

GCPMED 2020
**Global Challenges and Prospects of the Modern Economic
Development**

LEGAL RISKS THROUGH THE PRISM OF DIGITALIZATION

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Abstract

The relevance of the study of legal risks and their functions is due to the fact that building a rule of law in our country is unthinkable without creating a strong legal system operating on the basis of generally recognized democratic constitutional principles. Building a rule of law state without reference to legal risks is not possible. The relevance and significance of the topic under consideration is predetermined by the fact that the goal of building a legal state is to protect the constitutional order of the Russian Federation, the rights and freedoms of citizens, the rights and legitimate interests of enterprises, institutions and organizations. Every year, various collisions in the study of the institution of risk appear, and to solve this problem, adjustments are made to the legislation, and information technology developments are used and not only. Currently, in the domestic scientific literature there is no unified conceptual approach to the study of legal risks, determining their place and role. The work highlights the main functions of legal risk based on the analysis of scientific and educational literature and illustrated with examples from the field of law. There are no clear criteria for classifying risks in law. Currently, during a pandemic, all legal issues are considered through the prism of Covid-19, this is happening not only in the Russian Federation. The presented study focuses on the emergence of new types of risks in law, identifies new classifications and types of risks.

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Keywords: Digitalization, legal risk, risk, risk classification, types of risks



1. Introduction

The problem of the concept of risk is currently complex, because the very category "risk" appears before us in a variety of guises, which, in turn, makes it difficult to bring the existing approaches to a common denominator. Currently, in the theory of law, there is no single definition of the concept of "risk". On the other hand, ideas about legal risks are completely fragmentary.

The category of "risk" in law deserves special attention. It is found everywhere in all branches of law and in each of them finds its application. Much has been said about the concept, principles, and classifications of "risks" in the scientific and practical environment. It is necessary to understand the aspect of what constitutes a risk function in law. What are the risk functions? How do they manifest? It is widely known that the Russian Federation is actively using "anti-risk" measures and various kinds of forecasts specifically in terms of the country's socio-economic development.

In the operation of a particular system, of course, certain failures may occur, which, in turn, give rise to the onset of negative consequences in the form of damage or unforeseen circumstances. Thus, the phenomenon of risk arises. Risk is a probable unlawful deviation from legal decisions and acts, which entails negative consequences (Tikhomirov, 2016). The risk can and should be foreseen and prevented.

2. Problem Statement

First of all, it is necessary to understand the variety of existing concepts regarding the concept of "risk" and to analyze the existing in science and practice theories regarding this category. As you know, the existing legislation was developed in such a way as to cover the entire range of features of a particular branch of law. However, we will venture to suggest that the concept of "risk" is not a static category, and, therefore, needs a more elaborated conceptual apparatus.

So, for example, it is interesting to refer to the teachings that existed in Ancient Greece, where the concept of "risk" received its first consolidation. Risk, as such, was a rather ghostly category, as evidenced by the worldview of the Ancient Greeks. They believed that the future depends only on the will of the gods and has nothing to do with the desires and aspirations of man. The origin of the word "risk" is not known for certain. There are different points of view on this issue. The most common approach is to correlate risk with the Greek word rizikon (cliff, rock), meaning to maneuver between rocks.

Further, we can say that the emergence of the now known world religions contributed to the introduction of some understatement in the concept of "risk". The Middle Ages were marked by the acceptance of yet another truth: the future depends not only and not so much on God, but exclusively on the will and desire of man. During the Renaissance, a serious study of the problems associated with legal risk began. The use of the concept of "risk" as the category of "fear" contributed to the formation of the concept of three main components: threat, danger, adverse consequences. An interesting fact is that in the legislation of the pre-revolutionary period the term "risk" was practically not used, and instead of it the term "fear" was used in the legislation. Thus, the concept of "risk" did not receive its legislative consolidation in any of the branches of law until the revolutionary period, and also was not reflected in the scientific works of legal scholars.

3. Research Questions

The period of the pandemic has become a litmus test for the development of legal risks in Russia and the world. Almost all spheres of public life have abruptly switched to the online format. Digitalization plays an important role here. On the one hand, digitalization and informatization of society is a definite plus, citizens are becoming more mobile, many are switching to remote work, it is much easier to combine training and professional duties, the portal of State services, the Internet banking system is developing. However, in addition to the obvious advantages of digitalization, there are both obvious and hidden disadvantages. The main questions that were posed when writing this research study are presented below. What is legal risk? How important is legal risk for a modern legal system? Is the pandemic affecting the legal risk area? What types of legal risks can be identified? How do legal risk and digitalization relate? Is digitalization risk a positive legal risk?

4. Purpose of the Study

The presence of the virus is obvious. Today an unprecedented situation exists for the economy, healthcare, and the labor market. People are confused, everything is changing at an incredible speed, the way of life of an ordinary citizen is also undergoing significant innovations. The state of medicine, public health and the economy is actively discussed in the media and on Internet portals. There is not a single area of public life that is not affected by the pandemic. Given the constantly changing exponentially changing circumstances, new regulatory legal acts are emerging that should meet modern realities as much as possible. The pandemic has also affected the risks in law. In our opinion, it is important to dwell in more detail on the risks of modern lawmaking. The origin of the concept of "risk" is not known for certain. There are different points of view on this issue. Note, although this is a fairly well-known postulate, that the concept of risk in law does not have its own legislative formula. As a rule, risk is perceived as a kind of deviation from the law, as a kind of negative consequences.

5. Research Methods

In the context of the evolution of the concept of "risk" it is interesting to present the point of view of (Kovaleva, 2002). She proposes to distinguish three main historical types of risk based on the defining feature of its content: natural, civilizational, global. But at the same time, Kovaleva (2002) makes a clarification: "It should be noted right away that historical species are not historical stages, replacing each other, but appeared in addition to the natural, which always accompanied and accompanies an individual and a group of individuals" (p. 22).

Thus, we can conclude that, according to the point of view of Kovaleva (2002), the concept of "risk" does not change depending on the specific stage of the historical development of the political, economic and legal systems of society, but has a "cumulative effect", that is, it concentrates in itself new properties. It turns out that risk is a negative category, not always justified, does it have a similar relation to law? Let us analyze the opinions of legal scholars on this issue.

It is safe to say that the concept of "risk" and business are synonymous. The risk is obscurely traced in all areas of business law (Kruessmann, 2018). For example, in Ancient Russia and in later

periods of the development of the Russian state, merchants had codes of honor. Whatever risk followed the obligations that the merchants assumed, honor, good name and good faith were guarantees of a favorable outcome of the transaction for either party.

In our opinion, the reference of the subjects of legal relations to the fundamental principle of good faith will, over time, be a widespread tradition of the entire judicial system of the Russian Federation. Of course, this will contribute to solving an important problem: maintaining the proper level of legal regulation while directly preserving the stability of the practice of Russian courts. Thus, we can conclude that the main elements of risk can be conditionally divided into subjective and objective. Subjective risk factors include subject and volitional regulation.

If we turn to the scientific literature, which is devoted to the study and study of the concept of "risk", then it is possible to single out a huge number of definitions, which may include a variety of approaches and opposing points of view. In the Explanatory Dictionary of the Russian language, two definitions of the concept of "risk" are given. "Possibility of danger, failure." "Action at random in the hope of a happy outcome" (Ozhegov & Shvedova, 1997, p. 46). Everyone knows that in everyday widespread use, risk can be defined as an unfavorable outcome, the possibility of loss or failure. It's no secret that modern society is a rather complex and dynamically developing system, where, in essence, riots are order.

With a fair degree of convention in society, the following main areas can be distinguished:

- the state;
- natural sphere,
- social sphere;
- the economic sphere.

It seems possible to highlight some of the main areas of risk manifestation and types of risks:

- political risk;
- entrepreneurial risk;
- social risk;
- environmental risk.

6. Findings

The world is now faced with a serious problem: the new coronavirus infection (Covid-19). This is a real test, which the states of the whole globe are subjected to. Active cases of infection have also been identified in the Russian Federation. As we have already indicated in one of our previous works, using the scientific views of Tikhomirov (2016), the following risk classifications can be distinguished:

- "Risks, the occurrence of which cannot be foreseen;
- by scale - sectoral, local, regional;
- by areas;
- repetitive under normal circumstances;
- risks, the occurrence of which was expected;
- risks that manifest themselves in force majeure circumstances;
- risks from outside the legal environment".

The risks arising during a pandemic can obviously be attributed to each item from the proposed classification, including the risks in law. Osipov (2019) in his article: "The concept and classification of risks in law" noted that the basis for the classification of risks in law should be the type of legal process, which is directly related to a certain type of risk. One cannot but agree with this point of view, which, in our opinion, is fair and justified from the position of the functioning of the modern legal system. The author identifies global types of risks in law: risks associated with the implementation, application, and interpretation of law. As Osipov (2019) correctly points out in his scientific work, the presented classification is very extensive, but fundamental, fundamental for the further systematization and classification of risks in law.

We will try to study the adopted normative legal acts in recent months and systematize information about new risks in law in the specified period. It is not surprising that an analysis of regulatory legal acts in recent months, namely, March and April 2020, suggests that most of them, one way or another, were adopted in connection with the spread of a new coronavirus infection. As a result of the analysis of the submitted regulatory legal acts, we have derived a certain classification of risks in law with a constant value - Covid-19.

The most obvious classification is the division of risks in law according to industry criteria: risk in criminal law, administrative, civil, labor, etc. This classification is not an innovation, but risks in law, regardless of the state of the legal system, economy, politics and other public spheres of life, first of all, must be classified in the presented way. Such a legal (namely, legal) category as risk manifests itself most clearly in business law. Even the very definition of entrepreneurial activity is inextricably linked to risk.

The pandemic has been a powerful catalyst for reaffirming the definition of entrepreneurship. Many organizations doing business have found themselves in a difficult situation due to self-isolation. Not all organizations have the opportunity, due to objective and subjective reasons, to work exclusively remotely (Kozhevnikov & Chudinovskikh, 2020). Under these circumstances, the risk in law has fully manifested itself, having served as an impetus for the emergence of legal consequences: layoffs, layoffs, the onset of legal liability.

It is quite interesting to highlight the procedural risks associated with the pandemic. Of course, the problem is Covid-19 (Andreeva & Kachalova, 2020) – a global problem; modern society has not yet faced such circumstances. How does the judicial system work, are we able to defend our rights, in what form? There are a lot of questions.

Everyone is aware of the recently adopted Decrees of the President of the Russian Federation of March 25, 2020 №. 206 "On the declaration of non-working days in the Russian Federation" and of April 2, 2020 №. 239 "On measures to ensure the sanitary and epidemiological well-being of the population on the territory of the Russian Federation in connection with the spread of the new coronavirus infection (COVID-19)". These regulatory legal acts have made a significant contribution to the formation of procedural risks in law. This is manifested, first of all, in the extension of the terms for the consideration of cases by the courts. This is described in great detail in the Review on selected issues of judicial practice related to the application of legislation and measures to counter the spread of a new coronavirus infection (COVID-19) in the Russian Federation, 2020, №. 1.

In our opinion, one can also distinguish positive and negative risks in law. They are connected, first of all, with digitalization, which is spreading everywhere. Digitalization is currently a kind of trend; it penetrates almost all spheres of society and state life. Digitalization is a special approach that allows you to skillfully use digital resources to transform the work of an organization.

Very often you can find scientific papers and practical comments on the digitalization of various kinds of business projects (Farrokhi, 2019). Is digitalization taking place in the legal sphere, what are its risks during a pandemic? Of course, the percentage is insignificant, but digitalization affects the legal field of activity everywhere. Practical lawyers and theorists actively use legal reference systems in order to be on the crest of a wave in the system of constantly changing legislation. A citizen who, due to the duty of his work, has nothing to do with jurisprudence, actively uses the State Services portal and multifunctional centers.

But some of the possibilities of digitalization can be considered in terms of risks. For example, the risk applied to the legal profession. In 2016, the legal community actively discussed the news about the creation of the so-called artificial intelligence, which, with an accuracy of 79%, could guess the decision of the Strasbourg court. This project was developed by scientists from the UK and the USA. A similar artificial intelligence project was also created by students of Kazan University, it was named "Casebook". Does this mean that artificial intelligence will replace the lawyer in his daily activities? Hardly. A striking example is judicial work. Many nuances in litigation are left to the discretion of the judges. Artificial intelligence has yet to cope with this task. This can be thoroughly qualified as a positive risk in law.

In the era of digitalization (Tomashevski, 2020) information is of particular value; it is the most important component of the emerging legal relationship. This is, first of all, about the protection of information. The regulatory legal acts of the Russian Federation establish legal regimes for processing information that is of particular value (Alekseevskaya, 2020). These categories include state, commercial secrets, personal data, insider information, etc.

If we are talking about the legal regimes for processing personal data, then the question of identifying a person on the Internet remains very interesting, this problem is associated with possible violations of the rights of a large number of subjects, and this is not only about disclosing information. The subject of law on the Internet is very difficult to identify, and sometimes even impossible (Sukhova & Babikova, 2020).

On the issue of artificial intelligence, the debate is about responsibility for the actions of robots, because in fact it is a "digital personality", does it have legal personality? Who is a blogger? How is its activity regulated in the legal field? There are a lot of questions, currently there are even more questions than answers to them. It can be argued that digitalization in the legal sphere is not only a positive process, but also carries certain risks, in particular during a pandemic. Therefore, the negative risks in law include: The risk of lack of sectoral regulation of all digitalization processes associated with imperfect legislation in the presented area.

1. Risk of a threat to the legal profession.

2. The risk of abuse of digitalization technologies and, as a result, the emergence of new types of crimes (This category can be attributed to digital passes that are introduced in order to slow down the spread of Covid-19).

3. The risk of undermining sovereignty associated with the widespread dissemination of false information through social networks (Twitter, Instagram, Facebook), the so-called "fake news").

4. Associated risks.

Long-term risks include the legal implications for the private business sector after emerging from the pandemic: minimizing the consequences of the crisis from a legal and economic point of view.

According to the degree of consistency of the onset of legal liability for committed offenses, risks in law are divided into diffusion and chaotic. The first are associated with the lack of clear criteria for delineating the onset of responsibility for an offense. The second are associated with the lack of differentiation of administrative responsibility for offenses provided for in parts 9 and 10 of Art. 13.15 of the Code of Administrative Offenses of the Russian Federation (hereinafter referred to as the Code of Administrative Offenses of the Russian Federation), and criminal liability under Article 207.1 of the Criminal Code of the Russian Federation (hereinafter referred to as the Criminal Code of the Russian Federation) in cases of dissemination by an individual in the media, as well as in information and telecommunication networks, of knowingly unreliable information about a new coronavirus infection under the guise of reliable messages (Review of selected issues of judicial practice related to the application of legislation and measures to counter the spread of a new coronavirus infection (COVID-19) in the Russian Federation, 2020, №1).

In this particular situation, the pandemic acts as a catalyst for legal risks, i.e. a factor that accelerates or slows down the development of risks in law. It is more appropriate to assume that the pandemic still expands the boundaries for the emergence of new risks to the law. Hopefully, without diminishing the negative properties of Covid-19, it will serve as a springboard for improving and improving all spheres of public life.

7. Conclusion

Of course, digitalization is a very difficult process, especially from a legal point of view. To understand that this is not easy, it is also necessary to consolidate this process with a legal framework in order to prevent violations of citizens' rights. By the time of action, in our subjective opinion, it is possible to divide legal risks into short-term and long-term. That is, the risks that take place only during the pandemic and those that will exist after its end for a certain period. The short-term risks in law include the distance learning process, namely the risk of restricting the exercise of the right to education, for example, for students. Something from the educational process may remain uncovered for various subjective reasons: poor Internet connection, lack of a PC, or an accurate verified distance learning process. This is temporary. In the near future, students and teachers will go offline again, and the distance learning process will be properly established. As we know, not everything in our life can be foreseen. Legal risk is a very interesting legal category, the study of which has received due attention, but it would be fundamentally wrong to stop at what has been achieved. Everything that relates to the field of law is dynamic, everything changes, and it is possible that the functions of legal risk, their goals and significance will also change.

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