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# Specific Features of Certain Aspects of a Delivery Contract for the State and Municipal Needs in the System of the Government Order in the Russian Federation

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***Abstract*: The article is devoted to the analysis of certain aspects of a modern contract of goods delivery for the State and municipal needs, the legal significance of the contract of delivery in the system of the Government Order. The contract of delivery is an essential part of the execution of the State and municipal contract, i.e. the contract concluded on behalf of the Russian Federation Government, any subject of the Russian Federation or municipal settlement with governmental or municipal customer to provide state or municipal needs respectively. By this time there are still serious disputes concerning the role of the delivery contract for the State and municipal needs as a type of civil contract, as well as in the legal regulation and maintenance of the governmental and municipal contract. The significance of matters mentioned is connected with the fact that the Government Order carried out by means of a delivery contract not only meets State and municipal needs but can be also regarded as the basis for running target programs of budget and extra-budgetary financing, as well as the formation of the National Welfare Fund.***

***Keywords*: delivery contract, the State and municipal needs, the Government Order, state contract, municipal contract, public procurement, open tender, open trades, supplier, customer.**

## I. INTRODUCTION

### A. Introduction of the problem

The application of civil law provisions for implementation of the State or municipal contract represents the utter difficulty, and since the delivery contract is an integral part of it, the latter finds itself in a complex and problematic legal situation [1]. The most important role in registration, maintenance and execution of the State contract for the sake of economic and business activity as a whole play contracts of supply of goods to meet the state and municipal needs.

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### B. Importance of the problem

Some problems concerning conclusion of delivery contracts to cover State and municipal needs have been investigated in fundamental works of such authors as Sergeev A.P. [2], Braginskiy M.I. and Vitryanskiy V.V. [3], Evteev V.S. [4].

Certain aspects of contracts of delivery for the State and municipal needs became a matter of research in scientific articles written by Tarabaev P.S. [5], Andreeva L.V. [6], Novoselov V.I. [7].

## II. PROPOSED METHODOLOGY

During the current research the authors used a range of theoretical and private law methods of cognition: systematic and structural, analysis and synthesis as well as the method of formalization. The main method used by the authors was systematic and structural which allowed determining the position of a contract for delivery of goods for State and municipal needs in the system of the Government Order execution.

The combination of methods of analysis and synthesis and the method of formalization allowed to reveal the formal duality in the legal comprehension of the contract of goods delivery for the State and municipal needs which is connected with the peculiarity of its regime, civil or administrative character, as well as with the target direction in the implementation of the State and municipal contract.

## III. RESULTS ANALYSIS

We suppose that the contract of delivery of goods for State and municipal needs cannot be considered primarily under civil law provisions as far as it is hard to propose the initial equality of the parties under the contract, i.e. such a type of contract is dominated by peremptory rather than discretionary legal relations.

It is determined that the necessity to provide State needs is not a consequence of the publicity of the supply contract for state and municipal needs because it cannot serve as a proof of the affiliation of such type of contracts to the jurisdiction Administrative Law, and the civil liability for breach of contract and the very purpose of concluding the latter lie in the sphere of civil legal relations.

It has been established that the procurement of goods and services for the State and municipalities are quite equal to the placing of orders for supplies from the point of terminology.

In order to improve the legislation it seems necessary to unify the rights of certain potential parties to a supply contract for state and municipal needs in the existing normative acts bringing legal status of legal persons, public and legal entities or clearly stipulating the manner in which the participation of the state or municipal customer along with other public law institutions should be qualified.

## IV. DISCUSSION

No less important and debatable aspect in the modern Russian civil science is the problem of the Government Order that is executed by means of the contract of delivery. The fact is that it provides not only the State and municipal needs but also is the basis for the implementation of target budget programmes and extra-budgetary financing as well as the formation of the National Welfare Fund that influence the efficient development of many sectors of the Russian economy. They all affect the level of price settings, the income of private businessmen being the most important lever in the regulation of the economy. Entrepreneurs, respectively, are concerned in expanding the scope and volume of public procurement. The history of formation and development of legal relations of goods supply for State needs shows that such contracts are usually executed under the special legislation and in case of absence in laws the necessary norms were applied both as common civil norms and the customs of business turnover which are typical for contemporary situation.

The contract of delivery is similar in its legal characteristics to the contract of sale under which the seller (supplier) carrying out an entrepreneurial activity shall send in a clearly defined period of time produced or purchased goods to be utilized by a customer in business or for other purposes not related to personal, family, home or other use. If we refer to the Civil Code of the Russian Federation (Part 1 passed on 30.11.1994, with subsequent amendments and additions), we can find that the legal relations in the area of supplying of goods and services for the State and municipal needs are regulated, firstly, by provisions (Article 30, Paragraph 4) relating to the said contract and the subsidiary rules of the latter. Secondly, they are controlled by the general clauses concerning legal relations of sale (Article 30, Paragraph 1). The Code contains both general and special rules set under the contract of supply. The first group of rules provides legal persons with relative freedom in the application of their rights and obligations, in establishing the terms of contract. They also determine the free movement of goods throughout the Russian Federation territory and enshrine the cornerstone of the equality of parties in civil relations and the freedom and autonomy of counterparties. The Civil Code of the Russian Federation incorporates also a number of rules relating to contracts of sale which partially regulate delivery contracts but only if other clauses under supply contracts are not otherwise specified.

The Budget Code of the Russian Federation (passed on 18.01.2000 in last edition) comprises also the reference to the contract of goods and services supply. As it was mentioned before, the term “procurement” is contained in Article 69 (§ 1). It denotes budgetary assignments “to deliver the State (municipal) services”. The Article 73 also provides the detailed information on procurement registers, while Article 301 lists a range of violations that can be committed in the course of State and municipal procurement fulfillment. However, the document doesn’t contain any interpretation of the term of delivery contract as well as its integral parts. Thus, under the Civil Code regulations such kind of a delivery contract for the State and municipal needs is regulated by the Federal Law “On Contract System in the Sphere of Goods Procurement, Construction, Services to Maintain the State and Municipal Needs” passed on April 5, 2013 # 44-FL (last edition) which proposes two kinds of the State needs – state and municipal. The requirements of the State itself are provided by the federal and regional budgets of the Russian Federation and by extra-budgetary sources of funding. These requirements include the implementation of federal and regional target programmes, allocation of funds to meet the international obligations of the State, as well as the implementation of international target programs, the needs of the subjects of the Russian Federation, the state customers of services, goods and construction necessary for the normal functioning of the subjects of the Russian Federation. Municipal needs involve the needs of municipal settlements, municipal customers of construction, goods and services the satisfaction of which affords solving problems of local importance and those state tasks the decision of which are delegated to local authorities in respect to the implementation of federal laws and laws of the constituent subjects of the Russian Federation. These needs are covered from local budgets and extra-budgetary funds and other sources of funding.

A.P. Sergeev, a prominent civil scientist and specialist on contractual legal relations, assumes that "contract of supply of goods for the State and municipal needs mediates a compensatory movement of material goods in the national economy and this process is inconceivable for normal functioning of the economy" [2]. The most significant differences between State and municipal contracts are the following: a buyer as one of the parties to the contract is always the State and municipal customer (or a legal entity acting on one’s behalf); the contracts have differences in patterns of documents registration, in order and terms of conclusion, as the Government Order, for example, is formed according to the specially defined provisions of law; the main scheme of placing orders for the procurement of goods is expressed in participation in open trades or tenders; payment of goods, including reimbursement of possible losses caused to the supplier in the process of contract execution, is made at the expenses of different levels of budget; breach of contracts anticipates penalties. It should be noted the contradictory character of the term "compensation for damages" in the Civil Code of the Russian Federation (Part 1 of Article 15 and Part 1 of Article 393) applied as a result of violation of terms of contract of delivery, in comparison to a similar term explained in Part 18 (Article 95), when a supplier reimburses actual losses to a customer who has partially executed the contract in the case of unilateral termination of the contract.

Therefore, it is quite evident to replace the term "compensation for damages" by the term "compensation of expenses" in Part 18 of Article 95 of the Civil Code of the Russian Federation.

The features of all contracts mentioned above have both supporters and opponents in scientific community. For example, M.I. Braginskiy and V.V. Vitriyanskiy analyze in their works the procedure for concluding contracts for delivery of goods for the State and municipal needs and make a conclusion that the most difficult problems appear in respect to the concept of delivery time and its possible breach, with the size of batches of supplying goods, etc. The lawyers suggest the way to deal with the situation which stipulates the creation of special rules regulating certain terms of supply depending on specifications of goods: methods of packing, loading, etc. [3], [8].

Another subject of discussion among scholars emanates from the interpretation of the notion of "possible loss of profit" when participating in auctions to supply various types of goods. A well-known lawyer V.S. Evteev points out that in this case the lost profit characterizes the deformation of property interests in future that significantly differs from real losses. There is also a problem in the possible calculation of losses of this type [4], [9].

The legal issues of the state and municipal contract are researched by different groups of scientists who consider various complementary aspects of current problem. On the one hand, the most significant contribution to the study of this issue was made by "managers", specialists in the field of administrative law, for example, by Andreeva L.V. She supposes that such type of contract could not be examined primarily under the Civil Law provisions, as in this case, it is not possible to speak about the initial equality of the parties to the contract, i.e. the peremptory but not discretionary legal relations prevail in such type of a contract [6]. The author referred to the content of previously existed administrative contracts. The study revealed such important issues as the absence of true legal equivalence of the parties will; administrative liability imposed by the agency which one of the parties to the contract is subordinated to in case of failure to comply with the conditions of such a contract; not clearly clarified responsibility of a state body for violation of the contract; the availability of public legal elements in contracts [10]. However, the scientists guess that the presence of competition between entrepreneurs, binding nature of legal relations should ascribe them to the civil law competence. Thus, a comprehensive approach to understanding of the structure and specific features of contracts of such type is applicable in this case. Industry elements and specifics in such kind of contracts are expressed in its administrative component.

On the other hand, a group of civil law scientists such as V.I. Novoselov, P.S. Tarabaev, N.N. Volynkina and others emphasize legal elements of a civil contract in the State and municipal contract. The jurisdiction of Administrative Law covers only certain elements but the public nature of legal relations of this type is compensated by great involvement of private legal interests [5, 7].

The authors support the opinion of G.F. Ruchkina who argues that the necessity to provide the state needs is not resulted as a consequence of the publicity of the supply contract for the State and municipal needs and, therefore, cannot be regarded as a proof of the affiliation of such type of contracts to the jurisdiction of Administrative Law. The civil legal responsibility for the violation of the contract and the very purpose of the latter belongs to the sphere of civil relations [11]. The main problem here is the incomplete regulation of all stages of the public procurement system by the Civil Code of Russia. Lawyers face the problem of unavailability of necessary legislative base in the researched issue. It is quite difficult to find any additional information in addition to the process of concluding the state and municipal contract as well as the general description of mandatory provisions to be contained therein. That's why we can apply to the Administrative Law due to the fact of its enforcement.

The legally latent character of main stages of the system of public procurement results in inconsistency and lack of clear legal regulation of both civil actions in the process of concluding such contracts and their enforcement at a later stage. The logical solution of this situation would be a clear separation and definition of terms "state contract (agreement)", "government order" and "state procurement".

If we consider the term "state order" we can find out the absence of duly arranged obligatory legal relationship. The order represents more an economic rather than a legal category which includes a list of goods, constructions or services required by the State or municipal entities that will be covered from budgetary or extra-budgetary funds. The legal component in this case is traced, first of all, at the stage of drawing up of a contract and then during its enforcement, during the assessment of expenditure efficiency [12]. It turns out that "state order" and "public procurement" are the stages of the process of relations between suppliers and the State and municipal entities. The first of these stages anticipates the design of obligatory legal relations and the second one is their immediate practical application. In addition, the term "public procurement" can be interpreted in two meanings. The first one constitutes a purely economic issue as goods and services produced in Russia or abroad are procured by relevant authorities by means of the state budget. The second one represents the legal side as a deal between suppliers and contractors and the State and municipal customers.

Consequently, the analysis of the system of public procurement is rather important for our research. In 2011 the Federal Law "On procurement of goods, constructions and services by certain types of legal entities" (18. 07.2011, # 223-FL, in the last edition) was passed in order to improve the level of legislative support. The paragraph 1 tells that goods, constructions and services can be purchased even for further reselling to other persons. This is interesting because it elaborated "model provision on procurement for budget, autonomous institutions and unitary enterprises". According to the specified annex, procurement can be carried out in electronic form on a competitive basis which is necessary especially if one of the counterparties is a small or medium-sized enterprise [13, 14]. Article 8 contains forms of procurement: open auction, auction in electronic form, closed auction, open tender, tender in electronic form, closed tender, etc.

The preferences are made in respect to electronic tenders, auctions, requests for proposals because they are associated with greater transparency in the control of their results. However, the law does not indicate the selection of the electronic sites themselves. But making procurements more transparent restricts competition. As a result of the competition or auction a participant whose application was the most successful for buyers signs the contract of delivery (Article 37) within 10 to 20 days after submission of open information on the results of the said auction (or a tender). If the antimonopoly authorities do not find any violations in submitted information for 5 days following the said event, it is possible to enter into the contract. The new edition of the law includes important additions which contain new restrictions concerning monthly reporting. Now it should comprise information on the total amount of all concluded contracts, the size and quantity of contracts with separate suppliers or contractors (the new edition of Article 19, (§ 4). Other articles of the law on various types of closed procurements have not undergone significant changes with the exception for Part 16 Article 4 which assumes the possibility of competitive procurement even for such type of procurement, if it does not belong to the realm of national secret.

From the legal point of view the terms “government order” and “government procurement” are very similar. Thus, a well-known specialist in the supply of goods for State and municipal needs V. Belov points out that the procurement of goods and services for the State and municipalities and the placing of orders for supplies are very often equal. According to the law, for example, Article 2 of the UNCITRAL Law "On procurement of goods. construction and services" the process of acquisition of construction or services as the Government Order shall be considered procurement. According to the basic Federal Law of 02.12.1994 # 53-FL "On procurement and supply of agricultural products, raw materials and food for State needs", the State procurement means a form of organized by the Government acquisition of food, products, raw materials from producers of goods for further processing or sale to consumers on profitable terms [15]. Moreover, the concept of "government procurement" is contained in the Budget Code of the Russian Federation (Articles 69, 73, 301, etc.) and the term is treated as a budget provision for the purchase of State and municipal services. The main question here is whether to consider transfer payments as part of such procurement or not, which batches should be sold, and whether procurement done in our country and abroad are treated equally.

The system of government and municipal procurement contains a lot of separate elements such as identification and registration of orders, placement of orders, conclusion of the State and municipal contracts, their fulfillment, assessment by higher instances and others. Therefore, when we put an equality sign from the legal point of view between the notions of "government procurement" and "government order" while stipulating that the order will be the basis of such procurement, the "State contract" will always be only one of the elements in a holistic system of the State and municipal procurement.

Moreover, if the contract relates the jurisdiction of civil law, then both the order and the procurement correspond in general to civil and administrative laws. The procurement is connected, first of all, with practical actions on selection of the supplier-executor, with conclusion of corresponding obligations and with other legal actions necessary for the execution of a contract. The procurement begins with the selection of the supplier (contractor, executor) and ends with the fulfillment of obligations by parties to the contract. Attention should also be paid to the unification in current legal acts the rights of some of potential parties to the delivery contract for State and municipal needs by means of approximating the legal status of legal persons and public legal entities or by clear stipulating the manner in which the participation of a State or municipal employer and public law institution should be qualified.

## V. CONCLUSION

Thus, our analysis shows that the State and municipal procurements are the instruments of the order execution. At the same time the Russian Federation became an example of a country where the state procurements include not only those that are necessary for the normal functioning of the institutions of national power but also those that may be resold. The difficulty of legal perception of such contracts is related both to the formal duality of its regime, civil or administrative character, and to the target aspect in the implementation of the State and municipal contracts. In addition, only a state or a municipal authority will always be a customer in this case, i.e. one of the parties in such a contract and this state of things also complicates both the process of the contract implementation that is connected with allocation of budget funds and the procedure of registration. As soon as the civil contract became applicable not only in traditional private law sphere and came out to the public field, it automatically gained duality thus acquiring the features of a mixed type contract able to regulate both civil and administrative relations. The delivery contract originates from the rules of Budget Law which enables to determine its basic parameters then it moves under the Civil Law competence and in case of termination falls under jurisdiction of the Administrative Law.

Moreover, such indicators of the State and municipal contract as enforcement of interests of the State and municipal customers, the target nature of goods delivery or the possibility of control the characteristics of delivered goods by these customers reflect the administrative nature of the State (municipal) contract in general, except separate types of contract being its integral part [16], [17], [18].

Despite some traits that are different from the standard manner of its conclusion, the contract of delivery of goods for the State and municipal needs depicts the fundamental principles of the Civil Law which reflects the relative equality of parties, the free choice in concluding the contract itself as a supplier participates voluntarily in bidding and has the right to refuse the contract execution. In addition, the failure or improper fulfillment of terms of contract will be subjected to sanctions according to the civil liability.

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