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ADMINISTRATIVE AND LEGAL ASPECTS OF MANAGEMENT RISKS IN THE ECONOMIC SPHERE

ASPECTOS ADMINISTRATIVOS E JURÍDICOS DA GESTÃO DE RISCOS NA ESFERA ECONÔMICA

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ABSTRACT

The article deals with the definition of risk, risk origin theory, and methodological approaches to the concept of legal risk, as well as studies the completeness and quality of legislative statement of the risk-oriented approach to economy management in the Russian legislation. Risk management develops in two directions. The first direction includes measures on mitigating and preventing risks at the level of corporations. The main actors of the process are risk managers. The second direction is related to the development of public law risk management. This process is initiated by public authorities engaged in enacting standards and recommendations aimed at mitigating and preventing risks in public administration. The authors concluded that the two directions are mostly independent from each other and justified the need for synchronizing the public and private principles of risk management in order to improve its efficiency. Methodologically, the paper is based on the current advances in the theory of knowledge. The general philosophical analysis, methodology of systemic analysis, expert analysis, event-based analysis, conventional legal methods (the methods of formal and comparative logical analysis), as well as structural analysis and simulation were used within the framework of the research.

Keywords: risk theories, legal risks, public administration, risk-oriented public administration, administrative law

RESUMO

O artigo trata da definição de risco, teoria da origem do risco e abordagens metodológicas para o conceito legal de risco, bem como estuda a completude e a qualidade da declaração legislativa da abordagem orientada ao risco para a gestão da economia na legislação russa. A gestão de riscos se desenvolve em duas direções. A primeira direção inclui medidas de mitigação e

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vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

prevenção de riscos ao nível das empresas. Os principais atores do processo são os gestores de risco. A segunda direção está relacionada ao desenvolvimento direito público de gestão de riscos. Esse processo é iniciado por autoridades públicas engajadas na promulgação de normas e recomendações destinadas a mitigar e prevenir riscos na administração pública. Os autores concluíram que as duas direções são, em sua maioria, independentes uma da outra e justificaram a necessidade de sincronizar os princípios público e privado da gestão de risco para melhorar sua eficiência. Metodologicamente, o artigo se baseia nos avanços atuais da teoria do conhecimento. A análise filosófica geral, a metodologia de análise sistêmica, a análise de especialistas, a análise baseada em eventos, os métodos jurídicos convencionais (os métodos de análise lógica formal e comparativa), bem como a análise estrutural e a simulação foram utilizadas no âmbito da pesquisa.

Palavras-chave: teorias de risco, riscos jurídicos, administração pública, administração pública orientada para o risco, direito administrativo

1. INTRODUCTION

Etymologically, ***the word 'risk'*** (French *risque* — 'risk', Italian *risico) comes from* Ancient Greek ῥιζικόν — 'cliff', Ancient Greek ῥίζα — 'mountain foot'; 'to risk' originally meant 'to maneuver between rocks' (Etymological Online Dictionary, n/d). ***Legal risk*** is classically considered as an objective and to a certain degree assessable and controllable probability of negative consequences for the parties to a legal relationship, inherent in human activities.

Risk is of dual (subject and object) nature. Risk elements can be divided into the objective (risk factors and situation) and subjective (the subject and volitional control) ones (TRUNTSEVSKIY, 2014). As a rule, in civil law relations, "legal risk is the current or future risk of loss of income or capital, or the risk of losses as a result of violations or noncompliance with internal or external legal regulations, such as laws and regulatory institutions' regulations thereunder, rules, procedures, instructions, and articles of incorporation" (Truntsevskiy 2014).

Paragraph 1.1 of the National Standard of the Russian Federation GOST R 51897-2011/Guide ISO 73:2009 dated November 16, 2011 "Risk management. Terms and definitions" (2012) and Paragraph 3.1 of the National Standard of the Russian Federation GOST R 51901.21-2012 dated November 29, 2012 "Risk management. Risk register. General provisions" (2014) define risk as *"a consequence of the impact of uncertainty on achieving the set goal,"* and provide the following clarification: *"The consequence of the impact of*

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

uncertainty" should be construed as deviation from the expected result or event (positive and/or negative). Goals can vary by their content... and scope (strategic, organizational, related to project development, specific products and process). The risk is often characterized by describing its possible event and consequences or their combination. Risks are often considered to be the consequences of certain events (including changing circumstances) and the correspondent probability. Uncertainty is the state of complete or partial unavailability of information required to understand the event, its consequences, and their probabilities." Article 2 of the Federal Law "On technical regulation" No. 184-FZ of December 27, 2002 (current edition) defines risk as "the probability of causing damage to the life or health of individuals, property of individuals or legal entities, public or municipal property, environment, life or health of animals and plants with account of the severity of such damage" (FL " On technical regulation", 2017).

According to the law, ***technical regulations*** are meant to enact the requirements with account of the risk extent, which ensure the security types listed in Article 7. Technical regulations enact the minimum requirements that also provide other types of safety with an extended list of goals compared to the risk concept: *"for the purpose of protection of the life or health of individuals, property of individuals or legal entities, public or municipal property, environment, life or health of animals and plants, and for the prevention of activities misleading the purchasers, including consumers, ensuring energy efficiency and resource-saving"*. Technical regulations set out mandatory requirements for controlled entities and are adopted in the form of a relevant enactment.

2. LITERATURE REVIEW

We should mention the intensively developing ***relational theory of risk***. Providing insights to the theory, Boholm and Corvellec (2011) noted that the theory takes risks out of the situated cognition, which sets up risk relationships within the context of certain unforeseeable circumstances and certain causality. Head (2004) emphasized the ***subjective factors of risk production***. Different generations of company executives treat the same risks differently. This also applies to individuals. The subjective views of the executives scaled to the corporate level can have a crucial impact on the arrangement of risk environment management. Ageshkin and Korzhov (2012) who provided comments to the Federal Law "On technical regulation"

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

No. 184-FZ of December 27, reasonably pointed to the ***unity of the 'risk' and 'safety' concepts***: *"even after all safety precautions have been taken, a certain risk, usually referred to as residual, always exists. Such a risk is treated as admissible, i.e. acceptable for each particular situation with account of the existing social values (including economic and political factors, traditions) in a particular country and at a particular time"*.

ATTRIBUTES OF LEGAL RISKS

Tikhomirov distinguished such a property of risk as the ***alarm signal***. The scholar pointed out the following attributes of legal risks: "The risks manifest themselves in:

1. the probability of direct or indirect violation of legal provisions;
2. citizens' disregard of the legislation due to a poor legal culture and competence in laws;
3. misjudgment on the statuses of legal entities and selection of legal methods of governance;
4. risk of a growing number of conflicts of laws;
5. provocation of conflict of interests;
6. severance of the system – law ties in the legal system;
7. disruption of correlation between the method of legal regulation and the measure of reflection of economic, social, and political processes (Tikhomirov, Lapina 2014).

Tikhomirov derived the concept of risk as a *"probable wrongful deviation from legal models and laws*" (TIKHOMIROV, 2016). In his publications he specified: *"risk is the probability of an event and actions causing negative consequences for the implementation of a legal solution and able to cause damage to the area it regulates"*, and *"Risk is described as conscious volitional behavior of a person aimed at achieving a lawful positive result in a situation with ambiguous development prospects, which allows for a possible onset of unfavorable consequences and damage."* (TIKHOMIROV, 2014). ***The correlation of risks and legal risks***, their interconnection with jeopardies (threats) and security assurance make it possible to reveal a number of interesting nuances. The "Risk in Law: Genesis, Concept, and Control" presents an idea of the ***predictive function of risk*** that allows simulating a future situation and taking a decision in the conditions of uncertainty. The author identifies the concepts of risk and jeopardy as the whole and a part: "*jeopardy (threat) is a factor of risk, it is an element of the objective side of risk* (KRYUCHKOV, 2011). In the scientific publication

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

"Risk and Law" Tikhomirov and Shakhrai (2012) approached the phenomenon of legal risks as the institute of the general law theory, which materializes in certain branches of the Russian legislation. According to the authors, law legalizes and minimizes risks, sets countervailing mechanisms, establishes means of their prevention, determines and regulates legal liabilities. This viewpoint had been expressed by Tikhomirov in his previous publications (2012).

MANAGEMENT RISKS OF PUBLIC LAW RELATIONS

Before the early 2000s, risks had remained a subject of study within a branch of science, and only representatives of the Russian civil law had been interested in it. In 2014, the body of professors of the Department of Administrative and Information Law of the Financial University under the Government of the Russian Federation organized a round-table on legal risks in the system of public administration. A multi-author book (AVDIYSKIY; LAPINA, 2014) was published following the results of the event. Kichigin, Lapina, Karpukhin, Ponkin, Popova, Rylskaya, Solovyev, Truntsevsky, et al. addressed the problem of methodological approaches to the definition of the concept of legal risk; investigated the general theoretical problems of legal risks in the public administration system; reviewed the content of legal risks in various areas of public administration and in judicial practice (KICHIGIN, 2014; LAPINA, 2015; LAPINA; KARPUKHIN, 2014a; PONKIN, 2014a; PONKIN, 2014b; POPOVA, 2014; RYLSKAYA, 2014; SOLOVYEV, 2014; TRUNTSEVSKY, 2014). One of the advantages of this research was the accumulation of various conceptual approaches to determining the essence of the 'legal risk' category and the place of this concept both in the general theory of law and in various branches of public law: environmental, customs, administrative, and constitutional.

Kichigin (2014) approached the concept of ***'legal risk' through the prism of the 'legal uncertainty' category*** and followed the concept of 'legal uncertainty' set forth in the "Risk and Law" by Tikhomirov and Shakhrai (2012). They noted that legal uncertainty is traditionally interpreted as *"the correlation of the form and content of legal regulations and the possibility of their specification".* The authors noted that the reasons for this phenomenon are deviation from certain (logical linguistic and graphic) standards of the accuracy of expression of legal regulations.

According to Kichigin, "*legal uncertainty is one of the sources of legal risks*". The author considers two approaches to understanding the essence of legal risks that have emerged

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

in legal literature. According to a broad interpretation, legal risk includes financial and economic risks, for example, business interruption or loss of assets. Another narrow understanding reduces the concept to negative consequences for legal entities, expressed in penalties, criminal or administrative prosecution, deprivation of a special right, and setting the transaction aside. The author proposes to adhere to a narrow interpretation of the essence of legal risks and to treat them "as risks arising from the existence of legal uncertainty and causing negative legal consequences (KICHIGIN, 2014).

It should be noted that some scientists express the point of view the that the perception of the definition of risk in the context of uncertainty is incorrect. Ward and Chapman differentiate the concepts of 'uncertainty' and 'risk', noting that the term 'risk' emphasizes rather the probability of a threat, while uncertainty has a broad semantic interpretation. The emphasis on uncertainty will improve risk manageability during the project implementation, since it will provide an additional managerial resource for managing opportunities (STEVEN, 2003).

The legal risk research process that intensified in the late 1960s – early 1970s in Russian civil law went beyond the civil law framework and has transformed into the phenomenon of intersectoral integrated study by legal scholars in the last few years. Legal risks along with the concepts of legal gaps and conflicts of laws are the institute of the theory of state and law, which is currently at the stage of active theoretical formation based on the revision of both real and potential negative consequences of implementing legal regulations in the everyday life.

3. RESULTS

3.1. Types of management risks in the economy

Analyzing the types and causes of administrative and legal risks depending on the legal forms of public administration, we should distinguish the following risks:

1. *rule-making risks* arising in the process of rule-making activities of public administration bodies, which under certain circumstances can create a risky situation for making dangerous government decisions;
2. *law-enforcement risks* arising mainly from the activities of the executive authorities with respect to the adoption of individual legal acts potentially bearing the risk of negative consequences for the established order of governance in a certain area of public

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

relations;

3. *interpretation risks* arising from the interpretation of the previously adopted legal decisions by the public administration bodies (KIREEV, 2013).

In previous studies of the essence of risk, its relation to legal risk, and the distinction between the concepts of 'public law risk' and 'civil law risk', we formulated a number of concepts. ***The concept of 'public law risk'*** is defined as a potential danger of adverse development of socially significant public law relations as a result of adopting, implementing, and interpreting legal provisions, and administrative law risk as a type of public law risk associated with law-making, law-enforcement, and interpretation activities of the executive authorities, which may adversely affect the established order of governance in public administration (LAPINA; KARPUKHIN, 2014a).

In contrast to civil law risks associated with potential property (financial) losses in civil law relations, ***administrative law risks*** concern public interests and are associated with the potential destructive development of various spheres of the life of society, including the economic life.

1. *Risks associated with the rule-making activities of public administration bodies* may be due to possible subjective errors in the development of laws and regulations, gaps in the system of enactments, conflicts of law arising from contradictions of the provisions of laws and regulations thereunder, between laws and regulations adopted by federal and regional authorities in Russia, between laws and regulations adopted by public authorities with respect to matters under joint jurisdiction.
2. *Risks associated with law enforcement activities of public administration bodies* are associated with negative consequences for the established management procedures in the economic sphere of public relations. Among the reasons determining the emergence of law-enforcement risks, we should note the ability of a competent person of the authorized public administration body to make decisions at the "administrative discretion," i.e. the ability to choose a certain optimal management decision model within the framework of an alternative disposition formulated in a legal regulation.
3. *Interpretational risks* mean the possibility of replacing official acts of interpretation with legal norms. Interpretational risks arising in administrative law relations should also include the interpretation of the competence of public administration bodies by judicial institutions (LAPINA, KARPUKHIN, 2014a).

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

3.2. Management risks in the economic sphere of relations as defined by legal regulations

The baseline enactment in the Russian Federation is the Federal Law No. 172-FZ of June 28, 2014 "On strategic planning in the Russian Federation" (2017). This law regulates the relations arising between the actors of strategic planning in the process of goal-setting, forecasting, planning, and programming the socioeconomic development of the Russian Federation, constituent entities of the Russian Federation, municipalities, industries, and spheres of state and municipal government, ensuring the national security of the Russian Federation, as well as monitoring and control of the implementation of strategic planning documents.

According to Article 3(5) of the Federal Law, "forecasting is the activity of the strategic planning actors consisting in the development of scientifically based ideas *about the risks of socioeconomic development, threats to the national security of the Russian Federation*, directions, results, and indices of the socioeconomic development of the Russian Federation, constituent entities of the Russian Federation, and municipalities". Article 3(21) describes the strategic forecast of the Russian Federation as "the strategic planning document containing a system of scientifically based ideas *about the strategic risks of the socioeconomic development and threats to the national security* of the Russian Federation". Among the principles of strategic planning listed in Article 7 of the above Federal Law, the principle of feasibility is emphasized as follows: "When identifying the goals and objectives of socioeconomic development and ensuring the national security of the Russian Federation, the strategic planning actors should proceed from the possibility of achieving the goals and objectives on time *with account of resource constraints and* risks" (Article 7(9)) For the purposes of risk identification when achieving the goals of socioeconomic development of Russia and long-term performance targets, and with account of the objectives of ensuring Russia's national security, Article 16 sets the requirement to develop the "Strategy for socioeconomic development of the Russian Federation" every 6 years (Article 16(7)(2)). The "Strategic Forecast of the Russian Federation" developed by the Government of the Russian Federation for twelve or more years at the instruction of the President of the Russian Federation should also include "assessment of socioeconomic development risks and threats to the national security of the Russian Federation" (Article 23(2)(1)), the development of "an optimal scenario of addressing risks and threats with account of the objectives of the national security of the Russian Federation "(Article 23(2)(3)).

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

Some of the main tasks of monitoring the implementation of the strategic planning documents are "the analysis and identification of possible risks and threats, as well as timely taken measures to prevent them" (Article 40(2)(6)) (FL "On strategic planning …" 2017). In addition to the aforementioned Federal Law, the provisions stipulating risk management requirements are found, although infrequently, in other enactments (CCRF (Part 1), 2019; CCRF (Part 2), 2018; Merchant Shipping Code…, 2018; CCRF No 63-FZ, 2019; FL "On the national payment…", 2019; FL "On the Central Securities…", 2018).

A very vivid example is Chapter 54 "The Risk Management System Applied by the Customs Authorities" of the Federal Law No. 289-FZ of August 3, 2018 (as amended on November 28, 2018) "On customs regulation in the Russian Federation and amendment of certain legislative acts of the Russian Federation" (FL "On customs regulation …", 2018). The addressed issues are also indirectly and partially regulated by the Federal Law No. 184-FZ of October 6, 1999 (as amended) "On the general principles of organization of legislative (representative) and executive authorities of the federal entities of the Russian Federation," particularly in its provisions concerning threats (for example, Article 29.2(5)) (FL "On the general…", 2019).

3.3. The importance of the systemic analysis of management risks in the economy

All state programs adopted by the Government of the Russian Federation (38 programs currently) include a description of risks associated with their implementation. The "State program of the Russian Federation of economic development and innovative economy" approved by the Order of the Government of the Russian Federation No. 316 of April 15, 2014 (as amended on September 19, 2018) includes the risk-oriented approach in the pursuit of supervisory activities (RJR "… State Program…", 2018). Choosing a risky management decision and enshrining it in legal acts, one can achieve the desired goal with the best result (under the slogan "Risk is a noble cause"). We believe that interdisciplinary research is necessary for further development of this idea. Thus, Madera (2014) considered not only risks as events unfavorable for the subject, but also the its favorable chances. Theoretical developments on the sustainable socioeconomic development of Russia reappear in the Russian researches (not only by legal scholars, but also philosophers, economists, mathematicians, political scientists, managers, psychologists, sociologists, etc.). The basic concepts of the unified theory were first formulated by the Russian economist Kondratyev (KONDRATYEV,

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

OPARIN, 1928). Yakovets (1997) described cycles and crises in the development of the world, local, and global civilizations in "The History of Civilizations". These cycles and crises are referred to by other economic researchers, for example, Bezdenezhnykh (2006), Gorina (2012).

Environmental law uses the Sustainable Development Concept, which concerns not only the cumulative solution of environmental, economic, and social problems, but also recognizes the existence of risks in modern society and proposes measures to minimize them, including through the use of legal means (LAPINA; KARPUKHIN, 2014b). The idea of sustainable development is based on the possibility to impart a planned direction — a development vector — to social changes: "The whole world of future events is open for people to transform it to the extent that is limited by the best possible results of risk assessment" (GIDDENS, 1994).

3.4. Diagnostics and the mechanism of management risk prevention in the economy

As noted by Tikhomirov (2016), the role of law is passive and is described with the following statement: *"the law and its elements are still considered as a way of shaping decisions and actions, as external legalization*. There is a need for a mechanism of legal forecasting, adequate to the mechanism of forecasting of the socioeconomic development of the Russian Federation. Nevertheless, the Russian legislation gradually leans towards implementing risk management in public administration. Many provisions of ***national risk management*** standards can also be used for the legal regulation of risk mitigation in the public administration system. The "Project risk management. General provisions. GOST R 52806-2007" standard has been developed and is in effect in the Russian Federation. This document was put into effect for voluntary use from January 1, 2010, by the Order of the Federal Agency on Technical Regulating and Metrology No. 422-st of December 27, 2007 (GOST R 52806-2007, 2009). In terms of the implementation period, risk management decisions are made at three levels: strategic, tactical, and operational. Structurally, decisions can be made at the level of the business activity, project, and subproject.

Paragraph 3.2 of the National Standard of the Russian Federation GOST R 51901.21-2012 of November 29, 2012 "Risk management. Risk register. General provisions" defines 'risk management' as "coordinated organization management and control activities in terms of risks" (GOST R 51901.21-2012, 2014). National Standard of the Russian Federation GOST R ISO / IEC 31010-2011 dated December 1, 2011 "Risk management. Methods of risk assessment":

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

"risk management facilitates decision-making in the face of uncertainty and the possibility of events or circumstances (both planned and unforeseen), affecting the achievement of goals by the organization. Risk management involves using logical and systemic methods for consulting and exchanging information on risks; determining the scope of application when identifying, analyzing, evaluating, and processing a risk relevant for any activity, process, function, or product; risk monitoring and analysis; registration of the results obtained, and reporting. Risk assessment is part of the risk management process and is a structured process of identification of the ways to achieve goals, analysis of the consequences and likelihood of dangerous events to make risk treatment decisions." (GOST R ISO/MEK 31010-2011, 2012).

Lermack (2003) noted that successful organizations set high performance standards to ensure safety, productivity, quality, and service. At the same time, as noted by Louisot (2003), the number of risks constantly evolves, many uninsurable risks arise, which requires risk managers to interact at the intercorporate level in order to agree on new approaches related to effective management organization. Steven (2003) noted that new managerial approaches to risks in the financial sector will be driven by technological innovations.

In our opinion, the main purpose of risk assessment is to provide the objective evidence-based information necessary for making an informed decision regarding the methods of risk treatment. According to Paragraph 4.1 of the above GOST R ISO / IEC 31010-2011 dated December 1, 2011, "*risk assessment helps understand of how potential jeopardies and impact of their consequences can prevent the organization from achieving its goals; obtain information necessary for decision-making; understand the jeopardy and its causes; identify key risk factors, the vulnerabilities of an organization and its systems; compare the risk with the risk of alternative organizations, technologies, methods, and processes; share information about the risk and uncertainties; obtain information required for risk ranking; prevent new incidents based on a study of the consequences of incidents that have occurred before; choose risk treatment methods; comply with legal and mandatory requirements; obtain information required in order to make an informed decision on accepting the risk in accordance with established criteria; assess risks at all stages of the product life cycle*" (GOST R ISO/MEK 31010-2011, 2012).

We totally agree with the opinion of Royer (2000), who noted that risk management should be crucial for project managers, since uncontrolled or unremitting risks are one of the main reasons for a project to fail. Only in recent years, the legal means of risk management in

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

the system of state and municipal administration have begun to be implemented in laws and regulations due to Federal Law No. 172-FZ "On strategic planning in the Russian Federation" adopted in 2014 (FL "On strateging planning …", 2017).

Tikhomirov indicated that "it is necessary to implement risk-control methods and techniques:

1. in the process of forecasting and developing legal development strategies and concepts of legislation;
2. in the process of preparing and implementing legislative activity plans (programs);
3. in the mechanisms of state and municipal administration (at different levels);
4. in sectors and sub-sectors of the economy, social sphere, and ecology;
5. at the interface of the rules of national and international law" (TIKHOMIROV, LAPINA, 2014).

3.5. Risk management as a function of public administration

From the position of legal regulation in the system of state administration, Atamanchuk (2004) distinguished ***seven stages of management activities:***

1. analysis and assessment of the management case;
2. forecast and simulation of the necessary and possible actions to preserve and transform the state of the management case;
3. development of prospective enactments or organizational measures;
4. discussion and adoption of the enactments and implementation of organizational measures;
5. organization of the execution of the adopted decisions (legal and organizational);
6. execution supervision and prompt status update;
7. generalization of the conducted management activities, assessment of the new/resulting management case.

In turn, every form of public administration (law-making/law-enforcement activity) also comprises all the stages of the management process that occur in any management activity. Thus, the cycle of any management process, that is known from the management theory, can be used to identify and minimize risks in public law. The first two stages — the analysis and assessment of the case and the forecasting and modeling — will be of key importance for identifying and mitigating (or preventing) risks in law-making. At the last three stages, the

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

analysis and minimization of risks in law enforcement activities are essential. And further, it is possible to propose an adjustment of risks in law-making activities based on the identification of risks through legal monitoring, mitigation of risks in law-enforcement activities, analysis of the risks as a result of the interpretation activities. The proposed algorithm of risk management in public law is shown in Figure 1.

Fig. 1. Risk management algorithm according to Administrative Law

3.6. Implementation of risk-oriented management in public administration practices

The most important component of identifying, analyzing, evaluating, forecasting and mitigating (preventing) management risks in the economy are the expert assessment and forecast of possible risks and threats at the law-making stage, their identification during the expert examination of draft laws and regulations thereunder, including through public hearing.

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

There are several different expert examination procedures used in law-making activities of public administration bodies, which are carried out on the basis of laws and regulations thereunder (FL "On anti-corruption examination of enactments and draft enactments"; "On the Public Chamber of the Russian Federation"; " On the environmental impact assessment"; "On the organization of the provision of state and municipal services"; the Decree of the Government of the Russian Federation "On the order of pedagogical evaluation of draft enactments and enactments concerning education and parenting"; "On the Public…", 2017; "On anti-corruption…", 2018; "On the organization…", 2018; RJR "… procedure of pedagogical…", 2018). Russian scientists studied the analysis of the methodologies for conducting expert examinations of enactments or certain types of enactments (LAPINA; BARANOVA, 2014; VORONINA, 2016; KIM, 2017; KHABRIEVA, 2012).

The Ministry of Justice of Russia examines enactments for their compliance with higher-level legislation and anti-corruption examination; the Ministry of Economic Development uses the methodologies for the regulatory impact assessment procedure of draft enactments (OMJR "… for legal evaluation…", 2018; OMJR "… for anti-corruption…", 2018). Of great use for risk management analysis is the Order of the Ministry of Economic Development of Russia No. 159 of March 26, 2014 "On the approval of methodological recommendations on the organizing and carrying out the procedure for assessing the regulatory impact of draft enactments of the constituent entities of the Russian Federation and examination of enactments of the constituent entities of the Russian Federation" (2016). The analyzed document actually echoes the "Methodology of the regulatory impact assessment" contained in the Annex to the Order of the Ministry of Economic Development of Russia No. 290 of May 27, 2013 and regulates expert examinations at the level of the constituent entities of the Russian Federation (OMEDR "… summary report from…", 2016).

The document provides recommendations on the compilation of the section of the summary report "Assessment of the risks of the adverse consequences of the proposed legal regulation." This clause contains a list of the risks that are entailed as a result of solving the identified problem by the proposed method of legal regulation:

1. The risks of non-compliance of the proposed legal regulation with the stated regulatory objectives.
2. The risks of insufficiency of the mechanisms of implementation of the proposed legal regulation to solve the problem.

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

3. The risks of inadequate control over the compliance with the introduced requirements.
4. The risks of the resource and personnel deficiency.
5. The risks of inconsistency of the proposed method of legal regulation with the level of proliferation of the necessary technologies.
6. The risks of the investment climate deterioration.
7. The risks of the reduced rate of small and medium business development.
8. The risks of reduced competition.
9. The risks of product safety and quality deterioration.
10. Environmental risks.
11. Social risks.

In our opinion, a comprehensive unified risk assessment methodology is needed both at the federal level and at the level of the constituent entities of the Russian Federation, and first of all, it concerns draft federal laws and laws of the constituent entities of the Russian Federation. In the Russian Federation, there are several expert examinations at the federal level of law-making activity currently, including not only legislative activity, but also substatutory departmental law-making (LAPINA; BARANOVA, 2014). Are they sufficient or not? What is the promising path of further development? Perhaps, it consists in providing a **unified expert anti-risk assessment**, as the current situation causes different opinions of departments and, as a result, it is impossible to reach a uniform solution. The scale is large, and the result is difficult to predict. Is there a need for combining all expert examinations into a single comprehensive one, including the involvement of civil society to monitor law enforcement through the exchange of information and public evaluation through the so-called e-democracy?

3.7. Are evaluation and mitigation of management risks in the economy necessary everywhere?

The Western countries have abandoned comprehensive risk assessment and regulatory impact assessment, as they slow down the decision-making process and lobbyists sometimes use the assessment to reject decisions that are disadvantageous for them (RISK AND REGULATORY POLICY, 2010). It is noteworthy that according to the adopted Federal Law No. 172-FZ "On strategic planning in the Russian Federation," the Annual Address of the President of the Russian Federation to the Federal Assembly of the Russian Federation is assigned a status of a strategic planning document developed within the framework of federal-

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

level goal-setting and is of key importance. Article 13 of the mentioned law provides for public hearing of draft strategic planning documents. However, the law does not clearly define whether this provision concerns the Addresses of the President of the Russian Federation (FL "On strategic planning…", 2017). There is a need for a scientifically justified transition to consolidated planning of law-making activity. For example, the Institute of Legislation and Comparative Law under the Government of the Russian Federation annually develops important strategic documents: The Concepts of Russian legislation development, in which there is a systematic, programmatic approach to law-making that binds together the trends of development of basic, integrated, and procedurally supporting sectors (KHABRIEVA; TIKHOMIROV, 2013).

3.8. Methodology for monitoring the law enforcement practices in the Russian Federation

The Resolution of the Government of Russia No. 694 of August 19, 2011 approved the Methodology for monitoring the law enforcement practices in the Russian Federation, which enables the consistent identification of legal risks and contributes to their mitigation and prevention in the law-enforcement and interpretation activities (RGR "… for monitoring law-enforcement…", 2011). The methodology proposes to summarize, analyze, and evaluate the law-enforcement information by the following indicators:

1. disregard of guaranteed rights, freedoms, and legitimate interests of persons and citizens;
2. existence of enactments envisaged by acts of greater legal power;
3. disregard of the competence limits of a public administration authority, state bodies and organizations when adopting an enactment;
4. misinterpretation of the provisions of the federal law and/or acts of the President of the Russian Federation, the Government of the Russian Federation, as well as decisions of the Constitutional Court of the Russian Federation and resolutions of the European Court of Human Rights by the enactment;
5. inconsistency of the enactment of the Russian Federation with the international obligations of Russia;
6. presence of corruption factors in the enactment;
7. incompleteness of social relations in the legal regulation;
8. conflict of law;

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

9. legal and technical errors in the enactment;
10. treatment of the enactment provisions as the ground for legally significant actions;
11. misapplication of the enactment provisions;
12. illegal or unreasonable decisions, actions (inactions) in the application of an enactment;
13. use of provisions that allow a broad interpretation of the competence of public authorities;
14. existence (non-existence) of a uniform practice of the enactment enforcement;
15. the number and content of statements regarding the enactment clarification;
16. the number of valid judgments sustaining (not sustaining) the applicants' claims in connection with the relations regulated by the enactment and the grounds for their adoption;
17. the number and content of sustained applications (proposals, statements, complaints) related to the enactment application, including those containing conflicts of law and gaps in legal regulation, misinterpretation of the enactment provisions, and different approaches to its application;
18. the number and nature of the recorded violations in the scope of the enactment, as well as the number of cases of bringing the guilty persons to justice.

4. CONCLUSIONS

The provided analysis of management risks in the economy has clearly demonstrated the non-systemic and insufficient legal regulation of risk management, including legal risks, in the system of public administration of the economic sphere. In Russia, the institute of risks in administrative law is currently being formed and is interconnected with the institute of national security. The author's concepts of “public law risk” and “administrative law risk” have legal sense, but at the same time they were formulated in relation to the categories of “potential jeopardy in public administration” and threats to national security.

Further development of the institute of risks in administrative law should involve interdisciplinary interaction taking into account theoretical developments on Russia's sustainable socioeconomic development with account of the environmental situation, the need for innovative development of the real economy and other parameters in the rapidly changing geopolitical conditions. A scientific approach to risk management in administrative law enables

vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

choosing risky management decisions in various areas of public administration, but such decisions should be based on the algorithm for identifying, analyzing, evaluating, forecasting, and mitigating risks.

The legal means of public administration of management risks in law-making is legal examination, which involves professional assessment of draft enactments for any negative consequences of its implementation. Legal examination is not only limited to the analysis of draft legal acts but may also cover their practical application. Risk management in law enforcement is reduced to:

1. monitoring law enforcement in the Russian Federation to enable the identification of management risks in the economy and contribution to their mitigation or prevention;
2. performing legal experiments, which involves the local testing of draft enactments within a certain territory or sector.

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vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
DOI: 10.12957/rqi.2020.45898

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vol. 13, nº. 03, Rio de Janeiro, 2020. pp. 1325-1347
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