

The Problem of the Sectoral Recognition of Public Law Entities' Participation in Property Relations



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Abstract: *The article deals with the study of the peculiarities of the public law entities' participation in property legal relations. Attention is drawn to the fact that property law of Russia is one of the main civil legal forms of property relations, which must be brought into line with the modern requirements of the country's economic development. The system of property relations involving public law entities and, most of all, the system of property relations is of paramount importance. The article discusses the specificity of civil legal personality of public legal entities determining forms and procedure for their participation in property relations. The issues of sectoral recognition of public legal entities' participation in property relations are raised. The study identified only two forms of ownership that actually exist in Russia: private and public.*

Keywords: *property right, civil law relations, public law entities, property legal relationship.*

I. INTRODUCTION

In addition to participation in ownership relations, public entities may be subjects of certain other property relationships, in particular, related to servitudes (paragraph 4, clause 1, article 216, article 274, and article 277 of the Civil Code of the Russian Federation (hereinafter referred to as the Russian Civil Code)). However, it is ownership relations that are the most important area of civil law relations, in which the subjects in question are involved. According to clause 1 of Article 214 of the Russian Civil Code, state property in the Russian Federation is property owned by the Russian Federation (federal property) and property owned by the subjects of the Russian Federation – republics, krais (territories), oblasts (regions), federal cities, autonomous oblast (autonomous region), autonomous okrugs

(autonomous districts) (property of the subject of the Russian Federation). According to clause 1 of Article 215 of the Russian Civil Code, property owned by urban and rural settlements, as well as other municipalities, is municipal property.

The issue of the public legal entities' participation in property legal relations is closely related to the problem of the sectoral affiliation of institutions of state and municipal property law and depends on objects of law, most often real estate, involved in civil-law transactions. The question of determining of the branch of law, to which these institutions belong, has not only cognitive, but also practical significance. Depending on how you resolve it, the analysis of both the essence of the legal facts, based on which the corresponding rights arise and terminate, and legal relations, within which the realization of these rights takes place, gives different results.

In accordance with articles 71–73 of the Constitution of the Russian Federation, federal property management issues are resolved at the federal level. The government of Russia is empowered to manage the federal property based on subparagraph “d” of clause 1 of Article 114 of the Constitution of the Russian Federation, and these authorities are repeated in the Federal Constitutional Law “On the Government of the Russian Federation” (Federal Constitutional Law dated December 17, 1997 No. 2-FKZ “On the Government of the Russian Federation”). The provisions of constitutional legislation are detailed in the system of subordinate legal acts issued by the Government of Russia. According to Article 73 of the Constitution of the Russian Federation, the management of the property of constituent entities of the Russian Federation is subject to the exclusive jurisdiction of constituent entities of the Russian Federation. In accordance with Article 51 of Law No. 131-FZ, on behalf of a municipality, local governments independently own, use and dispose of municipal property.

Braginsky [1], Kozlov [2], Masharov [3], Talapina [4], Starodumova et.al. [5] have dealt in their papers with the issues of state participation in civil matters through the public law entities and other organizations.

Golubtsov [6], Moiseeva [7], Rybakov and Tarkhov [8], Khokhlov [9] studied the property institute as a whole and the participation of public law entities therein.

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Peculiarities of the property legal relationship regulation in relation to various real estate objects are discussed in the works of Volkova et.al. [10], Sadikov [11], Sukhanov [12], Efimova et.al. [13], Smagin et.al. [14], Sitdikova et.al. [15].

II. METHOD

In our study, we followed general scientific and specific law methods of knowledge obtaining; we sought to provide a systematic approach to the analyzed material.

When cognizing, analyzing and systematizing the existing scientific knowledge of civil law status of the public law entities, we used the logical legal method and legal cognition method; the use of the comparative legal method allowed to explore the development of legislation governing the participation of public law entities in civil law relations. The formal legal method made it possible to evaluate the efficiency of civil law regulation of relations involving participation of the public law entities in property legal relations. The use of the above methods allowed us to conduct a comprehensive analysis of the studied phenomenon: to identify problematic issues on the topic under study, to analyze the legislation and the scientific literature.

III. RESULTS

It has been established that the management of state and municipal property (state and municipal unitary organizations, land plots, unified immovable complexes, etc.) as the activities of government bodies, in which their administrative competence is manifested, is beyond the boundaries of the civil law sector and the mechanism of civil law regulation.

It has been determined that the activities of the Russian Federation and other public law entities in the state and municipal property management are outside the sphere of civil-law transactions, but even due to public authoritative methods of implementation, the subjective right of the public law entities' ownership does not lose its civil law nature. Thus, the subjective right of public law entities' ownership, as the absolute property right, is found to be subject to legal regulation by civil law. Legal relations on public law entities' property management belong to the sphere of public law. These two areas of legal regulation in general constitute the institution of property rights of public law entities, which is therefore interdisciplinary.

It is also established that the grounds for the emergence and termination of the right of public property arise on the grounds established by civil law and are significantly different from the grounds for the emergence and termination of the private property rights.

IV. DISCUSSION

There are various opinions of scientists regarding the issues of state and municipal property management. Y.M. Kozlov characterizes public administration as "an executive-administrative activity" using "the necessary legal authority (management)", "executive activity carried out in the process of day-to-day and direct management of economic, socio-cultural, and administrative-political

construction" [2]. I.M. Masharov believes that "public administration should be identified with the subordinate state-legal regulation of the normative and individual nature" [3]. In the reasonable opinion of E.V. Talapina, state property management is an administrative, authoritative activity that can be seen as a shell, whereas the content of management is represented by civil law relations as if contained inside the shell of state regulation, since administrative activity is an "actuator" of state decrees [4]. The Talapina's conclusion, in our opinion, can be fully applied to the municipal property management as well. In addition, actions of public legal entities in relation to objects of state and municipal property with the purpose of managing it, which are of executive and administrative nature and carried out in the process of economic construction, are not subject to the regulation by the civil law sector [13]. In addition, the methods of civil law regulation are not applicable to them, although the state has transferred a part of authorities regulating relations for creation of real estate objects to self-regulatory organizations – subjects of exclusively civil law relations [5].

However, not all scientists agree with the formulated approaches. For example, E.A. Sukhanov believes that public property management is only one of the forms of ownership rights exercising: in civil law sense, the owner here again only exercises the powers of ownership, use and disposal. S.A. Khokhlov supports Mr. Sukhanov; the author believes that management can be considered as an integral part of the owner's right to dispose of property [9]. It is difficult for us to agree with such views, since management, as was shown above, acts as an essential component of the state mechanism; it is a part of public law, and therefore "mixing it with the powers of the owner is clearly undesirable" [8]. For instance, O.N. Sadikov argues that "the state realizes its property rights, primarily within its authority, taking legislative and administrative acts entailing civil law consequences" [1, 15].

Based on clause 1 of Article 209 of the Russian Civil Code, the owners enjoy the rights of ownership, use and disposal of their property. Hence, in accordance with the Russian Civil Code, the public law entities are entitled to perform any actions with the property belonging to them if they do not contradict the law and other legal acts, do not violate the rights, and legally protected interests of other persons [14]. Public legal entities, as owners of their property, have the right, independently of each other, to enter into civil legal relations, determine the methods, means, and procedures for resolving these issues. However, they cannot establish for other public owners the procedure for disposing of their property.

In accordance with the adopted theoretical approaches, the rights of public law entities ownership should be considered both from objective and subjective points of view. In an objective sense, the right of a public law entity's ownership is a system of legal norms governing relations in the public law entity's ownership, use and disposal of a thing that it owns at its discretion and for its benefit, as well as in the elimination of all third parties' interference in the area of its economic domination.

In a subjective sense, the right of a public law entity's ownership can be defined as the latter's legally secured ability to possess, use and dispose of its property at its discretion and for its benefit by performing any action with respect to this property that is not contrary to the law and other legal acts. At the same time, when we speak about "own" interest of the public law entity, we mean the double-tier interest of the subjects under consideration in civil law resulting from its public nature. A necessary component and the basis of a double-tier interest is a public interest. In other words, in the legal relations of the property of public law entities and in their actions as owners, public interest must always be present as a driving force.

In sum, it is necessary to conclude that the management of state and municipal property as an activity of the authorities, in which their administrative competence is manifested, is beyond the boundaries of the branch of civil law and the mechanism of civil law regulation. "Relations on the management of state and municipal property arising between public authorities are excluded from the scope of civil law" [12].

The foregoing stipulates that the activities of the Russian Federation and other public law entities in managing state and municipal property are outside the sphere of civil-law transactions, but such activities represent a kind of limit to the eponymous civil law institutions, and the legal facts generated in one area of legal regulation cause legal consequences in the other area. By virtue of governmental ways of its exercising, the subjective right of ownership does not lose its civil-law nature. Subjective ownership of public law entities, as the absolute property right, is subject to legal regulation by civil law norms. In turn, the legal relations for the management of the public law entities' property belong to the sphere of public law. These two areas of legal regulation in general constitute the institute of a public law entity's property right, and such institute therefore has an interdisciplinary nature.

Legal science offers different opinions on the essence of state and municipal property relations. Note that the Russian legislation does not contain a definition of the form of ownership, as well as the exhaustive list of such forms and criteria for their delimitation. When studying this legal category, scientists are based primarily on article 8 of the Constitution of the Russian Federation, according to which private, state, municipal and other forms of ownership are equally recognized and protected in the Russian Federation. Some authors believe that "there is no reason to single out the right of state ownership as a form of ownership" [6].

In addition, legal literature often distinguishes only two forms of ownership – private and public. It should be noted that the term "public property" is not known in Russian legislation. For the first time, it was singled out and substantiated by E.A. Sukhanov [12].

It should be noted that some modern authors [7] express the opinion that it is necessary to perceive and develop the legal concept of two types of state and municipal property: property that constitutes the exclusive property of public law entities and property that constitutes commercial property of public law entities. At the same time, it is claimed that exclusive property must have a special legal status [10], including its withdrawal from civil-law transactions or restriction in

civil-law transactions. The authors point out the need for legislative recognition of a category of state property, which is intended for the state to perform public functions and for satisfaction of public needs.

Since it is necessary for the implementation of public law functions, public law entities may own any property, and all property of public law entities is divided into two categories. The first category is the "treasury" of a public law entity, which means the funds of the relevant budget, and other state (municipal) property not assigned to state (municipal) enterprises and institutions – the so-called unallocated fund (clause 2 of Article 214, clause 2 of Article 215 of the Russian Civil Code). Since the Russian Federation and the subjects of the Russian Federation are recognized as subjects of state ownership, and since municipal property exists, there is no single unallocated fund. At present, an unallocated fund of the Russian Federation, unallocated funds of constituent entities of the Russian Federation and municipalities should be allocated. The second category is the property assigned to state (municipal) enterprises and institutions based on the right of economic management or operational management.

According to clause 4 of article 214 of the Civil Code of the Russian Federation and clause 3 of article 215 of the Civil Code of the Russian Federation, the property in state and municipal ownership is assigned to state and municipal enterprises and institutions in possession, use and disposal under the right of economic management or operational management. The phrase "property ... is assigned to" used in these norms gives reason to come to the conclusion that practically all property should be assigned to state and municipal enterprises and institutions.

V. CONCLUSION

In sum, we should say that the legal status of state and municipal property management and disposition has a number of peculiar features. The grounds for the emergence and termination of the right to public and private property, as well as the peculiarities of their exercise, are radically different from each other. In addition to the general grounds for the emergence of property rights, public-legal entities have some special abilities for rights acquisition (e.g., clause 3 of article 225, article 228, article 231, clause 2 of article 233 of the Russian Civil Code, articles 238-240, 242-243 of the Russian Civil Code) and termination (e.g., article 217 of the Civil Code).

In addition, the specific characteristics of property relations management with the participation of public legal entities depend on the types of real estate: land plots, buildings, structures, unified real estate complexes, etc. However, this study does not provide for consideration of the peculiarities of exercising of state and municipal property rights to these real estate objects. These features will be considered in further research.

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