

Kudryashova E. V.

THE TOPICAL SCIENTIFICALLY-THEORETICAL ISSUES OF SECTORAL AFFILIATION OF STATE STRATEGIC PLANNING LEGAL REGULATION

*Kudryashova Ekaterina
Valer'evna,
c.j.s. (PhD of jurisprudence),
Associate professor in the
Department of financial law,
the lawyer at Chamber of
Lawyers of Moscow Region,
Moscow,
ev_kudryashova@inbox.ru*

Considering the evolution of planning, the author shows the difference between long-term and strategic planning. The timeliness of the draft law "On the state strategic planning" in the context of similar acts existing in other countries is estimated in the article. Here is noted that scientific and theoretical foundations of legal regulation of strategic management lag behind from the management development. The author gives his position regarding sectorial affiliation of legal regulation of state strategic planning.

Keywords: strategic planning, legal regulation of strategic planning, state strategic planning, strategic management.

The issue of strategic management in recent times has become very popular in the press and in scientific publications. At the same time, the legal aspects of strategic management have not yet become a subject of scientific debate among legal scholars, although the time for such a discussion came long ago.

Despite the popularity of the term "strategic", its scientific content is often overlooked or being touted fairly contradictory. We are going to break this tradition and to define what we mean under "strategic", in our case, strategic planning.

"The term of "strategy" (from the Greek *stratos* - army + *ago* - to lead) literally means the orientation of generals to win - a decisive change in situation through military actions. Strategy is a science, art, and experience of implementing large scale operations, transformations, reforms and other actions intended to qualitatively change the current situation, state of public affairs, situation in important sectors, the balance of power in the conflict of interests. The main feature of strategy is the orientation to new quality, new level, and new condition" [3, 171].

Strategic management is a management “from the future in the present”, a qualitatively new type of administration. Similarly, strategic planning is a qualitatively new stage in the evolution of planning. Incorrectly to believe that strategic planning is one of the types of planning alongside with financial, socio-economic one, and so on. All types of planning have become strategic: socio-economic, territorial, financial and other kinds of planning.

The evolution of planning has been going from the planning of ongoing internal processes in an organization, where the planning is directed inside of administration, to the planning aimed outwards, i.e. taking into account external factors: economic, socio-political, scientific, technical, etc. Managerial practice has shifted from the planning of ongoing activity to long-term planning, and from long-term planning to strategic one.

Long-term planning was conducted by moving past regularities and structural characteristics to the future. To orient in the heightened uncertainty of the future it was needed to change the original planning principle – occurred the necessity to go from the future to the present and not from the past to the future [2]. “The main difference between long-term and strategic planning is in the interpretation of the future. The system of long-term planning assumes that the future can be predicted by extrapolation of the historical growth trends... Strategic planning denies assumption that the future must necessarily be better than the past, and does not consider that the future can be explored by the method of extrapolation” [2, 49-51]. Strategic planning “does not assumes that the future is the improved past and therefore it can be extrapolated on that basis” [5, 59].

In general we can say that the paradigm of planning has changed – planning as a management method has become strategic, that has required implementation in legislation. The problem of implementation of state planning management in legislative acts was raised back in the Soviet period, because scholars and practitioners complained that “the process of national economic planning (in the broadest sense – from the development and approval of plans till their implementation) remained one of the least regulated in the legal aspect of the spheres of socialist economy” [7, 167].

Currently, attempts are being made to legitimize the legal regulation of state strategic planning. October 01, 2012 draft law “On State Strategic Planning” was introduced in the State Duma of the Federal Assembly of the Russian Federation [1]. The Bill defines the concept of state strategic planning as activities of federal public authorities, public authorities of the constituent entities of the Russian Federation and local self-government bodies with the participation of

labor unions and employers' associations, public, scientific and other organizations regulated by the legislation of the Russian Federation and aimed at state prediction, results-based and territorial planning, as well as monitoring of execution strategic planning documents designed to address the tasks of sustainable socio-economic development of the Russian Federation and strengthening of national security.

In foreign practice exist similar legislative acts. In the 60's of XX century in the Federal Republic of Germany was adopted the Federal law "On the Requirement of the Stability and Development of Economy" [9]. In 1993, the United States adopted the law on the effectiveness and results of the United States Government activity ("Government performance and results act") [11], which required federal agencies to develop strategic plans for a few years (now for the coming financial year and the subsequent four-year) in accordance with the budgetary programs. Improved law on efficiency and results of the United States Government activity was issued in 2011(GPRA modernization act) [12].

It appears that the emergence in Russian legislation of the special law on the state strategic planning marks the beginning of the implementation of strategic management in legislative acts. However, scientific-theoretical basis of the legal regulation of strategic management is lagging behind the development of the management.

Because of the traditional division of Russian legislation and legal science into branches (sectors), in the scientific-theoretical field a question rises about sectorial affiliation of the issues of state planning.

Soviet legal science referred state planning to the area of constitutional law because the planning was considered as one of the foundations of social system. In the era of "perestroika" planning as the basis of social system was opposed to market economy, what, however, was more emotional than science-based opposition. For example, in the German legal literature, we find an opinion that after Germany's most important structures of a legal state had been built, together with the development of the practice of Constitutional Court and administrative courts, the phase of planning started in 1967. There was found the western idea of planning, which so far has been hampered by ideological shade of connection of planning with totalitarianism. Planning is a great engine of our time. Planning is an understanding in the present of the looming shape of the future" [10, 114].

Even today there are supporters of interpretation of planning as a constitutional institute in the Russian legal science, which advocate the restoration of norms on state planning in the Constitution of Russia. For example, such suggestion is made

by the authors of the textbook "Constitutional Law of European States": "Constitutional and legislative determination of the content of state planning institute is needed". In this context, it would be advisable to develop a set of constitutional provisions that govern the planned activities of the State (relations on planning), form a constitutional-legal institute of planning and assessment "of existence of economy and society as a whole. This would allow linking of planning with changes in modern Russian economy. The economy cannot be separated from the social, cultural and institutional environment", and further "Restoration of constitutional institute of planning is a necessary base for the revival of a balanced economy that is able to provide for the needs of Russian society" [4, 28-29]. Restoration of planning as the basis of constitutional order has recently been proposed by some Russian politicians as a panacea against crisis phenomena [6].

It seems to us that after passing the time of idea of planning as the basis of social system, state planning has preserved great importance in the managerial science. Therefore, it seems fair to include state planning mainly in the field of administrative law. The above-mentioned draft law "On State Strategic Planning", in our view, refers to administrative law with few exceptions. In the Bill is said about the integration of budget planning in the general system of state strategic planning (e.g., paragraph 6 article 10 of the Bill), which is quite reasonable. However, strategic planning in financial sphere as part of financial management should be attributed to financial law.

After financial law had become an independent sector, scientists for a long time were waging a controversy about the affiliation of the issues of public finance management to the sector of administrative or financial law, but the discussions was summed up by the article of Professor A. I. Khudiakov "About the correlation of the concepts of "financial activity" and "finance management" [8, 63-66]. In this article A. I. Khudyakov said that finance management, which traditionally belonged to the subject of administrative law, should be referred to the subject of financial law. This position is justified and serves to a holistic perception of the financial activity of the State.

So, one of the urgent scientifically-theoretical problems of modern legal science is the issue of the development of scientific approaches to a legal regulation of strategic management, including strategic planning. In today's reality the issue of sectorial affiliation of state strategic planning's legal regulation should be resolved in favor of administrative and partially in favor of financial law. It is within these sectors should be considered the provisions of the Bill and, possibly, after some time the Law "On State Strategic Planning".

References:

1. Draft law No. 143912-6 "On State Strategic Planning" [Zakonoproekt № 143912-6 «O gosudarstvennom strategicheskom planirovanii»]. Available at: <http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=143912-6&02> (accessed: 22.03.2013).
2. Asnoff I. *Strategic Management* [Strategicheskoe upravlenie]. Moscow: Ekonomika, 1989
3. Atamanchuk G. V. *Theory of the State Management: Lectures. 3rd enlarged edition* [Teoriya gosudarstvennogo upravleniya: Kurs lektsii. 3-k izd., dop.]. Moscow: publishing house OMEGA-L, 2005.
4. *Constitutional Law of European States: A manual for students of law higher schools and faculties* [Konstitutsionnoe pravo gosudarstv Evropy: Uchebnoe posobie dlya studentov yuridicheskikh vuzov i fakul'tetov]. Editor-in-chief D. A. Kovachev, Moscow: Volters Kluver, 2005.
5. Kuznetsova E. I. *Strategic Analysis in the System of State Management of National Economy: monograph* [Strategicheskii analiz v sisteme gosudarstvennogo upravleniya natsional'noi ekonomikoi: monografiya]. *Zakon i pravo – Law and Justice*, Moscow: YuNITI-DANA, 2006.
6. Luzhkov Yu. M. Russian Features of the Global Crisis [Rossiiskie osobennosti mirovogo krizisa]. *Rossiiskaya gazeta – Russian Gazette*, federal edition from 11.02.2009, no. 4846.
7. *Theoretical Problems of Economic Law* [Teoreticheskie problemy khozyaistvennogo prava]. Moscow: 1975.
8. Khudyakov A. I. About the Comparison of the Concepts of "Financial Activity" and "Financial Management" [K sootnosheniyu ponyatii «finansovaya deyatel'nost'» i «upravlenie finansami]. *Pravovedenie – Legal Studies*, 1985, no. 1.
9. *Act to Promote the Stability and Growth of Economy from June 08, 1967* [Gesetz zur Förderung der Stabilität und des Wachstums der Wirtschaft vom 8. Juni 1967 (BGBl. I S. 582), das zuletzt durch Artikel 135 der Verordnung vom 31. Oktober 2006 (BGBl. I S. 2407) geändert worden ist]. Available at: <http://bundesrecht.juris.de/stabg/index.html> (accessed: 21.03.2013).
10. Joseph H. Keiser. Cited from Stolleis M. *Stages of Administrative Law Development* [Entwicklungsstufen der Verwaltungsrechtswissenschaft]. Edited by Wolfgang Hoffmann-Riem, Eberhard Schmidt-Assmann, Andreas Vosskule, Bnd.1, Munich: Verlag C.H., Beck, 2006.
11. Available at: <http://www.whitehouse.gov/omb/mgmt-gpra/gplaw2m> (accessed: 21.03.2013).
12. Available at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ352/pdf/PLAW-111publ352.pdf> (accessed: 21.03.2013).