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Administrative barriers to entrepreneurship in the Russian Federation

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5.1.2. Public Law (State Law) Sciences

GENERAL CHARACTERISTICS OF THE WORK

Relevance of the research topic. One of the main obstacles to the development of the economy of the Russian Federation, according to both legal theorists¹ and legislators², is excessive administrative pressure on business and general "overregulation", in particular, the presence of excessive administrative barriers in the legal regulation of entrepreneurial activity. It is important to note that the special role of administrative barriers as a restraining factor in economic growth is recognized equally by both representatives of economic theory and legal science.

It should be emphasized that it is the normative acts of federal executive bodies that are the most important instrument of state regulation and management in general. A convincing confirmation of this thesis is the example of the institution of administrative regulations, which, starting from 2005 and to the present, have become widespread in Russian law³.

Intended to regulate the procedure for conducting administrative procedures, they have become extremely widespread: at the federal level, regulations number in the hundreds, at the level of subjects and municipalities - in the thousands and tens of thousands⁴. At the same time, the quality of preparation and, as a consequence, the effectiveness of the application of individual administrative regulations do not meet modern standards of public administration.

At the same time, due to the high level of "overregulation" in the field of management, a situation arises in which the requirements of by-laws for the procedure

¹See, for example, the interview with the Chairman of the Government of the Russian Federation M.V. Mishustin URL : <https://ria.ru/20211201/podderzhka-1761622212.html>, (date of access: 03/19/2021).

²See, for example, the Strategy for the Development of Small and Medium-Sized Entrepreneurship in the Russian Federation through 2030 (together with the Action Plan (roadmap) for the implementation of the Strategy for the Development of Small and Medium-Sized Entrepreneurship in the Russian Federation through 2030), approved by RF Government Order of 02.06.2016 No. 1083-r as amended by RF Government Order of 30.03.2018 No. 547-r // Coll. Legislation of the Russian Federation. 13.06.2016. No. 24. Art. 3549.

³ *Davydov K. V.* Administrative regulations of federal executive bodies of the Russian Federation: theoretical issues: Monograph / edited by Yu. N. Starilov . Moscow: N O T A B E N E, 2010. pp. 13–18.

⁴ *Mikheeva I. V.* Principles of legal regulation of licensing procedures as a basis for effective public administration // Russian Law Journal. 2019. No. 2. P. 8–14.

for implementing administrative procedures contradict the requirements of the law and the purposes of its adoption, introducing defective or excessive regulation. As a result, such excessive regulation leads to the emergence of individual administrative procedures that do not comply with the general line of legal development, reduces their effectiveness and ultimately causes their degeneration into administrative barriers⁵. At the same time, legal science notes that "executive and administrative activity, like any other public authority activity, is impossible without a certain space for the free discretion of officials (administrative discretion)"⁶.

Such defects – administrative barriers – become a factor that negatively affects the quality of public administration and hinders the achievement of the goals of legal regulation, which leads to a decline in the effectiveness of governance as a whole.

The described trends are of greatest importance in the area of public administration of entrepreneurial activity as, firstly, one of the most extensive areas of regulation, and, secondly, one of strategic importance for the development of the state.

In turn, a justified reduction in the degree of regulation and the elimination of administrative barriers contribute to increased management efficiency and, as a consequence, an increase in the growth rate of the domestic economy.

The thesis that the rejection of excessive and outdated regulations, the reduction of the regulatory and supervisory burden on business have a positive effect on the business and investment climate of the state has been repeatedly expressed in scientific literature. It is noted that transparent and understandable regulation is one of the drivers of economic development. For example, studies conducted by the Organization for Economic Cooperation and Development show that the reduction of administrative barriers for business and regulatory reform lead to an increase in annual economic growth rates by approximately 2% of GDP ⁷.

⁵Administrative procedures and control in light of the European experience / edited by T. Ya. Khabrieva, J. Marcoux. Moscow: Statut, 2011. P. 117

⁶ *Krasnov M.A., Talapina E.V., Yuzhakov V.N.* Corruption and legislation: analysis of the law for corruption potential // *Journal of Russian Law*. 2005. No. 2. P. 15–21.

⁷Lyubimov Yu., Novak D., Tsygankov D., Nesterenko A., Varvarin A., Ibragimov R., Zharkova O., Moskvitin O., Maslova N., Verle E. "Regulatory Guillotine" // *Law*. 2019. No. 2. P. 20–36.

The reform of control and supervisory activities, the so-called "regulatory guillotine", was aimed at eliminating the excessive administrative burden on business entities⁸. The implementation of this reform also confirms the existence of a demand for a qualitative change in the current state regulation of entrepreneurship.

Despite the obvious need to propose a systemic solution to the problem of the emergence and functioning of administrative barriers in domestic law, there are still no unified theoretical approaches to understanding the legal nature of this phenomenon.

All this indicates the need for scientific research of these issues, which determined the topic of this dissertation research.

The issue of the quality of state regulation of entrepreneurship in Russia (and, as a consequence, the issue of studying administrative barriers) is particularly relevant in the current sanctions conditions, which represent a serious test for the active development of the Russian economy.

At the same time, sanctions and counter-sanctions restrictions, in turn, can also be considered to some extent as administrative barriers. Thus, the restriction on the free sale of shares in Russian companies owned by foreign persons, established as a counter-sanction measure, on the one hand, protects the interests of the companies themselves and other (except for foreign persons associated with unfriendly jurisdictions) owners of companies who are protected from the sale of shares in Russian enterprises at a reduced cost and in a short time, and on the other hand, complicates the conduct of such transactions and the receipt of shares by Russian buyers and the payment for such shares. The given example illustrates some contradictory approaches to defining the nature of administrative barriers described in the works of various researchers. Thus, administrative barriers can be considered both as a positive phenomenon aimed at protecting the interests of entrepreneurs and other persons, and as a negative phenomenon complicating the conduct of entrepreneurial activity.

The dissertation research is devoted to the topic of administrative barriers in the legal regulation of entrepreneurial activity in Russia: their legal nature, main features and

⁸ Regulatory guillotine / Official website of the Analytical Center under the Government of the Russian Federation URL: <https://knd.ac.gov.ru/about/> (date of access: 01.05.2024).

classifications, as well as mechanisms to counter administrative barriers that are currently used in our country and that can be introduced in the future.

The essence of administrative barriers, even by the definition of the word "barrier" ("obstacle")⁹, implies the creation of any restrictions that complicate or block the achievement of the final result. In itself, the creation of restrictions on entrepreneurial activity in some cases may not be a negative phenomenon. Moreover, one of the tasks of administrative law as a branch of domestic law is the regulation of relations in the sphere of public administration. The creation of restrictions can and should be assessed as one of the necessary instruments of legal regulation. And only in those cases when the introduction of additional restrictions does not correspond to the purpose of regulation (in the context of entrepreneurial activity - this is primarily the economic development of the state), interferes with its achievement, such regulation should be assessed as excessive, representing an administrative barrier.

The degree of scientific development of the research topic. Theoretical problems associated with the topic of administrative barriers as a legal phenomenon in the field of state regulation of entrepreneurial activity, including issues of developing a definition, determining the characteristic features of the phenomenon, universal methods for identifying and eliminating administrative barriers, have not been the subject of comprehensive research to date.

Some works (including dissertations) conducted up to the present moment are devoted to the study of administrative barriers arising in certain narrow spheres of regulation. In this regard, they do not take into account the systemic nature of the phenomenon described, and do not study the patterns of its functioning.

A significant contribution to the study of the legal nature of administrative barriers as a legal phenomenon was made by such researchers as E. V. Bessonova, E. K. Glushko, G. B. Kazachenko, E. V. Samoylenko, D. V. Ushakova, O. M. Shestoperova .

It is impossible not to note the contribution of economic researchers to the study of issues related to understanding the essence of administrative barriers. The problems of

⁹ *Ozhegov S.I., Shvedova N.Yu.* Explanatory dictionary of the Russian language. M., 1997.

this institution are considered in the works of such scientists as A. A. Auzan, V. Yu. Voloshina, L. A. Istomina, G. V. Kalyagina, O. D. Komarovskiy, P. V. Kryuchkova, H. N. Lygin .

Among the works aimed at studying administrative barriers in narrow areas of state regulation, it is necessary to separately note the works of V. V. Tyryshkin, who studies the features of administrative barriers arising in the law enforcement activities of the internal affairs agencies of the Russian Federation ¹⁰; S. A. Agamagomedova , whose works are devoted to the study of administrative barriers encountered within the framework of regulating customs procedures ¹¹. Methods for identifying administrative barriers are proposed in the works of U. N. Punanova ¹².

This work is devoted to the study of the above-described problems of the institute of administrative barriers as a legal phenomenon and contains scientific developments, as well as proposals in the practical plane, aimed at improving the legal regulation of entrepreneurship.

The object of this study is social relations that develop in the course of interaction between the state and entrepreneurs, within which administrative barriers are formed and function.

The subject of the research is theoretical provisions defining the concept and features of administrative barriers, normative legal regulation of entrepreneurial activity that gives rise to administrative barriers, as well as law enforcement practice within the framework of the designated topic.

The purpose and objectives of the dissertation research. Within the framework of this dissertation research, the goal is to develop theoretical provisions concerning the legal nature and concept of "administrative barrier in entrepreneurial activity", regulatory

¹⁰ Tyryshkin V. V. Overcoming administrative barriers in law enforcement activities of the internal affairs bodies of the Russian Federation dis candidate of legal sciences: 12.00.11 / Tyryshkin Viktor Vladimirovich. M., 2015. 209 p.

¹¹ Agamagomedova S. A. Administrative barriers when passing customs control: concept, types and methods of overcoming // Journal of Russian Law. 2017. No. 6. Agamagomedova S. A. Overcoming administrative barriers when passing customs control of goods containing intellectual property rights // IS. Industrial Property. 2016. No. 12.

¹² Punanova U. N. Ways to improve administrative and legal instruments for identifying and eliminating administrative barriers to entrepreneurial activity // Administrative and municipal law. 2014. No. 12.

regulation of this phenomenon, to determine universal classifications, to identify and propose ways to implement a mechanism to counter administrative barriers.

To achieve the research objective, it was necessary to solve the following **tasks**:

- formulate the concept of an administrative barrier in regulating entrepreneurial activity as a legal phenomenon;
- to establish the specifics of legal regulation of administrative barriers in entrepreneurial activity;
- to identify the legal nature of administrative barriers;
- to determine methods for identifying administrative barriers in entrepreneurial activity;
- establish methods for preventing administrative barriers in entrepreneurial activity;
- to identify methods for eliminating administrative barriers in entrepreneurial activity.

The theoretical basis of the research was formed by the fundamental principles of legal theory, research by Russian representatives of administrative law and economic theory.

A significant contribution to the study of administrative barriers in Russian legal regulation was made by A. A. Auzan, V. V. Astanin, V. V. Burovtsev, E. E. Voevodskova, V. Yu. Voloshina, G. V. Germanovich, E. K. Glushko, O. V. Grechkina, K. V. Davydov, A. N. Degtyarev, E. M. Zabolotskikh, S. M. Zubarev, S. M. Zyryanov, L. A. Istomina, I. V. Kalinina, G. B. Kazachenko, V. K. Kartashaeva, N. V. Ketova, P. V. Klyuchkova, I. P. Kozhkar, A. M. Kononov, A. Yu. Kokovikhin, K. G. Koryakina, N. P. Kralina, T. N. Narovlyanskaya, R. I. Malikov, A. V. Martynov, I. V. Mikheeva, I. R. Mukharlyamov, B. P. Noskov, U. N. Punanova, N. V. Putilo, B. V. Rossinsky, Yu. N. Starilov, S. A. Starostin, N. V. Subanova, S. V. Taktarova, L. K. Tereshchenko, Yu. A. Tikhomirov, V. P. Umanskaya, T. Ya. Khabrieva, O. M. Shestoperov, M. A. Shtatina.

Certain aspects of the study of administrative barriers, as applied to narrow spheres of regulation, are also reflected in the works of Russian scientists. Such researchers include S. A. Agamagomedova, V. A. Baidukov, I. V. Berezhnoy, E. V. Bessonova, D.

G. Galitsky, K. A. Korchagina, E. V. Samoylenko, S. V. Sosunov, I. N. Solovyov, Yu. V. Stepanenko, V. A. Turovskaya, V. V. Tyryshkin.

The work of these scientists paved the way for further research into the problem of administrative barriers in the legal regulation of entrepreneurial activity.

Methodology and research methods. The methodological basis of the dissertation research is the dialectical method of research, which allowed us to consider the problems of legal regulation of administrative barriers in entrepreneurial activity.

In preparing the work, specific scientific methods were also used:

- using the method of interpreting legal norms, the legal basis for the emergence and functioning of administrative barriers in entrepreneurship was determined;
- methods of formal logic and legal-technical analysis made it possible to formulate the basic definitions, as well as to substantiate the proposed definitions and their applicability in the study of the problem posed;
- The use of a systemic-structural method made it possible to identify the specifics of the legal nature of administrative barriers in entrepreneurial activity.

The special legal methodology is represented mainly by formal-legal and historical-legal methods:

- the formal-legal method made it possible to study the understanding of administrative barriers, which has sufficient justification from the current legal regulation;
- Based on the historical and legal method, the historical context of the formation and development of the concept of administrative barriers and approaches to its definition in regulatory acts of executive authorities was demonstrated.

The combination of research methods used by the author allowed him to comprehend and reveal the object and subject of the dissertation research and achieve the set goal.

Among the special methods used in the work, it is necessary to highlight the structural-functional, normative-logical, technical-legal and other methods.

In the analysis of empirical material, sociological methods of obtaining information were used: analysis of documents, interviewing.

The regulatory framework of the study includes the provisions of the Constitution of the Russian Federation, federal laws, acts of the President of the Russian Federation and the Government of the Russian Federation, regulatory legal acts of federal executive bodies, laws and by-laws of the constituent entities of the Russian Federation, etc.

The empirical basis of the dissertation research consists of :

- reviews of law enforcement practices of federal executive bodies of the Russian Federation, including information and analytical reports of the Federal Antimonopoly Service on the state of competition in the Russian Federation (2018–2022), reports on the results of monitoring law enforcement prepared by the Ministry of Justice of the Russian Federation (2018–2022), reports of the Prosecutor General of the Russian Federation on the state of law and order in the Russian Federation and on the work done to strengthen them (2018–2022);
- information and analytical reports on the activities of the Federation Council of the Federal Assembly of the Russian Federation;
- practice of the Constitutional Court of the Russian Federation (2015–2022), the Supreme Court of the Russian Federation (2015–2022), and arbitration district courts (2018–2022) on issues of identifying and eliminating administrative barriers to entrepreneurial activity;
- information obtained when representing the interests of entrepreneurs in administrative and arbitration proceedings;
- roadmaps for the implementation of measures to adopt regulatory legal acts in the field of regulation of entrepreneurial activity;
- analytical materials of advisory bodies under executive authorities.

The scientific novelty of the dissertation research is due to the fact that for the first time a comprehensive legal study was conducted, aimed at establishing the legal

nature and identifying the features of administrative barriers to entrepreneurial activity, as well as formulating proposals for improving the mechanism for counteracting administrative barriers and proposals for its improvement.

The innovations of the conceptual plan include the dual nature of administrative barriers in entrepreneurial activity, identified on the basis of analysis, and the established identifiers of administrative barriers. In addition, the thesis that administrative barriers are contained mainly in by-laws is substantiated, and a systematic system of methods for identifying, preventing and eliminating administrative barriers is proposed, since achieving all the formulated goals is simply impossible without a certain theoretical basis that allows one to understand the nature of the phenomenon.

As a result of the conducted research, **the following provisions are submitted for defense:**

1. It is proposed to understand administrative barriers in the legal regulation of entrepreneurial activity as a system of legal, economic, institutional or organizational restrictions that arise as a result of the implementation of regulatory control of administrative procedures between competent state bodies and individuals or legal entities, create obstacles to the implementation of entrepreneurial activity and do not correspond to the goals of public administration. The formulated definition of administrative barriers is based on the identified main characteristics of this phenomenon, and also reflects the views on the essence of administrative barriers in the field of entrepreneurship regulation proposed by representatives of legal and economic theories.

2. Administrative barriers to entrepreneurial activity have a dual nature, since they represent economic and legal restrictions. Economic restrictions are expressed in the creation of excess costs of the enterprise, the occurrence of lost profits and inefficient use of resources, or a decrease in the rate of development of the economic entity. Legal restrictions are expressed in defects in the legal regulation of entrepreneurial activity, the identification of which is possible mainly in the course of law enforcement practice. Phenomena in which the designated dual nature is absent cannot be considered as administrative barriers.

3. The paper distinguishes administrative barriers from closely related concepts or phenomena, which include, in particular, defects in legal regulation (violations of formal-logical requirements, requirements of legal technique, the presence of contradictions, gaps, legal uncertainty) . A number of factors have been identified that are concomitant for the emergence of administrative barriers, and cannot in themselves be considered as administrative barriers arising in the sphere of entrepreneurial activity, such as organizational problems in the system of state bodies (for example, difficulties in determining the competence of bodies, illiterate functional delineation of powers between bodies, etc.) or imperfections of law enforcement practice (corruption, incompetence of performers, dishonesty in the performance of official duties, the presence of departmental interests). These factors are concomitant for the emergence of administrative barriers, but in themselves cannot be considered as administrative barriers arising in the sphere of entrepreneurial activity.

4. Administrative barriers in the sphere of entrepreneurial activity arise in the interaction of business and the state during the implementation of administrative procedures regulated by regulatory legal acts of executive authorities. A large volume of by-laws, as well as a variety of forms and types of entrepreneurial activity, give rise to the multiplicity, heterogeneity and peculiarities of existing administrative barriers in the sphere of entrepreneurial activity. In this regard, the need for the development and application of a comprehensive mechanism of interrelated measures aimed at preventing, identifying and eliminating administrative barriers in the sphere of entrepreneurial activity, taking into account the significant volume and diversity of forms of manifestation of administrative barriers, is substantiated.

5. The mechanism for counteracting administrative barriers proposes identifiers of administrative barriers, i.e. factors that may contribute to the emergence of administrative barriers in the process of law enforcement, or signs indicating the presence of administrative barriers. The following factors are proposed to be considered as identifiers of administrative barriers: duplication of requirements within the framework of administrative procedures or the presence of requirements with the same focus; multiple entities involved in the implementation of administrative procedures; the

impossibility of implementing an administrative procedure without first receiving the result of another administrative procedure; unreasonable requirements for the forms and sequence of actions of the applicant when implementing an administrative procedure; the presence of discretion of the executor of the procedure when making a decision not conditioned by the requirements for the applicant; the term of execution of the administrative procedure; the costs of overcoming the administrative procedure. It is advisable to use identifiers of administrative barriers when monitoring regulatory legal acts, assessing the regulatory impact and other mechanisms for examining legal acts.

6. In the legal mechanism for counteracting administrative barriers in the sphere of entrepreneurial activity, it is proposed to apply a continuously operating system of measures for identifying, preventing and eliminating administrative barriers, including an assessment of the regulatory impact, an assessment of the actual impact of regulatory legal acts, monitoring of law enforcement, methods and means used by government agencies and courts in law enforcement practice. A system of methods for identifying administrative barriers is proposed, which can be used at various stages of the rule-making and law enforcement process. Based on this approach to the study of barrier identification tools, a continuously operating system for monitoring the quality of regulation can be created, covering all stages of the creation and application of the norm.

7. An analysis of the development of modern technologies in public administration demonstrates the possibility and feasibility of improving the mechanism for counteracting administrative barriers through the introduction of digital technologies used within the framework of the GIS Rulemaking, methods for improving legal regulation.

Degree of reliability and testing of research results. The materials of the dissertation research were reflected in scientific publications, speeches at scientific and practical conferences in the Federation Council of the Federal Assembly of the Russian Federation (Seminar-meeting on the topic "Prospects for the implementation of electronic proceedings in cases of administrative offenses" on May 20, 2022, report on the topic "Digital methods for identifying administrative barriers in the legal regulation of entrepreneurial activity"), HSE (II International Scientific and Practical Conference "New

Milestones in the Development of Administrative and Administrative-Procedural Law" 2020, report on the topic "Tools for identifying administrative barriers in Russian legislation"), and also implemented within the framework of the educational process of the National Research University Higher School of Economics.

The main theoretical and practical provisions, recommendations and conclusions formulated as a result of the conducted research were published in scientific articles, including in scientific journals included in the List of leading peer-reviewed scientific journals and publications recommended by the Higher Attestation Commission of the Russian Federation.

The testing and implementation of the research results were also carried out: as a representative of entrepreneurs in the context of challenging regulatory and non-regulatory legal acts, in practical work at the Association of Advocates of the Moscow Law Firm "Forward Legal" (2020-2021), at the Lexar Joint-Stock Company as a lawyer since October (2021-2023), as a senior lawyer (2023), at the Moscow Law Firm "KKP" as a lawyer (2023 - present).

The structure of the dissertation is related to the stages of the conducted research. The dissertation consists of an introduction, two chapters, including five paragraphs, a conclusion, and a list of references.

CONTENT OF THE DISSERTATION WORK

The introduction of the paper justifies the relevance of the research topic, due to the lack of a unified approach to understanding the legal nature of the phenomenon under study, defines the object, subject, purpose and objectives of the study, theoretical and methodological foundations, includes the main provisions submitted for defense, indicates theoretical, regulatory and empirical foundations research results, significance of the research results, lists information about the testing of the research results.

The first chapter, "The concept and legal nature of administrative barriers", includes three paragraphs that analyze approaches to defining the concept of administrative barriers in scientific literature and regulations, investigate the current state

of legal regulation of administrative barriers, and analyze the legal nature of the phenomenon described.

In the first paragraph of the first chapter "The concept of an administrative barrier in entrepreneurial activity", the author examines the approaches formed to date to formulate the definition of administrative barriers. The author offers his own definition of this phenomenon.

The concept of an administrative barrier appeared in the legal regulation of entrepreneurial activity quite a long time ago¹³. Although the state pays great attention to reducing administrative barriers, including in the activities of state regulators, it is not always understood in the same way in special works, many authors have different approaches to determining the content and essence of the administrative barrier.

The problems of understanding the administrative barrier in the legal regulation of entrepreneurial activity in regulatory acts and legal literature are related not only to the fact that this phenomenon is complex and complex, expressed in a significant number of situations and forms of regulation, but also to the fact that most of it includes an economic component.

In the scientific literature, administrative barriers are considered both as a legal and economic phenomenon. At the same time, it should be noted that the topic of administrative barriers to entrepreneurship was developed primarily by scientists and economists.

Based on the definitions formulated in the works of researchers of legal and economic sciences, studies of the nature and classifications of administrative barriers, we consider it necessary to offer our own understanding of administrative barriers in the legal regulation of entrepreneurial activity.

It seems that an administrative barrier in the legal regulation of entrepreneurial activity should be understood as a system of legal, economic, institutional or organizational restrictions that arise as a result of the implementation of an administrative and legal procedure (procedures) for influencing public relations between competent

¹³ Введение в деловой и правовой оборот термина «административные барьеры» произошло на рубеже 1995–1998 гг. Ранее использовалось понятие «административное препятствие».

administrative and public authorities and individuals or legal entities that create obstacles to the implementation of entrepreneurial activity and do not correspond to objectives of public administration.

The definition of administrative barriers in the legal regulation of entrepreneurial activity in this case consists of several structural elements that reflect the main characteristics of the phenomenon that were identified in the framework of this study. Thus, the nature of administrative barriers is defined through administrative procedures, but it takes into account the possibilities of various manifestations of administrative barriers – both as procedures in general and as their individual elements.

In the second paragraph of the first chapter "Legal regulation of administrative barriers to entrepreneurship" an analysis of the current regulatory framework on the issue of administrative barriers is carried out.

Currently, the Russian Federation has a large number of regulatory legal acts (several thousand) that use the concepts of administrative barriers and proclaim as their goal their reduction in the legal regulation of business activities. Most of them are aimed at improving the quality of regulation of entrepreneurship in general or regulation of individual areas and commodity markets.

At the same time, it should be noted that the concept of an administrative barrier is often found in procedural documents that are clothed in legal form in subordinate departmental acts. The most likely reason is that such acts are usually used to consolidate strategies and roadmaps, which in recent years have often been used to streamline work on improving the quality of legal regulation.

The institution of transfer of powers is also considered constitutional and legal, as evidenced by the following factors: the federal nature of legal relations between the Russian Federation and its subjects, the strict division of their powers by the Constitution of the Russian Federation, as well as the direct mechanism for transferring powers – through the adoption of a special federal Law (Part 2 of Article 45 of the Federal Law "On General Principles of the Organization of Public Power").

The analysis of normative legal acts shows that, as a rule, the understanding of the administrative barrier in a normative legal act correlates with existing theoretical research

in the field of administrative law, as well as with the approach developed in economic theory.

Some shortcomings in the use of the concept may be related to general problems in the preparation of legal acts of management (for example, poor quality of regulatory legal acts, low efficiency of the activities of bodies (officials))¹⁴.

In the section described above, it is established, that a relatively small number of regulatory legal acts specifically describe the impact of regulatory mechanisms and individual institutions on reducing administrative barriers, and also contain effective measures aimed at preventing or reducing the level of administrative barriers. An important approach in legal regulation is the establishment in a regulatory legal act of key performance indicators for the implementation of measures aimed at reducing administrative barriers to entrepreneurial activity.

In the third paragraph of the first chapter "The legal nature of the administrative barrier in entrepreneurial activity", the inherent characteristics of administrative barriers, are investigated, their main properties are identified, and specific features are determined.

First, administrative barriers are always associated with the establishment of some kind of restriction for entrepreneurs.

Secondly, administrative barriers are an economic and legal phenomenon. Any restrictions that do not include legal restrictions and economic costs at the same time cannot be considered as administrative barriers.

Third, administrative barriers can be considered as regulation in principle, or only as separate procedures within such regulation, which represent its defect and do not correspond to the goals of management. The second, narrow approach seems to be more reasonable and corresponds to the mechanism of removing barriers, as opposed to reducing them. We believe that using this point of view, we can talk about optimizing regulation by eliminating individual procedures or their stages.

Fourth, administrative barriers do not correspond to the original purpose of the legal regulation of the sphere in which they originated. This criterion – the non-

¹⁴ Правовые акты: оценка последствий: научно-практическое пособие / А.В. Кашанин, Ю.А. Тихомиров, С.В. Третьяков и др.; отв. ред. Ю.А. Тихомиров. М.: Юриспруденция, 2011. 224 с.

compliance of the barrier with the purpose of legal regulation-is key for distinguishing the administrative barrier from other forms of state-legal influence, such as restrictions, prohibitions, regulations, requirements, mandatory rules. Administrative barriers do not meet the goals of legal regulation – they are aimed at achieving a different goal or "sabotaging" the achievement of an established goal. This feature fully describes the need to use the category of effectiveness of legal regulation to qualify a particular legal phenomenon as an administrative barrier in legal regulation

Fifth, administrative barriers have a complex legal nature and are similar to other legal phenomena. Such related phenomena can include corruption, administrative arbitrariness, and imperfections in legal technology.

Sixth, administrative barriers arise in the implementation of administrative procedures. This can be either the entire administrative procedure or some part of it. However, it is the connection with the administrative procedure that is an important feature that characterizes a particular phenomenon as an administrative barrier. An administrative barrier is a defect in a rule of law. It can be detected only in the framework of law enforcement practice.

The second chapter "Legal mechanism for identifying, preventing and eliminating administrative barriers" includes three paragraphs that analyze current and prospective elements of the mechanism for countering administrative barriers in regulation

In the first paragraph of the second chapter "Legal mechanisms for identifying administrative barriers in the legal regulation of entrepreneurial activity" analysis the most significant feature and characteristics of the administrative barrier that allow it to be identified in regulation are analyzed.

The section describes indicative signs of barriers, and also proves that other signs can be attributed to indicators of administrative barriers – It is important that they are clear and allow you to identify barriers as quickly as possible. The author concludes that the proposed indicators of barriers should be tested on normative (or non-normative) acts to assess their effectiveness and prospects for further theoretical research.

Within the framework of the described paragraph, we also forecast the tools, применяемые currently used in our country to identify and eliminate administrative barriers:

- assessment of the regulatory impact of draft regulatory legal acts of federal executive bodies, draft amendments to draft federal laws and draft decisions of the Council of the Eurasian Economic Commission (EEA)¹⁵;
- Assessment of the actual impact of regulatory acts (FEV)

The author concludes that today the legal tools for identifying administrative barriers in legal regulation are limited. The few mechanisms that can be used to achieve this goal are clearly insufficient to fundamentally change the current situation. Moreover, we can talk about a relatively narrow scope of their application. Although administrative barriers can be called more of a problem of state regulation of the economy, they often arise in other areas of government.

The second paragraph of the second chapter "Legal mechanisms for preventing administrative barriers in the legal regulation of business activities" describes the process of preventing the occurrence of administrative barriers.

As part of the study of certain aspects of the regulatory quality control process, the Institute for monitoring law enforcement in the Russian Federation is considered.

The section also examines suggestions aimed at implementing various tools in the law enforcement monitoring process to improve the quality of its implementation

The third paragraph of the second chapter "Legal mechanisms for removing administrative barriers in entrepreneurship" describes how to remove administrative barriers in the framework of a judicial procedure.

It is established that within the framework of legal proceedings, entrepreneurs have a direct opportunity to point out specific imperfections in the legal regulation that they have encountered, and which, in their opinion, should be qualified as administrative barriers. In such cases, the judicial interpretation of the term "administrative barrier" allows assessing the correctness of the entrepreneur's position in the dispute and making

¹⁵ Пунанова У.Н. Указ. соч.

a conclusion about the presence or absence of an administrative barrier, the existence of which is indicated by the party to the legal process.

Due to the lack of a normative definition or a generally accepted scientific term, judges are forced to draw situational conclusions and classify certain cases as administrative barriers solely based on their own understanding of their legal nature within a particular dispute. Of course, judicial discretion itself is an integral part of any proceedings, but in this case, we should not talk about discretion as such, but a gap in regulation and in the theory of law.

Based on the results of the study, it can be concluded that at the present time it is impossible to distinguish universal characteristics of the administrative barrier used by courts as signs of its presence in regulation. Such characteristics are developed casually and depend entirely on the discretion of the individual judge considering the case.

Thus, the main problems of judicial enforcement in assessing the presence or absence of an administrative barrier in legal regulation should be attributed, first of all, to the insufficient level of research by courts of legal phenomena qualified by dispute participants as administrative barriers, the lack of uniformity in understanding the legal nature of an administrative barrier in judicial practice, as well as difficulties in qualifying the issue of a barrier as a matter of fact or a matter of law.

In **conclusion**, the results of the study are presented, the main conclusions are formulated, including the fact that removing administrative barriers in Russian legal regulation is a complex, complex task that requires not only practical work to improve legislation, but also further legal research.

The main definitions of administrative barriers are presented, and later their characteristic features are revealed. Based on the analysis, several author's definitions of administrative barriers as a universal legal phenomenon inherent in many areas of state regulation are proposed.

Also, the work was carried out to study the existing classifications of administrative barriers both in the legal regulation as a whole and in its individual areas. As a result, the problem of lack of uniformity in approaches to the separation of barriers according to various criteria is revealed.

The main publications on the topic of the dissertation research:

Publication in journals included into the HSE University list (list D):

1. Tumanova E. M., The concept of administrative barriers in entrepreneurial activity: analysis of theory and judicial practice // *Legislation*, 2022. No. 7. P. 42-50
2. Tumanova E. M. The concept of «administrative barrier in the legal regulation of entrepreneurial activity» in the regulatory legal acts of the federal executive authorities of Russian Federation // *Proceedings of Voronezh State University. Series: Law*. 2022. No. 2. P. 158-168.
3. Umanskaya V. P., Tumanova E. M. The nature of the administrative barrier as a managerial decision // *Courier of Kutafin Moscow State Law University (MSAL)*), 2024, No 5, P. 165 – 173.

Publication in a journal from the List of peer-reviewed scientific publications of the Higher Attestation Commission:

4. Tumanova E. M. The concept of an administrative barrier // *Law & Legislation*, 2022. No. 9. P. 85-88.