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LEGAL REGULATION OF RISKS MANAGEMENT

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The article analyses normative legal acts and other official documents governing risks management in management and in public administration, justifies the necessity of adopting a unified normative act governing a science-based management of legal risks in the system of public administration.

Keywords: risk, risk management, legal risks, management, public administration, risk assessment, risk minimization, managerial process.

Russian legislation is steadily moving towards the implementation of the mechanism of legal means to minimize risks in the system of administration. Mention should be made of the priority development of legal management of risks in the system of corporate management. At that, earlier normative acts dealt with the issues of risk management in the institute of technical regulation.

For the first time legislative definition of risk is presented in the Federal Law No. 184-FL from 27 December 2002 "On Technical Regulation", "risk - the probability of harm to life or health of citizens, property of individuals or legal entities, state or municipal property, environment, life or health of animals and plants in view of the gravity of the harm" [2].

N. A. Ageshkina and B. Yu. Korzhov correctly point to the indissoluble unity of the concepts of "risk" and "safety". Commentators of this law have stressed that "even after all the security measures, there will always be some risk, usually referred to as a residual. This risk is considered to be acceptable... in a particular country and in particular time" [15]. Taking into account the degree of risk of harm, in technical regulations shall be the minimum necessary requirements that ensure the types of safety listed in article 7 of the Law [2].

For comparative-legal analysis of risk management regulation in corporate management it is important to take into account that national standards and preliminary national standards, unlike technical regulations, are applied on a voluntary basis and supported by a mark of conformity to the national standard [2].

Many norms of national standards of risk management can be used for legal regulation of risks minimization in the system of public administration.

Terminology adopted in the National Standard “GOST (State Standard) R 51897-2011 / ISO Guide 73: 2009. National Standard of the Russian Federation. Risk Management. Terms and Definitions” seems important: “Risk: the consequence of influence of uncertainty on achievement of set goals”. At that, the consequence of influence of uncertainty is considered as a deviation from the expected outcome or event (positive and/or negative). Risk is often perceived in the form of the consequences of a possible event and the corresponding probability [14]. In the quoted standard there are definitions related to risk management (risk management, risk management structure, risk management policy, risk management plan) and related to the risk management process, including those related to risk assessment.

In the Russian Federation there has been developed and is operating another important document: “GOST (State Standard) R 52806-2007. Risks Management of Projects. General Provisions” [13]. In accordance with the Order Federal Agency on Technical Regulation and Metrology of Russia N 422-st from 27.12.2007, this document was entered into force for voluntary application on January 1, 2010. It outlines the decision-making algorithm in the field of risk management in perspective (temporal) and structural (institutional) plan. In the perspective plan the decision-making in the field of risks management occurs at three levels: strategic, tactical and operational. In the structural plan the decision-making can be considered at the levels of commercial activity (business level), project and subproject. These levels are generally correspond to the adoption of long-term, medium-term and short-term decisions.

Unlike corporate management the issues of minimization risks in the system of public administration are lesser resolved. Although the “Administrative Reform Concept and Action Plan for Administrative Reform in the Russian Federation in 2006 – 2010” clearly defined the need to introduce a system of regular risk assessment in the executive branch and its subordinate institutions. Only by the present moment legal means of risk management in state and municipal administration begin to take normative-legal outlines. In the recently adopted Federal Law No 172-FL from June 28, 2014 “On Strategic Planning in the Russian Federation”, article 3 contains a conceptual apparatus that enables us to assess and

manage risks [4]. So, the strategic forecast of the Russian Federation is understood as a “strategic planning document that contains a system of scientific views on the strategic risks of social and economic development and on threats to the national security of the Russian Federation”. It was developed under the instructions of the President of the Russian Federation for twelve or more years by the Government of the Russian Federation, taking into account data submitted by federal bodies of executive power, bodies of executive power of the constituent entities of the Russian Federation and the Russian Academy of Sciences. The adjustment of the strategic of forecast of the Russian Federation is carried out every six years. The strategic forecast of the Russian Federation contains:

- 1) risk assessment of the socio-economic development and threats to the national security of the Russian Federation;
- 2) phased predictive estimates of probable state of socio-economic potential and national security of the Russian Federation;
- 3) the best scenario to overcome risks and threats with taking into account resolving the issues of national security of the Russian Federation;
- 4) assessment of the competitive positions of the Russian Federation in the world community;
- 5) other provisions under the decision of the President of the Russian Federation or the Government of the Russian Federation [4].

Appears to be that risks management, including legal risks, should be carried out not only at all stages of public administration, but also on the relevant levels of management (both under subject composition and under administrative-territorial principle).

The most important part of the identification, analysis, assessment, prediction and minimization (prevention) of legal risks is an expert assessment, prediction of possible risks and threats at the stage of law-making, their identification during the examination of draft laws and normative by-law acts [7; 9], including by means of public consultation [5]. There are currently several different expertises used in lawmaking activity of the public administration bodies. So, there is an expertise of the Ministry of Justice of the RF for compliance with the higher legislation, anti-corruption expertise [3; 6], there are techniques for the procedure of assessment the regulatory impact (ARI) of draft normative legal acts, which are used by Russian Ministry of Economic Development in expertises [10; 11]. Departments additionally identify risks. Order of the Russian Ministry of Economic Development No. 159 from March 26, 2014 “On Approval of Methodological Recommendations on the Organization and Conduct of the Procedure for Assessment of Regulatory

Impacts of Draft Normative Legal Acts of the Constituent Entities of the Russian Federation and Examination of Normative Legal Acts of the Constituent Entities of the Russian Federation” is very useful for analyzing of risks management. The analyzed document in fact duplicates Regulatory Impact Assessment Methodology that is contained in the annex to the order of the Russian Ministry of Economic Development No. 290 from May 27, 2013, regulates the conduct of expert assessments on the level of the constituent entities of the Russian Federation. Paragraph 7.8 of the analyzed document provides guidance on the compilation of a summary report “Assessment of the risks of adverse effects of application the proposed legal regulation”. This paragraph contains a list of risks of resolving an identified problem by the proposed way of legal regulation. Assessment of probability of adverse effects should be conducted for each identified risk.

Russian Ministry of Economic Development has developed these guidelines in accordance with the requirements of paragraph 3 article 26.3-3 of the Federal Law No. 184-FL from October 6, 1999 “On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation” [1] and proposes an algorithm to identify and assess risks at the level of subjects of the Russian Federation. In our view, there is a need for comprehensive unified technique for risk assessment, including legal risks, both at the federal level and at the level of the constituent entities of the Russian Federation, and in the first place, this concerns draft federal laws and laws of the constituent entities of the Russian Federation.

Nowadays there are several expertises at the Federal level of lawmaking activity in the RF, which include not only lawmaking activity, but also by-law departmental rule-making [16]. Is it enough or not? Which way to go? Maybe do a unified expert assessment, because various agencies in implementation of expert risks assessment in the system of public administration has different goals and, as a result, getting of a single solution, for example, concerning the adoption of a by-law normative legal act, is problematic. Large scale, and the result is hard to predict. Is there a need for merging expertises in one complex expertise, including with involvement of civil society to monitor law enforcement (exchange of information and public consultation)?

In establishment of the situation of the need for legal regulation in various areas of public administration a significant role belongs to the political will of the President of the Russian Federation. It is noteworthy that the Federal Law “On Strategic Planning in the Russian Federation” refers RF President’s annual address to the Federal Assembly of the Russian Federation to strategic planning documents

developed at the federal level [4]. Article 13 of the Law provides for public consultation of draft strategic planning documents. The law does not give a clear answer whether this rule will apply to the addresses of the President of the Russian Federation or not.

There is a need for a science-based transition to consolidated planning of law-making activity. Certain prerequisites for the transition to such a planning have been created. For example, the Institute of Legislation and Comparative Law under the Government of the Russian Federation annually develops very important strategic documents – the Concepts of development of the Russian legislation, in which there is a systemic, programmatic approach to law-making that binds development trends of basic, integrated and process ensuring branches [17].

We need a unified universal technique for identifying, predicting and minimization of risks at the stage of law-making, we need a federal law “On Normative Legal Acts” [12], which should include norms on risks assessment.

Legal means of minimizing risks in public administration at the stage of law enforcement is a legal experiment (approbation of a law or by-law in a particular area, and in the case of a positive result its introduction throughout the territory), monitoring of law enforcement, including statistical and analytical information on the delivery of public services and implementation of state functions, including control and supervisory functions.

For example, the Decision of the Government of the RF No. 694 from August 19, 2011 approved the Methodology for monitoring law enforcement in the Russian Federation, which allows you to consistently identify legal risks and contribute to their minimization and prevention in law enforcement and interpretative activity [8].

Monitoring of law enforcement helps to conduct assessment of legal risks, on the basis of which we can correct (to offer a new vision or change) a normative legal act, and thereby contribute to the achievement of ultimate goals of public administration.

Methods to prevent corruption risks are the most fully developed [8].

The shown comparative legal analysis of norms existing in the Russian Federation, which govern risks management, has clearly demonstrated unsystematic and inadequate nature of legal regulation of risks management, including legal risks in the system of public administration.

The focus of further researches should be put on the issue of legal adjustment of normative legal acts as a way of minimizing and eliminating legal factors that contribute to risks emergence. These shall include legal gaps, legal collisions and

imperfection in structure of legal prescriptions. The legal adjustment is carried out through amendments and additions to existing normative legal acts, through legal correlation, which lies in the introduction to existing normative legal acts of reference rules that make it possible to correlate the sanctions of legal norms contained in the duplicate structures of codified normative acts and, finally, through interpretative adjustment, the examples of which are court decisions and, above all, the decision of the Constitutional Court of the Russian Federation.

Legal means of minimizing risks in public administration will contribute to the sustainable development of Russia in the modern global changing world.

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