Federation and local self-government bodies with the participation of public, academic and other organizations to develop a science-based understanding of the potential risks of social and economic development and threats to national security of the Russian Federation, the directions and results of socio-economic development of the Russian Federation and the subjects of the Russian Federation, to define the parameters of the socio-economic development of the Russian Federation, the achievement of which ensures the implementation of the aims of social and economic development of the Russian Federation and the priorities of social and economic policy with taking into account the tasks of the national security of the Russian Federation".

The definition is fairly open-ended. It implies that the state predicting is an activity that is carried out by a fairly wide range of actors, including public authorities of the federation and the subjects of the federation, local self-government bodies, as well as public scientific and other organizations involved in the elaboration of science-based understandings of the potential risks and threats. At that, the form of outward expression and consolidation of such activity, the types and legal nature of acts taken by public authorities and local self-government bodies as a result of its implementation are not specified. The absence of normative-legal consolidation of the normative-legal form of predicting results predetermines the proposed form of implementation the analyses of its effectiveness and achievement of a predictable result in the form of monitoring.

In article 3 of the draft law the monitoring of implementation of state strategic planning documents is defined as an activity on a comprehensive assessment of key financial and economic indicators, as well as budgetary commitments contained in the state strategic planning documents, in order to establish the ability to achieve

within planned time frames the strategic goals of sustainable socio-economic development of the Russian Federation and ensuring national security, taking into account the efficiency of use of public funds and the risks associated with achieving these goals.

The principal value of the procedure of establishing the results of state predicting in the form of normative legal act lies in getting by the state predicting of properties of a norm of law, obtaining of a formal certainty, generally binding nature, support of its implementation by the possibility of use of state coercion and responsibility for failure to comply with it. Regulatory and legal establishment of state programs and predictions suggests that the method of public administration aimed at ensuring the implementation of the state strategic prediction is a government control over its execution, and the consequence of its non-fulfillment is the responsibility to the state. Version of an external design and enshrining of the state strategic predicting proposed by the authors of the draft law does not solve the problems facing the state in this sphere of state activity. Lack of normative-legal form of expression the activities of state bodies and local self-government bodies for strategic planning and predicting, determines the non-binding nature of their predictions and, on this basis, the appropriate nature of definition their results in the form of monitoring. With this approach to defining and enshrining "strategies" and "forecasts", it is not by accident that many of the already-approved long-term predictions have been consigned to oblivion and the development of the economic and political spheres is being carried out in the so-called "manual" control.

In the theory of administrative law the form of public administration (activities of executive power) is commonly understood as the outward expression of content of management, outwardly expressed action of an executive authority, carried out within the framework of its competence and causing certain consequences. Forms of governance are considered as a juridical way of external expression and internal organization of managerial activity.

Under the form of administrative and public activity realize external official, legal or non-legal way to express this activity on the part of an administrative body [6, 319].

In this regard, we find undisputed the definition of the system of state strategic planning proposed in article 3 of the draft law, as a "set of participants of the state strategic planning, interrelated documents of state strategic planning, characterizing the priorities of socio-economic development of the Russian Federation and ensuring national security, and normative-legal, information, scientific and methodological, financial and other resource support for the state strategic plan-

ning". There are two concepts that characterize the form of public authorities' activities for the state strategic planning in this definition. This is a reference to the system of "interrelated documents of the state strategic planning" and "normative-legal support" of the state strategic planning. From this definition, it follows that the form of strategic state planning as an administrative and public activities of the bodies of state and municipal government, the official way to express this activity are the documents of the state strategic planning.

It should be noted that the notion of "state strategic planning documents" is frequently used in the text of the draft. The authors of the draft give the definition of this notion. Under the system of state strategic planning documents is proposed to understand "a totality of interrelated state strategic planning documents regarding strategic goals, tasks, timing and sources of resource support". This definition raises a lot of questions in terms of the proposed in it criteria of systematization and interrelation of "the state strategic planning documents" in its goals, tasks, timing and sources of resource support, since predicting and strategic planning have a long-term perspectives and a comprehensive systematic nature. In this regard, they may contain different time terms, different sources of funding and resource support, they may contain a set of tasks aimed at the realization of the goal, to achieve which "the state strategic planning document" has been adopted.

It is necessary to pay special attention to the proposed in the draft law form of implementation of administrative and public activity in the form of "the state strategic planning document". The notion of "state strategic planning document" is given in article 3 of the draft. It is defined as "documented information developed, reviewed and approved by the public authorities of the Russian Federation, public authorities of the subjects of the Russian Federation and other participants of the state strategic planning in accordance with the requirements established by the normative legal acts provided in article 2 of the current Federal Law in order to ensure state strategic planning process". According to article 2 of the draft "the legislation of the Russian Federation on the state strategic planning consists of federal constitutional laws, the current Federal Law, federal laws, and adopted in accordance with them normative legal acts of the President of the Russian Federation, the Government of the Russian Federation, federal executive bodies, laws and other normative legal acts of the subjects of the Russian Federation, and municipal legal acts regulating the relations defined in article 1 of this Federal Law".

It should be noted that reference and blanket nature of presentation the norms of the proposed draft law, as, indeed, rather abstract nature of the proposed wordings, are its characteristic feature, indicating the poor quality of its prepara-

tion from the point of view of compliance with the rules and principles of legal technique. Enough to draw attention to the fact that the authors forgot to include in the sources of law the Constitution of the Russian Federation and norms of international law. Whereas it is the Constitution of the Russian Federation defines priorities, key strategic goals and objectives, functions that stand before the bodies of state power and local self-government, and must be taken into account in the state strategic planning and predicting. Introduction of a large number of new for the system of state and municipal management concepts has necessitated their definition in the text of law. However, the presence of excessive amount of these novelties that are not based on already available in the theory and practice of acts of external expression of activity on exercising powers by public authorities and local self-government bodies in the form of acts of management, determines the possibility of emergence legal conflicts in their implementation.

It should be noted that the form of administrative and public activity of a body of state power and local self-government is of crucial value in the mechanism of management. In the theory of administrative law rightly point out that through the forms of administrative and public activity express its content and the methods of this activity used by administrative bodies. As the methods of expression (forms) of administrative and public activity stand out the commission by administrative bodies of various legal and illegal actions, issuance (adoption) by them normative and individual legal acts [6, 319]. In the administrative-legal literature the forms of exercising public administration (executive power) on the content are classified, as a rule, into two main types: legal and non-legal. The wording of articles of the proposed law and use in it of the concept of document provides a basis for the conclusion that the authors do not assume during the state strategic planning an adoption of a managerial act that has normative-legal nature. Since the concepts of "act of management", "legal-normative act", which have become largely traditional forms of expression of public authorities' activities, are not used in the proposed draft.

The proposed amendments to the state strategic planning documents also do not meet the legal technique. In theory of law emphasize three forms of rule-making process: adoption of a new norm, amendments and additions to an existing norm and abolition of a law norm. The draft uses the concept of "adjustment of the state strategic planning document", which is defined as "partial amendment of the text of the document without changing the period for which was developed the state strategic planning document". Hardly can be called reasonable such approach to definition the way of expression the activities of state bodies and local self-gov-

ernment bodies for planning and predicting of different spheres of state activity.

One can hardly consider it reasonable and permissible to use the concept of "document" in relation to the acts of public authorities on the state planning and predicting, no matter whether it has a strategic, long-term or short-term nature. Let's turn to the etymology of the word "document" to analyze the validity of its use. It has different semantic meanings. In a broad sense it is information recorded in a tangible medium with requisites that allow its identification. In this sense the document is used in the Federal Law "On Information, Informatization and Protection of Information" [4] and in the Federal Law "On Participation in the International Exchange of Information" [3]. The document also refers to a material object with recorded information contained therein in the form of text, audio, or images to be transmitted in time and space for storage and public use. In this sense it is used in the Federal Law "On Librarianship" [2].

In jurisprudence the document refers to a drawn up in accordance with established procedure act that certifies a juridical fact (birth, marriage) or an event, serves as evidence relevant to the circumstances of a case (written evidence), or providing for (terminating) the right to anything (contract, diploma, testament); any fixed in a tangible medium (usually written) act, which has legal effect, evidentiary, entitling or service value. In this sense, documents are subjected to special requirements on the form and content of their compilation. From a document has to be seen who has made it, and what is its content? The text of a document must be set out concisely and comprehensively; the presentation should not be open to different interpretation of words; it is not recommended to use a little-known abbreviations and notations, if they are not deciphered, foreign words and special terms that are not widely known, if they are not explained in the text. Documents are classified on different grounds. Distinguish public emanating from the bodies of state power and management, and private documents. In flow of documents distinguish incoming and outgoing documents, on the degree of openness stand out documents available to the public, restricted, secret, top secret documents, etc. [11].

The Federal Law No. 77-FL "On Obligatory Copy of Documents" document is defined as a material carrier with recorded in it any form of information in the form of text, audio, image and (or) their combination, which has details that enable it to be identified, and is designed for transmission in time and space for public use and storage. [1]

Juridical document is a tangible medium, compiled in accordance with an applicable legislation, which creates rights and responsibilities of individuals. An important type of documents – different certificates confirming the identity of

a person, its belonging to an organization or permission to engage in certain activities [9].

The above interpretations of the notion of “document” indicate the presence of different meanings embedded in it. This gives rise to its different interpretation in law enforcement practices and, as a consequence, the appearance in it of collisions of law norms, the lack of implementation mechanisms and bases for responsibility for infringement.

As has already been noted, depending on the nature and consequences all forms of administrative and public activity are divided into two types. The first of them is legal forms of administrative and public activity, which are external forms of its expression and are characterized by the occurrence or the possibility of the occurrence of certain direct or indirect consequences for those subjects, in respect of which these activities are carried out. Depending on the content and purpose of implementation of administrative and public activity, distinguish law-making form, law-regulative form and law-enforcement form. Depending on the orientation of administrative and public activity, distinguish internal and external forms.

The second type – non-legal forms of administrative and public activity. These are the means of the external expression of this activity, characterized by the absence of direct legal consequences and inability of their emergence for those subjects, in respect of which these activities are carried out. These include organizational-administrative and material-technical actions. In the literature also highlight such a form of administrative and public activity as making legally significant actions of power, which refers to the impact of an administrative body on a particular individual or legal entity not arranged through issuing (adoption) of an individual legal act, and it is carried out on the basis of the relevant norms of administrative law in order to ensure the legal regulation of the conduct of that person, legal protection of its rights and lawful interests, as well as the rights and lawful interests of other persons, security of society and the state. At that, it is noted that administrative and legal actions can be performed through the applying by administrative bodies of such types of impact of power as: documentary-legal, organizational-legal, technical-legal, property-legal, and personally-legal. Under the documentary-legal type of the impact of power understand an impact exercised through drawing up by an administrative body or an authorized representative of official documents that have legal significance to the person in respect of whom this document is drawn up, as well as to others (drawing up a protocol on administrative offence, certificate of inspection, official document,

conclusions, written response to an application, complaint, and etc.).

From the above analysis it follows that a document, as a provided for in the draft law form of implementation administrative and public powers of authority by bodies authorized to carry out state strategic planning, is not an appropriate external form of expression the activities of state and local self-government bodies for state strategic planning and predicting. The concept of "document", by virtue of the prevailing practice of law application and regulation, is largely of an individual legal significance to a person in respect of whom it is adopted, as a result of committing of legally significant action by a body that implements public powers of authority in respect of a particular individual or legal person. It is hardly reasonable to consider a document as a form of exercising public powers of authority. These powers are exercised by the participants of the state strategic planning, which include quite a wide range of public authorities of the Federation, subjects of the federation and local self-government bodies. So, at the Federal level, the number of subjects of the state strategic planning includes: the President of the Russian Federation, Federal Assembly of the Russian Federation; Government of the Russian Federation, Security Council of the Russian Federation, Accounts Chamber of the Russian Federation, Central Bank of the Russian Federation, federal executive authorities, other bodies and organizations in cases provided for by normative legal acts. At the level of a subject of the Russian Federation, to the subjects of the state strategic planning has been offered to include: a senior official of a subject of the Russian Federation, body of legislative authority of a subject of the Russian Federation, control and accounting body of a subject of the Russian Federation, the highest executive body of state power of a subject of the Russian Federation, executive bodies of state power of a subject of the Russian Federation, local self-government bodies of a subject of the Russian Federation, other bodies and organizations in cases stipulated by normative legal acts [8]. It seems that, with taking into account the proposed in the draft law range of subjects, in determining the external form of exercising their powers for the implementation of state strategic planning, one should base on the constitutionally established forms of their exercising. These are normative or individual acts. The President exercises its powers by issuing decrees and orders, the Federal Assembly of the Russian Federation issues Federal laws and decisions, the Government of the Russian Federation issues decisions and instructions, etc. Hardly in this regard is reasonable to legislatively determine that the President of the Russian Federation, the Federal Assembly of the Russian Federation and the Russian government adopt documents of the state strategic planning. In the theory of state and law and the theory of administrative law have formulated a common

notion encompassing the existing forms of exercising powers by public authorities and local self-government, this notion is "act of management". The notion of "act of management" is more acceptable to define the form of exercising powers of the subjects of state strategic planning than the notion of "document".

The law should define the legal nature of acts of the state strategic planning. They must have the nature of normative-legal acts. The definition proposed in the draft law, which does not provide for the legal nature of "state strategic planning documents", makes such planning illusory, having the nature of assumptions and wishes, not mandatory, and irresponsible for its performers. With such a nature of "documents", there is no need in the designed by them strategic planning for the supreme bodies of state power of the federation and the subjects of the federation included in the range of subjects of the state strategic planning.

Unfortunately, the content of the proposed draft provides grounds for the conclusion that in this form it cannot solve rather acute problems of comprehensive, systematic and responsible planning and predicting of the development of economic and socio-cultural sphere, strengthening the defense capability and sovereignty of the state that are facing the state.

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