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"Municipal Property Law in Russia and Mongolia"

Specialty 5.1.3 - Private - legal (civilistic) sciences.

DISSERTATION ANNOTATION
for the degree of Candidate of Sciences in Jurisprudence

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Relevance of the research topic. The development of local self-government as a tool to improve the efficiency of solving the tasks facing the state on the basis of delegating some of the powers to local authorities has necessitated the creation of a solid economic basis for their implementation, which objectively requires ensuring their property independence by granting the authority to own, use and dispose of the property of the corresponding administrative-territorial entity. The peculiarities of legal registration of such an economic and administrative decisions are largely predetermined by the historical features of the development of the state, due to which we can observe the formation of fundamentally different approaches to solving this issue, which range from the recognition of the broadest possible powers exercised on behalf of a public-legal entity, inherent in the institution of property, to the introduction of various kinds of restrictions, up to the denial of the independence of municipal (local) property. This circumstance determined the main vector of this study, based on the comparison of the legislation of the Russian Federation and the Mongolia on municipal (local) property.

However, regardless of the degree of decentralization of property management processes, they are always aimed at creating a more stable and reliable economic basis for the existence of the population in the respective territory, including by stimulating economic development, increasing the efficiency of municipal property use, expanding the practice of interaction with business structures, which, in turn, will contribute to strengthening the foundations of local self-government. Its achievement is greatly facilitated by the improvement of legislation, which, in turn, requires doctrinal substantiation of the specifics of subjects and objects of the right of municipal property, the grounds and the procedure for its acquisition and termination, the use of various organizational and legal forms of involvement of such property in economic turnover in post-socialist countries such as Russia and Mongolia. Particular attention should be paid to the approaches implemented by the legislator to address these issues, the differences in which, sometimes quite significant, are certainly of interest in the context of the development of the science of civil law and the identification of areas for improvement of legislation.

Degree of development of the scientific problem. The multifaceted nature of the institute of municipal property requires the attention of specialists in the field of economics and jurisprudence. Moreover, among the latter there are quite a number of representatives of the fields of constitutional, municipal and administrative law due to its close connection with the institution of local self-government, the organization of which determines the institution of municipal property.

Turning to civilistic studies, we should note the works of S.N. Bratus, A.V. Vinnitsky, O.S. Ioffe, Y.H. Kalmykov, V.P. Kamyshansky, S.M. Korneev, V.D. Mazayev, V.P. Mozolin, V. A. Rybakov, K.I. Sklovsky, E.A. Sukhanov, V.A. Tarkhov, Y.K. Tolstoy and other scientists devoted to the institute of property rights in general and public property, in particular. Problems of origin, realization and termination of the right of municipal property at different times were the subject of research of Y.N. Andreev, M.I. Braginskii, A.V. Kamyshanskii, N.N. Kolmakova, N.M. Korshunov, N.A. Lesnyak, V.P. Mozolin, O.N. Sadikov, S.V. Tychinin, L.A. Cherdakova, A.E. Chernomorets, V.V. Chubarov et al.

The purpose and objectives of the study stem from the current state of scientific development of private legal aspects of the right of municipal property. Its purpose was to identify the peculiarities of civil-law regulation of municipal (local) property relations, formed under the influence of historically determined approaches to the solution of the problem of decentralization of property management of administrative-territorial formations in post-socialist countries. Its achievement was facilitated by the solution of the following tasks:

1) development of the concept of municipal (local) property and scientific-theoretical ideas about its essence and meaning, taking into account the determinants of the development of this institution;

2) analysis of the problems of determining the subjects and objects of the right of municipal (local) property;

3) determination of the peculiarities of acquisition and termination of the right of municipal property;

4) identification of the specifics of the realization of the right of municipal ownership of land and other real estate objects;

5) comparative analysis of the use of municipal (local) property for the establishment of legal entities and participation in their capital in Russia and Mongolia;

6) identification of organizational and legal forms of partnership between the municipality and private business entities.

The object of the study is social relations arising in the acquisition, exercise and termination of the right of municipal (local) property in the Russian Federation and Mongolia. Its **subject** is formed by the norms of civil and municipal law, in particular the part affecting the relations under consideration, the practice of their application, as well as existing in science doctrinal approaches to the solution of problems arising in the area under consideration.

The theoretical basis of the study was mainly formed by the works of Russian scientists devoted to the problems of emergence and termination, as well as the exercise of municipal property rights, including various formats of municipal-private partnership. The analysis of doctrinal approaches presented in the relevant monographs and scientific articles made it possible to assess the state and prospects for development of civil legislation in the area under consideration, to form a corresponding author's position, which is expressed in the conclusions and proposals. **The methodological basis of the study** is represented by a set of general scientific and private-scientific methods of cognition. The priority among them is given to the dialectical method, which allows us to consider legal phenomena and processes in their interrelation and intersection with socio-historical factors, to identify the determinants of the formation of the institute of municipal (local) property rights in the system of civil law. Along with this, in the study of legislation, doctrinal approaches and judicial practice were used, general scientific methods of analysis and synthesis, systemic and structural approaches, which ultimately permit the formulation of conclusions based on the research.

The simultaneous reference to the legislation of Russia and the Mongolia in order to identify similarities and differences in the civil and legal regulation of municipal property relations and to determine on this basis the directions for improving the legislation has led to the extensive use of the comparative legal method. Along with this, the historical-legal and formal-legal methods were used.

The information base of the study was mainly formed by the legislation of the Russian Federation and Mongolia, including the Civil Code of the Russian Federation (hereinafter - the CC of the RF)[1], the Civil Code of Mongolia dated September 10, 2002 (hereinafter - the CC of Mongolia)[2], the Law of the Mongolia on State and Local[3] Property dated May 27, 1996 (hereinafter - Law on SLP)[4] , Federal Law No. 131-FL dated October 6, 2003 "On General Principles of Organization of Local Self-Government in the Russian Federation"[5] (hereinafter - the Law on OLS), the Law of the Mongolia "On Administrative-Territorial Units of

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[1] See: Civil Code of the Russian Federation: part one of 30.11.1994 № 51-FZ; part two of 26.01.1996 № 14-FL; part three of 26.11.2001 № 146-FL; part four of 18.12.2006 № 230-FL [Electronic resource] // URL: http://pravo.gov.ru (date of address: 09.03.2024).

[2]See: Civil Code, January 10, 2002 [Electronic resource] // URL: https://legalinfo.mn/mn/detail/299

[3]Remark: "Locally owned" literally translates as local property, but in the context of this study I will use the more familiar for the Russian legal doctrine concept of "municipal property" or use the terms "local" and "municipal" as synonyms.

[4]See: On State and Local Property, May 27, 1996 [Electronic resource] // URL: https://legalinfo.mn/mn/detail/492

[5] See: Collection of Legislation of the Russian Federation. 2003. № 40. Art. 3822.

Mongolia and their Management" dated December 24, 2020 (hereinafter - the Law on ATUM)[6], as well as a number of other laws regulating municipal (local) property relations. At the same time, the legislation of the Republic of Belarus, the Republic of Kazakhstan and the People's Republic of China, the choice of which was conditioned by their belonging to post-socialist states, was used to illustrate alternative approaches to the consolidation of property rights of administrative-territorial entities. Considerable attention was paid to judicial practice which reflects the peculiarities of application of the provisions of the legislation on the right of municipal property, and contributes to the identification of existing gaps and contradictions in it. Of particular importance in this sense are the positions formed by the Constitutional Court of the RF, reflecting fundamental ideas about the directions of development of legislation and law enforcement practice.

The validity and reliability of the results of the study is ensured by analyzing a wide range of Russian and foreign doctrinal and regulatory legal sources, judicial practice, using a set of scientific methods that permit the identification of the problems of civil-law regulation of municipal property relations, as well as possible directions of its development in the post-Soviet space based on the example of Russia and the Mongolia, as well as to formulate the author's approach to their solution. At the same time, the author of the work:

- identified, based on the analysis of doctrinal approaches, as well as Russian and foreign legislation, the factors determining the development of the institute of municipal property rights, primarily in the post-Soviet space;

- analyzed the differences in legislation concerning subjects and objects of the right of municipal property in Russia and Mongolia, taking into account the existing differences in the definition of its correlation with the right of state property, as well as the implementation in the Mongolia proprietary concept of interpretation of objects of property rights;

- assessed the normative approaches to determining the civil legal status of municipalities and local self-government bodies in Russia and Mongolia.

- substantiated the mixed legal nature of acquisition and termination of municipal property rights in the order of delimitation of public property;

- systematized and correlated the grounds and peculiarities of the emergence and termination of municipal property rights in Russia and Mongolia, implemented both by virtue of a direct prescription of the law and on the basis of transactions;

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[6]See: On the administrative, territorial units and their management of Mongolia, December 24, 2020 [Electronic resource] // URL: https://legalinfo.mn

- identified the specifics of organizational and legal forms of municipal-private partnership used in Russia and Mongolia;

- assessed the peculiarities of participation of municipal entities in the creation of legal entities were determined, their legal status and prospects of legal regulation of their activities;

- formulated proposals to improve the legislation.

Positions put forward for defense and having scientific novelty.

1. The theoretical substantiations of the hypotheses that the differences in the essential characteristics of the right of municipal property in Mongolia and Russia, which began to be formed during the transition to a market system of economic relations, are due to the adherence to the theory of state self-government and dualistic theory of self-government, respectively. This determines the existence of fundamental differences in the construction of the system of economic relations and their respective legal and regulatory framework: 1) the proclamation of municipal property as a special form of state property in Mongolia, while recognizing it as an independent form of property in Russia; 2) the existence of a wider scope of powers of local self-government bodies in Russia, while implementing a largely similar communal-rent model of municipal economy.

2. The definition of the right of municipal property in the subjective sense as a set of powers of ownership, use and disposal of municipal property, exercised by local self-government bodies and other authorized subjects on behalf and in the interests of the population of the municipal entity in the manner and within the limits established by the current legislation. Therefore, the recognition of municipal entities as subjects of the right of ownership is a legal fiction that allows to isolate property intended to satisfy the rights and legitimate interests of the population of the respective territory and to subject it, therefore, to a special legal regime characterized by the existence of special grounds for the acquisition and termination of the right of ownership, as well as the procedure and limits of use of the relevant property.

3. The identification of the reasons for the existing differences in the legislative fixation of objects of municipal property rights in Russia and Mongolia, which are largely explained by a fundamentally different approach to understanding the essence of rights to things and other objects of civil law. The implementation in Mongolia of the proprietary concept of interpretation of objects of property rights allows to consider any objects as such, providing for the resolution of debatable issues regarding the ownership of municipal entities of

budget funds, uncertificated securities and rights to the results of intellectual activity.

4. The substantiation of the mixed legal nature of acquisition and termination of the right of municipal property in the order of delimitation of public property. The public-law nature of the relevant relations is evidenced by: 1) the presence of specific grounds for making a decision on the transfer of property, which are: a) the ability / inability of the property to ensure the solution of local issues established by law; b) the actual use of the transferred property by the public-law entity acting as its recipient, or the unitary enterprise created by it, if it does not contradict its purpose or c) the need for material support of the municipality in connection with the distribution/redistribution of the subject of jurisdiction and powers between the authorities of different levels; 2) gratuitous transfer of ownership rights; 3) administrative procedure of interaction between authorized bodies of different levels and registration of the transfer of property rights by an administrative act. However, the inadmissibility of ignoring the will of local self-government bodies, and the objective necessity of such transfer for the exercise of local self-government powers, brings to these relations a civil-law component based on the principles of equality, autonomy of will and property independence of their participants.

5. The notation that the acquisition and termination of municipal property rights on the basis of a transaction inevitably bears the imprint of the special legal status of a municipal entity, which is expressed in the presence of specific grounds for this (privatization, forced seizure of property, etc.), deformation of the principle of freedom of contract, in which the opinion of the counterparty may not actually be taken into account, as well as close connection with the adoption of managerial decisions.

6. The revelation that the position of the Russian legislator with regard to the fate of escheat property and property not realized in the course of bankruptcy proceedings contradicts both the requirement of the purpose of municipal property and the economic interests of the municipality, which is forced to incur unreasonable costs for the assessment, accounting, storage and maintenance of illiquid assets. The way out of this situation is seen in the transfer of movable property to municipalities for its further disposal, and immovable property to federal ownership, which, on the one hand, will avoid the formation of ownerless property potentially endangering life, health, property and the environment, and, on the other hand, will reduce the burden on the local budget.

7. The formulation of municipal-private partnership as a set of normatively enshrined organizational and legal forms of interaction between municipalities

(represented by local governments) and business entities on the basis of pooling their resources and sharing risks in accordance with a contract concluded on a long-term basis to achieve socially important goals. At the same time, the Mongolia has a one-tier model of public-private partnership without a municipal segment, which is due to a rather high level of centralization of management and control on the part of public authorities in the Mongolia, which prevents them from effectively addressing their tasks.

8. The identification of necessity of formation and legislative consolidation of a single concept of using the structure of a legal entity by a public-law entity, including municipal, to solve its tasks, which can be realized through the adoption of the Law on State and Municipal Legal Entities, in which it is advisable to determine: 1) the peculiarities of the legal status of this category of legal entities; 2) the grounds and procedure for their establishment, including the adoption of the relevant decision by the competent authority, taking into account possible restrictions on the spheres of activity; 3) the peculiarities of the realization by a public-law entity of the rights of the owner / shareholder / participant; 4) the formation of management bodies and the exercise of their powers, as well as the responsibility of persons carrying out management; 5) the assessment of the effectiveness of the activities of such legal entities, ensuring its transparency.

The theoretical and practical significance of the research consists in a comprehensive analysis of the institute of municipal property rights enshrined in the legislation of Russia and Mongolia, the formation of theoretical approaches to solving legal problems arising in this area, caused by existing gaps and contradictions in it. The provisions formulated in this paper may serve as a theoretical basis for further research in this area, as well as contribute to the improvement of civil legislation governing municipal property relations and eliminate contradictions in law enforcement practice in this category of cases.

Verification of the research results. The provisions and conclusions of the dissertation were reflected in three scientific articles published in the editions recommended by the Russian Higher Attestation Commission for publishing the results of scientific research; they were approved in the course of scientific discussions at all-Russian and international scientific-practical conferences.

The structure of the work is determined by the set goals and objectives and includes an introduction, three chapters, nine sections, conclusion and bibliography.

The first chapter, **"General Characteristics of the Right of Municipal Property in Russia and Mongolia",** is devoted to the analysis of historical, legal and economic approaches to the formation of the institute of the right of municipal

property, disclosure of its essence, taking into account the implementation of different approaches to its legislative enshrinement in Russia and Mongolia.

Accordingly, the first section, **"The Concept, Meaning and Determinants of the Development of Municipal Property",** focuses on the analysis of the problems of its separation from state and private property, the implementation of various approaches to determining the scope of property powers of municipalities, which sometimes underwent serious changes, analyzes various factors affecting the formation of this legal institution. The second section, **"The Concept and Content of the Right of Municipal Property",** reveals this legal category in both subjective and objective sense. The paper evaluates the possibility of recognizing a municipality as a legal entity of public law, touches upon the problem of determining the legal status of local self-government bodies. The third section, **"Peculiarities of the Objects of Municipal Property Rights",** is based on the analysis of existing legislative approaches to the definition of the objects of municipal property rights, the differences in approaches to the classification of municipal property objects are noted, the specifics of their legal regime are disclosed.

The second chapter **"Features of Acquisition and Termination of the Right of Municipal Property"** is devoted to the analysis of doctrinal and legislative approaches to solving the issue of the grounds and procedure for the acquisition and termination of the right of municipal property.

The first section, **"Acquisition and Termination of the Right of Municipal Property in the Order of Delimitation of Public Property"**, is devoted to the specific grounds for its emergence and termination, reflecting its essence. Particular attention is paid to the will of all interested subjects and the consistency of actions of the relevant authorized bodies. The second section, **"Acquisition and Termination of the Right of Municipal Property by Virtue of a Direct Prescription of the Law",** is devoted to the analysis of the specifics and peculiarities of the implementation of specific grounds for this, established in the public interest and serving primarily to preserve this property in civil turnover and its use in the implementation of the powers of public authorities of this or that level. It is noted that there are significant differences in the normative consolidation of the transfer of rights to ownerless property and neglected animals. The third section, **"Acquisition and Termination of Municipal Property Rights on the Basis of a Transaction",** reveals the peculiarities of the existing approaches to their legislative regulation and practice of application in Russia and Mongolia. It is noted that the adoption of relevant decisions cannot be fully attributed to the private law sphere, and the will of the counterparty is not always decisive, although it may be taken into account in determining the price.

The third chapter, **"Legal Basis for the Use of Municipal Property",** is devoted to the analysis of doctrinal approaches and peculiarities of the legislative establishment of organizational and legal forms of municipal-private partnership, as well as the participation of municipalities in the creation of legal entities.

The first section, **"Organizational and Legal Forms of Municipal-Private Partnership",** reveals the evolution of ideas about possible forms of interaction between municipalities and business entities, assesses the state of legal regulation of these relations and identifies prospects for its improvement. The second section, **"Participation of Municipal Entities in the Establishment of Legal Entities"**, reveals trends in the legal regulation of relations related to the establishment and functioning of legal entities created on the initiative or with the participation of municipal entities, while in both states there is a tendency to reduce such ways of using municipal property.