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Legal Regimes for State Property Management

Regímenes legales para la gestión estatal de la propiedad

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ABSTRACT

Article deals with administrative-legal mechanism of state property management on example of the Russian Federation and the Republic of Belarus. Modern science is interested in comparative analysis of approaches to the management of state property in the States under consideration. The criteria of inclusion of objects in the state property formulated based on the existing legal relations allow the author to conclude that the subject of state property management is interested in the possibility of exercising the right of management, which will be the basis for determining such property as the object of such management.

Keywords: Legislation; modernization; regulation; technology.

RESUMEN

El artículo trata sobre el mecanismo administrativo-legal de la administración de bienes estatales, por ejemplo, la Federación de Rusia y la República de Belarus. La ciencia moderna está interesada en el análisis comparativo de los enfoques para la administración de la propiedad estatal. Los criterios de inclusión de objetos en la propiedad estatal formulados en base a las relaciones legales existentes permiten a los autores concluir que el sujeto de la administración de la propiedad estatal está interesado en la posibilidad de ejercer el derecho de administración, que será la base para determinar dicha propiedad como objeto de dicha gestión.

Palabras clave: Legislación; modernización; regulación; tecnología.

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INTRODUCTION

It is necessary to create for the purposes of administrative law and management mechanism the concept of "state property group" and it is possible to give it the following definition: "state property group" – a set of state property and non-property objects that are subject to monetary valuation and have property characteristics (regardless of their materiality), allowing them to individualize and implement in respect of them state management functions (De Man, 2016).

It seems that the use of the term "state property group" in the legal system makes sense if it is included in the existing legal acts. A similar act in the field of state property management is The decree of the Government of the Russian Federation of July 16, 2007 № 447, which approved the Regulations on the accounting of Federal property (hereinafter – the Regulations on the accounting of Federal property). So, it is offered to bring in point 2 of this Provision concept" the state property group "in the edition formulated by the author and to add the paragraph 1 of point 3 of the called regulatory act after words" the following Federal property located in the territory of the Russian Federation or abroad "with words" making the state property group". In addition, for uniform legal regulation of accounting and management of state property, it is advisable to make similar changes to the relevant legislative acts of the Russian Federation (Damsa, 2016).

In the Republic of Belarus, the proposed amendments should be made to the Resolution of the Council of Ministers of the Republic of Belarus, which determines the procedure for accounting and maintenance of the register of state property (Huffman, 2013).

The composition of the "state property group" should be defined for administrative and legal purposes of the office. The definition of the composition of state-owned property is necessary, first of all, because the mechanisms of management of its assets (available state property) directly or indirectly determine the limits of the real possibility of the state's participation in the management of its property.

LITERATURE REVIEW

The legal basis for the management of state property form part 2 of article 8 of the Constitution of the Russian Federation, according to which the Russian Federation establishes the right of state ownership, the norms of the Civil code of the Russian Federation in the part regulating the right of ownership and protection of civil rights, and other acts, in particular, the provisions of the Federal act of 21 December 2001 № 178-FZ "On privatization of state and municipal property" and the Decree of the Supreme Soviet of the Russian Federation of 17 December 1991 № 3020-1 "On the division of state property in the Russian Federation into Federal property, state property of republics within the Russian Federation, edges, areas, Autonomous region, Autonomous districts, cities of Moscow and St. Petersburg and municipal property" (hereinafter – Decree of the armed forces of the Russian Federation No. 3020-1) (Huffman, 2013).

In the Republic of Belarus, such a legal basis is article 13 of the Constitution of the Republic of Belarus, which establishes the right of state ownership, the Civil code of the Republic of Belarus, which lists the subjects, objects and defines the content of the right of state ownership, the decree Of the President of the Republic of Belarus dated July 4, 2012 № 294 "on the order of state property", which defines the concept of" state property", as well as regulates the main types of management, other legal acts, regulatory features of state property management in the Republic of Belarus (Huffman, 2013).

In accordance with the current legislation of the Russian Federation, state property is divided into Federal (Russian Federation) and subjects (Huffman, 2013). Thus, state property is divided into the following types: 1) property, which is managed at the Federal level; 2) property, the authority to manage which is transferred to the subjects of the Russian Federation.

DATA AND METHODOLOGY

The comprehensive nature of state property management is reflected in the fact that it is not subject to the limits of managerial authority. The state combines the functions of the holder of power, determining the content, form and procedure for the implementation of powers, and the owner of the property.

This statement requires clarification, since the comprehensive nature of management rights to state property is manifested in the classification of its separate categories to the exclusive property of the state, necessary for the implementation of its most important functions. And that is why only certain types of state property are also increased and preferential protection. Other categories of property are privatized or leased to private individuals, operational management – to public institutions or on the right of economic management are assigned to state enterprises. Such state property is used to perform the main state tasks and can be the object of civil relations and economic turnover in the manner prescribed by law.

RESULTS AND DISCUSSION

The implementation of the legal regime of state property is governed by a set of legal rules governing the process of its management in the Russian Federation and the Republic of Belarus (Katzarov, 1964).

In the Russian Federation, as a negative example of outdated regulatory norms of Federal property management, as well as a systemless approach to the relationship of Executive authorities with property powers, we can cite the decision of the Director of the Pulkovo Observatory of St. Petersburg on the provision of Federal property-land on the territory of the Pulkovo Observatory, for the construction of a housing complex. The necessary documents on construction, regulating the height of the building and other standards, have been agreed with the authorized bodies of St. Petersburg. However, within the framework of his powers, the Director of the institution, guided by the decree of the Council of people's Commissars of 1945, allowed the construction of the housing complex. Only after the conversion of the Federal property Agency to the Prosecutor's office of St. Petersburg, FANO demanded from the head of the institution to withdraw this permission. Fano had no authority to cancel the Director's decision on granting THE land plot on its own. It should be noted that, according to experts, in the case of using the land for other purposes, the operation of the Pulkovo Observatory would be impossible (Riccardi, 2013).

This example confirms that the diversity of state property management bodies, the lack of a unified approach to the implementation of the powers under consideration, as well as the use of a large number of administrative acts of Executive bodies of industry competence (Rosimushchestvo, Federal Agency of scientific organizations and others) – all this makes it impossible to develop a single vector of state property management and the implementation of the State program of the Government of the Russian Federation, reliable protection of state property and effective management.

The specified analysis of system of subjects of management of the state property allows to divide the Executive authorities allocated with the state property powers on:

- bodies of General competence to which the Government and the Ministry of economic development of the Russian Federation, and also the Government of the Republic of Belarus belongs;
- bodies of special competence, including the Federal property management Agency and the State property Committee of the Republic of Belarus includes industry controls;
- functional, that is performing certain functions, the Federal Agency of scientific organizations of the Russian Federation, the Ministry of defence of the Russian Federation and other, and in the Republic of Belarus – national Academy of Sciences (Damsa, 2016).

The organization of management in this area is the main for the implementation of its administrative and legal management mechanism, as it determines the main activities of the Executive authority (subject of management). Executive authorities, organizations and other associations together form a system of subjects of public administration, which provides both the managerial relationship between the subject of management and the object, and the relationship within the management system. The functions of the subject of management are the determining criterion for the establishment of types of management actions directly related to the scope of the relevant subject of their powers. State Association (body, organization), performing managerial functions transferred to it by virtue of administrative legal personality, is one of the organizational mechanisms of the administrative body (Executive body) of the subordinate level (Lai, 2014).

You can propose the following approach to solving the problem. State bodies and organizations authorized to manage state property should act in the relationship and interaction, United by a common goal – the effective management of state property. This power may be a direct duty (as in Rosimushchestvo) or a functional duty of the second level (concomitant), but, nevertheless, is a single power (Kono, 2012).

State bodies and organizations can be combined into a four-tier institutional mechanism of the subject public administration:

- the first level of management is the highest state authorities (President and Government (Council of Ministers of the Republic of Belarus);
- the second level – the Executive bodies exercising administrative intersectoral coordination and implementation of state policy in the sphere of property relations (Ministry of economic development of the Russian Federation and the Ministry of economy of the Republic of Belarus);
- at the third level there are sectoral management bodies, the property powers of which are their main function – Rosimushchestvo and the State Committee on property of the Republic of Belarus;
- at the fourth – the Executive bodies that form the organizational mechanism and implement their property powers through derived functions (functional property powers), which include the Ministry of defense of the Russian Federation, the Federal Agency of scientific organizations, state corporations and others (Guins, 1957).

The proposed system of subjects of state property management will allow them to interact with each other through direct structural and functional links of subordination, and with objects and other subjects of management – depending on their individual characteristics. All this will help to organize the system of subjects of state property management in accordance with the principles of integrity and efficiency (Katzarov, 1964).

The analysis of the powers and functions of subjects of legal realization of administrative and legal mechanism of state property management in the Russian Federation and the Republic of Belarus allows the author to conclude that the main subjects of management are the bodies and organizations that implement their property powers as their main function and accompanying, namely: Rosimushchestvo and The state property Committee of the Republic of Belarus; the Ministry of defense of the Russian Federation, the Federal Agency of scientific organizations, state corporations and others (Brokelind, 2016).

To build organizational relations between the subjects of management, and also taking into account the lack of "super-administrative property powers" of Rosimushchestvo, the impossibility of influencing management processes in other bodies and organizations that implement property powers, it is proposed to create a management state Corporation, whose powers would include functions for the implementation of management activities, as well as ensuring the interaction of management entities with the state Executive authorities through the provision of consulting and information services. In the Republic of Belarus, it is proposed to give such powers to the newly created Agency (Kuprecht, 2014).

The creation of the state Corporation for state property management is aimed at solving the urgent problem – the formation of a single Institute of state property management, the objectives of which is to

improve the efficiency of state property management, create conditions for the investment attractiveness of such objects, increase the availability of state property for involvement in economic activities. In the management of state property, the state Corporation will act as an agent of the Russian Federation. The property of the state Corporation will be formed at the expense of the property contribution of the Russian Federation in the form of the objects of state property which are in Federal property. Also, for the formation of a single body, I consider it appropriate to transfer the functions of holding auctions for the sale of state property of this state Corporation (Liang, 2007).

In the Russian Federation, a Single development institution has similar functions, but the authority of this body is limited only by the objectives of its creation – the development of the housing sector (Kono, 2012).

Federal property and property of subjects of the Russian Federation consists of the state property assigned to the state enterprises and organizations on the right of economic maintaining and operational management (articles 294, 296 of the civil code of the Russian Federation), and also making the state Treasury.

The Federal law of 6 October 1999 No. 184-FZ "on General principles of the organization of legislative (representative) and Executive bodies of state power of the constituent entities of the Russian Federation" defines an exhaustive list of grounds on which state property may be in Federal ownership. The analysis of this list has shown that the criterion for classifying state property as Federal property is the state tasks, the implementation of which in accordance with article 71 of the Constitution of the Russian Federation is the exclusive responsibility of the Russian Federation.

The state property is owned by the subject of the Russian Federation, which provides the activity of public authorities of the subject of the Russian Federation, necessary for the exercise of powers granted to them by Federal laws (Tasdelen, 2016).

Analysis of the provisions of the above Federal law allows us to divide the state property of the subject into the following types (Damsa, 2016):

- state property necessary to resolve issues related to the exclusive jurisdiction of the Russian Federation and the joint management of the Russian Federation and its subjects;
- state property necessary for the implementation of Federal powers transferred by the Russian Federation to the subjects of the Russian Federation;
- the state property necessary for use in the activity by public authorities of the subject of the Russian Federation, public civil servants, employees of the state unitary enterprises and public institutions of the subject of the Russian Federation according to regional laws.

In the Republic of Belarus, unlike the Russian Federation, the Constitution does not enshrine the principle of differentiation of state property.

There are two levels of state property management in the Republic of Belarus:

1. National (Republican), that is, state property assigned to the Republican legal entities or constituting the Treasury of the Republic of Belarus;
2. Local (municipal), that is, state property constituting the Treasury of the local administrative-territorial unit, as well as assigned to municipal legal entities.

The local level is divided into three sub-levels:

1. Regional (regional state property, Minsk city property);
2. Basic (regional state property and property of cities of regional subordination);
3. Primary (public property and village territorial formations, and cities of regional subordination and the local administration in cities with district division).

Another type of state property that has not received its scientific consolidation and research is the property created in the process of international economic and political activity of the state, which includes the property of the Union state of the Russian Federation and the Republic of Belarus. The peculiarity of this type of property is its management and the creation of two States at the expense of a joint budget, necessary to ensure the activities of this economic entity. The agreement between the Republic of Belarus and the Russian Federation on the regulation of property issues of the Union state entered into force on 2 February 2009 and determines the procedure for the management of property created and acquired at the expense of the budget of the Union state.

Given that the basis of the activities of the Union state of the Russian Federation and the Republic of Belarus is the economic and political component, and the primary division of the property of the Union state into types, according to the author, should be based on those functions for which this property is used:

- property created for the implementation of economic functions of the Union state (development of joint programs, property obtained in the performance of activities and sub-programs);
- property, providing the activities of the Union state;
- property related to the implementation of political objectives (defense, security, and so on).

At the same time, international norms do not define the concept and composition of the category of "property". The position of the participants of the working group on improving the legislation of the Union state, as well as researchers who propose to define the term through the law of the Russian Federation and the Republic of Belarus, deserves attention (Kono, 2012).

It is difficult to agree with this position due to the fact that neither the Russian Federation nor the Republic of Belarus legislatively defined the scope and content of the concept of "state property". Therefore, it seems appropriate to define the concept of property of the Union state of the Russian Federation and the Republic of Belarus by analogy with the definition of "state property group" developed by the author.

In accordance with the resolution of the Council of Ministers of the Union state № 31 "on property created and (or) acquired at the expense of the budget of the Union state, and on the suspension of certain Resolutions of the Council of Ministers of the Union state", which entered into force on October 21, 2014, each state shall carry out a separate account of this property in accordance with national legislation. In the Republic of Belarus in 2012 the Resolution of the Council of Ministers of the Republic of Belarus regulating the order of accounting of the property created and acquired at the expense of means of the budget of the Union state, the property transferred to the property of the Union state by state participants and other property which came to property of the Union state which is in the territory. At the same time, the property created and acquired at the expense of the budget of the Union state of the Russian Federation and the Republic of Belarus, in fact, is the property of the Treasury of these States. However, at present this issue has not been sufficiently investigated, and the property owned by the Union state is accounted for in the state property located abroad. In addition, it should be noted that the powers to manage the property of the Union state of the Russian Federation and the Republic of Belarus differ from similar powers to manage the property of the Russian Federation located abroad, since there is no sign of unity of command in the management mechanism. In addition, as of 2016, the Russian Federation has not adopted a Resolution of the Government of the Russian Federation regulating the accounting procedure for the considered category of property. Thus, it is now necessary to develop in the Russian Federation the procedure for accounting for the property of the Union state (Garde, 2009).

The Russian Federation and the Republic of Belarus, where it is necessary to determine not only the types and composition of the property of the Union state, but also its exclusive status associated with the peculiarities of management.

Thus, in the Russian Federation and the Republic of Belarus, it is proposed to determine the division of state property into types for its intended purpose: 1) provision of state (Republican) functions, 2) functions of the Federation subjects (municipal), 3) created in the process of international activity.

CONCLUSION

The analysis of these rules of constituent documents of the territorial Executive authorities of the Republic of Belarus, carrying out the management of state property, leads to the conclusion that there is unity in the organization of public administration at different levels of administrative-territorial entities, which can not affect the efficiency of the structure of subjects of public administration at the national and regional levels.

The multiplicity and different combination of state bodies that form the organizational structure of the subjects of state property management determines the need for its correct construction, improvement of its levels and the order of their interaction through the relevant elements of the administrative and legal mechanism of management, since their main goal is to develop a systematic approach to the existing diversity of structures.

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