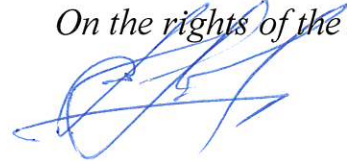


Translation from Russian into English

“RUSSIAN PRESIDENTIAL ACADEMY OF NATIONAL ECONOMY AND  
PUBLIC ADMINISTRATION”  
FEDERAL STATE BUDGETARY EDUCATIONAL INSTITUTION OF  
HIGHER EDUCATION

*On the rights of the manuscript*



**Viktor Aleksandrovich MAIBORODA**

**FEDERAL TERRITORY AS A NEW SUBJECT OF LAW: THEORETICAL  
AND LEGAL RESEARCH**

5.1.1. Theoretical and Historical  
Legal Sciences

**Abstract of the dissertation**  
for the Doctor's of Law Degree

Moscow-2023

**Relevance of the topic of the dissertation research.** The amendments to the Constitution of the Russian Federation in 2020 implemented public authorities and federal territories as independent institutions of legal regulation. The unification of powers presupposes the unification of their material embodiment: objects of federal, regional and local significance. The preservation of the rights to participate in the solution of local issues (local self-government) and the assignment of powers in the field of public administration, the solution of special tasks for which the federal territory is being created, are a problem of creating such an alloy of the organization of power that has not previously been carried out in the state-building of Russia at all its stages of the historical path. The resolution of the problems of such a relationship, embodied in the peculiarities of the organization of public power, is the comprehension of the nature of the federal territory as a subject of law and as a subject of various types of legal relations: civil and special.

In the case of the creation of the first federal territory of the Russian Federation, special tasks were assigned to it that in itself did not affect the procedure for the delimitation of powers between the Russian Federation and the constituent entity of the Russian Federation, on whose territory the federal territory was created. Instead of such a tool, a mechanism has been created for the indirect management of the federal territory by the central bodies of federal power, which is procedurally defective. In addition, such an instrument does not have the possibility of judicial protection opposed in the balance or the resolution of a contradiction by another, independent third party.

In such circumstances, the need to formalize the foundations of the organization of public authority of the federal territory is obvious. The absence of such foundations in the directly normative consolidation does not enable to make a definite judgment about the possibility of replicating the features of the organization of public power. By itself, the unification of the powers of various levels of the public authority organization should serve as a basis for gaining the degree of independence of public authorities that will make it possible to achieve special goals of the federal territory in proper balance with the rights of residents to participate in public administration and in solving issues of local importance.

**Degree of elaboration of the scientific problem.** The scientific works of S.A. Avakian, Yu.A. Tikhomirov, G.N. Chebotarev, S.N. Sheverdiaev are devoted to the general concept of public power. Special attention should be paid to the works of T.Ya. Khabrieva and A.A. Klishas, whose definite authorship belongs to the constitutionalization of the doctrine of the unity of public power.

A number of researchers have identified the processes of interaction between state authorities and local self-government bodies in the formation of the institute of unity of public authority based on the norms of international standards, recommendations and multilateral agreements. Thus, in the works of S.N. Sheverdiaev, A.A. Troitskaia, it is stated that informative acts of international law do not directly determine the specific mechanisms of interaction of public authorities between levels.

When considering the peculiarities of the organization of public power in the federal territory, this study uses the results of the work of the scientific school of Yu.A. Tikhomirov, who has created a theory of competencies consistently adapted from Soviet law to the modern model of regulation.

The research of I.V. Irkhin in the field of determining the properties of territorial autonomy in the Russian Federation in comparative comparison with foreign legal systems enable to take a different look at the concept of territorial autonomy.

No systematic works summarizing the implementation in the sphere of domestic regulatory and legal regulation of federal territories have been carried out to date. The federal territories themselves as public legal entities of federations have been studied in sufficient detail in the English-language legal literature. Such researchers as B. Arnebeck, W.B. Bryan, L. Casey, H.W. Crew, J. Kratz, J. Madison, S.J. Markman и J. Romero should be mentioned.

**Goal and objectives of the dissertation research.** The goal of the work is to develop theoretical and legal provisions on the legal nature of the federal territory as a new subject of law.

The objectives of the dissertation research are as follows.

1) To define the legal essence of the federal territory as a new type of public legal entity.

2) To study the legal personality of the federal territory as a new subject of relations regulated by the norms of constitutional and sectoral legislation.

3) On the basis of comparative analysis, to establish the possibility of implementing individual mechanisms from legal regimes, which determine the status of federal territories in foreign legal systems.

4) To identify the correlation of powers of public authorities of the federal territory in the context of the theory of separation of powers into legislative, executive and judicial.

5) To identify the relationship of public authorities of the federal territory with ordinary state authorities and local self-government bodies.

6) To investigate the nature of property relations with the participation of the federal territory and to offer the possibility of participation of the federal territory as a subject in civil circulation.

7) To determine the practical significance of the properties of the federal territory as a new subject of public authority.

8) To formulate the general principles of the organization and legal regulation of public power of the federal territory and the possibility of reproduction of the organization of public power of the federal territory.

**Object and subject of the dissertation research.** The object of the dissertation research is public relations related to the implementation of the institution of public authority in a special public legal entity – the federal territory.

The subject of the research is the statutory provisions of the current Russian legislation and other legal regulations, as well as the doctrinal views of legal scholars on the problems of the organization of public power in the federal territory.

**Theoretical and methodological basis of the research.** The theoretical basis of the research was the scientific, scientific and practical works of domestic legal scientists A.A. Klishas, A.V. Bezrukov, A.E. Pomazanskii, A.E. Postnikov, A.N. Pilipenko, V.I. Vasiliev, G.N. Chebotareva, E.E. Nikitina, I.A. Ignatieva, I.V. Pliugina, L.V. Andrichenko, L.N. Vasilieva, N.M. Kolosova, S.A. Avakian, S.V. Shulga, S.N. Sheverdiaeva, T.S. Krasnova, T.Ya. Khabrieva and Yu. A. Tikhomirov.

In addition, the work uses scientific sources in foreign languages: Arnebeck B.,

Bryan W.B., Casey L., Crew H.W., Kratz J., Madison J., Markman S.J. and Romero J. and a number of other researchers.

The methods of axiological, dogmatic, historical and comparative legal scientific analysis are used in the work.

The use of the axiological method has made it possible to identify the balance of legal values in the formation of the institution of the peculiarities of public authority of the federal territory and to propose means to achieve it in cases where its presence is not obvious in the regulatory system.

The application of the formal legal (positivist) approach has enabled to analyze the features of the implementation of representative, executive and administrative mechanisms of legal regulation by public authorities of the federal territory. The approach from the position of legal realism has made it possible to form a conclusion about the absence of an ordinary mechanism of checks and balances in the peculiarities of the organization of public authorities of the federal territory.

Based on the methodology of comparative analysis, foreign federal legal systems in the USA, Canada, Australia, India, Pakistan, Brazil and other foreign countries having experience in organizing public territory have been studied.

The appeal to the methods of strategizing economic models of development has made it possible to identify the prospects for the development of mechanisms of legal regulation of public authorities of the federal territory.

A content analysis has been used to identify the meaning of the novelties of Russian legislation using the method of implementing normative competencies considered in the study due to the lack of authentic law enforcement practice. Inductive syllogisms are used in a systemic relationship with general theories of competencies, their redistribution in the system of state-building of the Russian Federation. By the method of deduction, the final conclusions of the study and the principles of the organization of public power of the federal territory are formulated. It is particularly worth noting the contradictio in contrarium, used to highlight the perception of the territory with the possibility of including part of the territorial sea (water area) in it and establishing a unified legal and regulatory system in relation to such a federal territory.

**Information base of the research.** The information base of the research constitutes the works of legal scholars, regulatory acts of the Russian Federation and other states, regulatory legal acts of public authorities of the “Sirius” federal territory, the results of disputes of working groups that provide norm-designing during the creation and formation of the activities of the first federal territory, texts of judicial acts and generalizations of judicial practice.

**Validity and reliability of the research results.** The validity and reliability of the research results is confirmed by the results of the study of legal concepts and approaches, the outcomes of the rule-making activities of public authorities of the federal territory.

**Scientific novelty of the dissertation research.** The scientific novelty of the research lies in the fact that it is the first Russian-language comprehensive study of the institute of the organization of public power in the federal territory as an integral legal phenomenon with its own unique characteristics, principles and properties. The study presents a scientific concept for finding a balance between the public interest, the tasks for which the federal territory is created, and ensuring the rights of citizens to participate in decision-making on public administration and local issues in a volume comparable to the ordinary order.

The features and shortcomings to be eliminated in the regulatory competence of the public authorities considered in the work are identified. Disclosure of regulatory competence and its mechanism of operation in the absence of a judicial guarantee of norm control is proposed to be replaced by means of compensatory legitimacy.

In the absence of an independent type of ownership of the federal territory, the possibility of using a public easement for individual purposes in balance with the possibilities of integrated development of the territory (renovation) is stated.

The study formulates the provisions that form the basis of the features of the organization of public power of the federal territory as a subject of law.

The scientific novelty of the research is expressed in the provisions submitted for defense. **The provisions submitted for defense are as follows:**

1. The federal territory is a public legal entity whose subjectivity in the legal order of the Russian Federation is unique. The subjectivity of the federal territory is based on a

special mechanism for the formation of public authorities, combining in single public authorities the expression of the power of the people in free elections and representation from the state authorities of the Russian Federation, a constituent entity of the Russian Federation.

2. The participation of the federal territory as a subject in civil circulation is based on the granting of its rights to municipal property, property rights of the federal territory, as well as the rights to form and execute its own budget.

However, the personable structure should be completed: firstly, the federal territory shall be endowed with an independent form of ownership (or an independent property right), and secondly, the endowment of its own budget already means the possibility of forming its own treasury of the public legal formation of the federal territory. The Treasury (paragraph 4 of Article 214 of the Civil Code of the Russian Federation) is an object of civil law regulation.

3. The public-legal subjectivity of the federal territory is implemented by directly endowing it with the powers of a constituent entity of the Russian Federation and the powers of a municipal entity, whereas the implementation of federal powers is carried out only through the membrane of the institute of coordination.

The federal territory as a public legal entity is not endowed with the property of territorial autonomy: the territory of the federal territory is not excluded from the territory of the constituent entity of the Russian Federation, and the borders of the federal territory are established along the borders of the municipal entity created in accordance with the procedure established by law.

The resolution of the issue of ensuring the territorial autonomy of the federal territory is possible through the modernization of the constitutional concept of the composition of the territory of the Russian Federation. The provision of the first sentence of Part 1 of Article 67 of the Constitution of the Russian Federation shall include the territories of federal territories in the list of the composition of Russia.

4. The rule-making authority of the federal territory is divided. Part of the rule-making regulation is implemented directly by the public authorities of the federal territory, and part – in coordination with the Government of the Russian Federation. At

the same time, conciliation procedures have no rules of implementation and apply mainly to the powers of public authorities in the field of land and urban planning relations, that is, to powers understood as municipal. This approach makes it possible to establish a corresponding relationship between the goals of creating a federal territory and practical mechanisms for achieving them, which are within the competence of the federal executive authority, but not the public authority of the federal territory.

5. The mechanism of formation of the public authority of the federal territory continues the trend of state-building in Russia. This is the institution of delegating authority to regulate certain relations to other persons not classified as authorities (specialized state corporations). The purpose of such delegation is to achieve economic (i.e. commercial) success. The delegation of powers is limited exclusively by the sphere of special and economic regulation, and does not affect institutions endowed with the power of coercion, including the court, the prosecutor's office.

With regard to the subjectivity of the federal territory, such an approach should be abandoned and the public authorities of the federal territory should be given the authority to enforce the implementation of their own regulation in case of their voluntary non-fulfillment.

6. The organization of public authority of the federal territory is a new experience in the consolidated, reconfigurable delegation of powers of Russia, a constituent entity of the Russian Federation and a municipal entity to public authorities. Reconfigurable delegation refers to the ability of a public authority to use the powers of Russia, a constituent entity of Russia or a municipality, or to refuse such use. The new experience combines both the empiricism of the management company of a special business entity (a territory of advanced development, a special economic zone, etc.) and the sign of the territoriality of a public legal entity, but despite the change in the nature of the recipient of delegation, it is stopped at the same border of refusal to delegate authority by force of authority in case of non-compliance with the established regulation.

Overcoming orthodoxy (traditionalism) in the territorial representation of the federal territory, that is, the inclusion of the water area in it, will enable to overcome orthodoxy (traditionalism) in refusing to delegate federal institutions of coercion to public

authorities of the federal territory, since conducting economic activity in the marine area involves the implementation of a set of powers of federal executive authorities, including the authority to bring to administrative responsibility. It is administrative coercion that acts as an obviously acceptable boundary for the transfer of compulsory powers of the state authorities of Russia and constituent entities of Russia to the public authorities of the federal territory.

7. The public authority of the federal territory at the current level of its construction is actually the level of a municipal organization, which is given separate (albeit significant in scope) functions of the constituent entity of the Russian Federation. To ensure the public authority of the federal territory, revenue sources at the level of the constituent entity of the Russian Federation and revenue sources at the municipal level have been transferred. Expenditure obligations of the federal territory ensure the performance of part of the functions in the state administration of the constituent entity of the Russian Federation and part of the functions in resolving issues of local importance.

The delegation of coercive powers to the federal territory (provision 5, submitted for defense) will change the public-legal nature of the institution of the federal territory and enable to postulate a judgment about it as a governmental unit.

8. The concept “territory (area) of the federal territory”, legalized in the legal regulation through fixing the location of borders in the federal law without coordination with adjacent public legal entities, is given the properties of such a territory, which is equivalent in semantic perception to the property of the territory of a public legal entity - a constituent entity of the Russian Federation. However, this perception is fictitious, since the border of the subject from its legal and accounting nature excludes conflictogenity through a constitutionally defined procedure for coordinating the borders of the constituent entities of the Russian Federation. The existence of a procedure in itself does not mean that there is no possibility of a conflict, but it means that there is a way to resolve it in case of its occurrence. The concept “territory (area) of the federal territory” does not exhaust the specified potential of conflictogenity, since the procedure for coordinating borders, achieving a consistent consensus has been moved to an informal “basement floor” of regulation, not visible and not perceived by the law enforcement officer, but

implemented when adopting a law (statutory provision) establishing the boundaries of the federal territory. That is, the border of the federal territory is based on the will of the federal legislator, the formation of which regularly includes receiving a response to the draft law of the constituent entity of the Russian Federation, in whose borders the federal territory is formed. Such substitution of the procedure for approving the border of the federal territory needs to be legalized at the level of the law, thereby exhausting the latent conflict potential of the delimitation of the territory of the constituent entities of the Russian Federation and the territory (area) of the federal territory.

9. The absence of an independent form of ownership of the federal territory has in the current legal regulation system exclusively palliative means of resolving proposed through the use of a special institution of public easement for certain purposes. The use of a public easement for certain purposes will make it possible to replace the absence of an independent form of ownership of the federal territory in the event of property disputes based on a conflict of public and private interests in the use (redistribution of use) of the territory and individual land plots. Firstly, a public easement for certain purposes is provided by a consideration mechanism; secondly, it has the properties of legal certainty formed by the instruments of public hearings (public discussions), the results of which do not imply a revision of the implementation of public interest; thirdly, it has pre-trial settlement tools.

10. The rights of a resident of the federal territory to participate in elections and to participate in resolving issues of local significance in terms of the scope of powers exercised are not equivalent to the same rights of a resident of another public legal entity within Russia: firstly, residents of the federal territory do not have the right to recall a member of the Council of the Federal Territory, secondly, there is no right to approve changes the boundaries of public legal education, thirdly, only political parties have the opportunity to nominate candidates for members of a representative body, but it is absent from other public associations. Fourth, residents of the federal territory are not represented in the jury lists compiled at the municipal level. Fifth, the participation of residents of the federal territory in the local referendum is not provided.

In this regard, the ratio of the rights of residents of the federal territory to participate in elections and to participate in solving local issues does not correspond to the scope of the rights of a resident of another municipality and the diminished rights to participate in solving local issues are replaced by a reduction in the burden of property taxation.

But, in addition, a statutory provision is also needed to consolidate the right of residents of the federal territory to participate in the administration of justice.

11. The representative body of public authority of the federal territory is in need of additional means of legitimization, since the delegation of powers is carried out not only through the expression of the power of the people in free elections, but also from other representatives without comparable legitimacy. As such means of additional legitimization, it is proposed to consider an improved institution of public hearings.

12. The constitutional and legal concept “unified public power system”, disclosed in the statutory provision on the State Council of the Russian Federation, means a system of already formed state and municipal bodies, which do not include public authorities of the federal territory.

It is necessary to consolidate the role of the State Council of the Russian Federation in the formation and activities of public authorities of the federal territory as a universal body regulating relations in the formation of the institution of a unified public authority.

13. The organization of the public authority of the federal territory as a public legal entity makes it possible to combine the functions and powers separated in the ordinary legal order of the state structure. Such combination will give a plenty of opportunity to create economic competitive advantages of labor and production results.

14. The architecture of powers of the public authorities of the federal territory consists of two levels. The first level is the powers, the obligation of which is integral, the second is the powers, the possibility of which depends on the presence (absence) of an agreement on their acceptance for execution by a public authority or, conversely, on their transfer to state authorities and local self-government bodies from the public authorities of the federal territory.

In addition, as a special characteristic of the federal territory as a subject of law, it is necessary to indicate the rights to establish the specifics of regulating individual legal relations within the boundaries of the federal territory.

15. Special properties of the organization of public power of the federal territory are as follows:

firstly, the unification of the powers of state authorities of the Russian Federation, state authorities of a constitute entity of the Russian Federation and local self-government bodies in single public authorities of the federal territory;

secondly, the formation of public authorities by mixed methods: through elections and through delegation of powers from the head of state and from the executive bodies of the federal and regional levels;

thirdly, the lack of independence in exercising by public authorities the powers of public administration granted to them and only partial independence in the exercise of powers in matters of local importance;

fourth, the shift in the balance of the separation of powers to a representative body of public authority, expressed in the absence of an independent counterweight in terms of regulatory compliance verification and replaced by a preliminary approval of regulation;

fifthly, a decrease in the relatively usual scope of rights to local self-government in terms of formation and influence on the representative authority of the federal territory.

**Theoretical and practical significance of the research.** The theoretical significance of the research lies in the formulation of an integral and consistent doctrine of the peculiarities of the organization of public authority of the federal territory with the proposed means of further improvement of regulatory competence. The paper highlights and formulates the essential foundations of legal regulation of public authorities of the federal territory. The practical creation of a federal territory is one of the facets of the implementation of the concept of unity of public power, implemented in the Constitution of the Russian Federation by the 2020 amendment. The basis of the “Sirius” created federal territory is the unification of the further use of the Olympic heritage sites and the self-realization of timely identified talents, including in the field of sports. Therefore, it is true that the practical significance of the study lies in the extrapolation of the conditions

for the creation of a federal territory by the presence of unique conditions, which themselves are not causally related in the system of public administration. For example, the combination of the legal regime of the Free Port of Vladivostok in the Primorsk Territory and the trend of large-scale housing construction implies a similar consolidation of the powers of public authorities in single bodies to establish a common legal regime that combines the infrastructural security of large-scale housing construction with the turnover of the Free Port.

The results of research in the field of the peculiarities of the organization of public power of the federal territory may be used by the system-forming body in the field of the organization of the unity of public power in the Russian Federation.

In addition, the practical significance involves the possibility of using the results of the study in rulemaking both in relation to the existing federal territory and in relation to the entire institute of the peculiarities of the organization of public power of federal territories.

These studies may be used in the preparation of grant applications and writing analytical notes.

#### **Approbation of the results of the dissertation research.**

The dissertation research was discussed at a meeting of the Department of Jurisprudence of the North-Western Institute of Management of the Russian Presidential Academy of National Economy and Public Administration and recommended for defense.

The provisions of this study were reported at 20 international and all-Russian conferences and forums, including ACSH Annual conference public service development and cooperation. Date: October 27-29, 2021 (Wednesday, Thursday, Friday), Astana; 5th International Scientific and Practical Conference “Support for Competition: Economic and Legal Mechanisms to Ensure a Balance of Interests of Production and Consumption”, St. Petersburg State University, February 04, 2022, St. Petersburg; International Scientific and Practical Conference “Carbon Neutrality and Global Environmental Governance” under the joint activities of the North-Western Institute of Management of the Russian Presidential Academy of National Economy and Public Administration and the North-

Western University of Political Science and Law of the People's Republic of China, July 12, 2022, St. Petersburg (Russian Federation) – Xi'an (People's Republic of China); 6th All-Russian Legal Forum "Civil Law Reform: Some Results and New Problems", September 21, 2022, Moscow.

Since 2020, the author has been a member of the expert group of the "Sirius" federal territory to ensure regulation of the specifics of urban development activities. The author has developed an innovation in the representation of the concept "element of the planning structure of the federal territory", the results of which are published in journals indexed in the databases of WoS, Scopus. The essence of the innovation is that the element of the planning structure of the federal territory (the planning district and the Olympic district) are immediately integrated into the master layout plan, which obliges the federal territory to provide the element with objects of social, transport and communal infrastructure.

In addition, since 2020 the author has been an expert of the Commission of the State Council of the Russian Federation in the direction "Agriculture", since 2021 – an expert of the Commission of the State Council of the Russian Federation in the direction "Construction, Housing and Communal Services, Urban Environment" and takes an active part in the formation of a unified system of public authority headed by the State Council of the Russian Federation (one of the provisions submitted for defense). It is this objective that has both practical and doctrinal significance.

Thus, the approbation of the research results has a practical, applied nature and is directly used in the construction of institutions of the federal territory.

The results of the dissertation research are reflected in 60 scientific publications of the author.

**Dissertation structure.** Proceeding from the fact that the paper analyzes the joint embodiment of two new institutions – public power and federal territory, it contains independent chapters, semantic units, revealing, respectively, the features of the organization of public power and subjectivity of the federal territory as a governmental unit. The work consists of an introduction, four chapters, including fourteen paragraphs, a conclusion, and a bibliographic list.

The first chapter provides for the development of the categorical apparatus of the

study, the characteristics of the place of federal territory as a governmental unit. .

The second chapter of the work is devoted to the comparative analysis of federal territories in foreign legal systems, the creation of a classification of various kinds and types of federal territory in foreign countries.

The third chapter reveals the mechanisms of unified public authorities in the federal territory and determines the place of public authorities in the system of state and municipal administration. A separate significant aspect of this chapter is the regulation of property relations of the federal territory and proposals for an independent form of ownership and property law of the federal territory as an independent subject of law.

In the fourth chapter, the legal personality of the federal territory is identified, and proposals for improving the organization of public power are formulated, general principles of legal regulation of public authorities of the federal territory are developed.

In conclusion, the key insights into and conclusions during the study of the federal territory and the organization of public power are formulated.