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ВЕСТНИК

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2

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Clarivate Analytics

NAS RK is pleased to announce that Bulletin of NAS RK scientific journal has been accepted for indexing in the Emerging Sources Citation Index, a new edition of Web of Science. Content in this index is under consideration by Clarivate Analytics to be accepted in the Science Citation Index Expanded, the Social Sciences Citation Index, and the Arts & Humanities Citation Index. The quality and depth of content Web of Science offers to researchers, authors, publishers, and institutions sets it apart from other research databases. The inclusion of Bulletin of NAS RK in the Emerging Sources Citation Index demonstrates our dedication to providing the most relevant and influential multidiscipline content to our community.

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LEGAL PERSONALITY OF PUBLIC LEGAL FORMATION

Abstract. In article public legal formation is studied as the organizational and legal embodiment of state and in the publication analyzes using the normative and systematic methods, as well as analysis and synthesis, the content of the Russian legislation and the works of legal scholars.

The author came to a conclusion that «to be a subject of legal relations» means only to have ability to enter them. Therefore nothing and nobody can treat a sort of such phenomena as a legal entity or subject of legal relationship as ability is one of attributes. When public formation is called legal entity, often on a background the fact it is officials and bodies of public government (public administration and local government) ordered in structure and that the most important function of public formation – right ensuring.

According to the author legal personality of public formation and legal personality of its bodies also mutually depend on each other. On the one hand, public formation as phenomenon, ideal in terms of philosophy, cannot carry out any actions as legal entity without actions of people – bodies and officials. On the other hand, state and municipal bodies and officials or act as legal entities – representatives of state or municipality (for example, governor in relations with legal entities which exist out of state), or their legal personality is based on they are recognized as a part of public formation, entering relations with its population or with other bodies and officials of this public formation. At the same time legal personality of public formation is not the sum of legal personality of all public bodies neither particular bodies of public formation, nor all of them combined are legal entities of state or municipal property.

Keywords: public legal formation, Russian Federation, subject of the Russian Federation, municipality, legal personality, legal entity, legal entity of public law, bodies of state, local governments.

Introduction. Public legal formation is organizational and legal embodiment of state. In everyday life, it is often claimed we enter into relations with state, however, legal practice is such law relations arise with a part of public legal formation, with federal organization of state – with a part of federation, a subject of federation and municipality, a unitary organization – with a part of state, which is a public legal entity, an administrative unit of state and municipality.

Methods. The article analyzes using the normative and systematic methods, as well as analysis and synthesis, the content of the statements of the Constitution of the Russian Federation, the Civil Code of the Russian Federation, the Budget Code of the Russian Federation, the Federal Law of the Russian Federation of October 6, 2003 No. 131-ФЗ «On the General Principles of the Organization of Local Self-Government in the Russian Federation», the Federal Law of November 14, 2002 № 161-ФЗ «On State and Municipal Unitary Enterprises» and the works of legal scholars about public law formation.

Discussion. Legal science has not sufficiently studied the institution of public law formation. This concept is used in legislation, for example, in the Budget Code of the Russian Federation (Article 6), when determining what phenomena the Russian Federation, subjects of the Russian Federation and municipalities belong to. Some legal scholars are expanding the group of public law entities at the expense of other state entities of law, however, it is preferable to focus on the legislator in the question of what is public law formation.

In Russian legal science, as a rule, aspects of the participation of public law formation in civil relations are studied, there are no dissertations in the database of the leading Russian library «Russian State Library» in which this institute was studied as a whole. The only monographic research in the catalog of this library devoted to the contemplation of issues of public law formation is the monograph by V.E. Chirkin, published in Moscow in 2011 and later reprinted under the title «Public Law Formation», with the volume of 336 pages. The author of this publication refers to public law formations of state, federal subjects, territorial autonomies, municipalities, community public law entities of indigenous ethnic groups and reservation of tribe (siblings). The scientist considers public law formation as a territorial structural and functional form of organization of territorial public collective, which has its own public authority, uses it (along with actions in this territory, except for state, other public authorities) to organize and regulate life of this territorial public collective, which is a de facto or de jure legal entity of public law, responsible for the actions (inaction) of its bodies and officials (Chirkin, 2011, p. 59-61).

Describing qualities, or differently attributes, public formation, V.E. Chirkin notes it is special formation of territorial and social character as which basis on territorial public collective acts (as a rule, citizens of this state); unites certain territorial group of population for organization and regulation of its public life, implementing public power; possesses this type of power which sources root in will of its population, people, proves in three main qualities: as certain public community, as organization and as system of administrative personnel; creates control system in territorial public collective (institutes of direct democracy, representative, executive bodies, etc.); establishes obligatory rules, issues legal acts; using powers of authority and levers, will organize, orders public territorial collective; acts and in other ways governs public relations, activity of territorial public collective, carrying out in different forms, different methods and for different purposes administrative function; is official representative of territorial public collective; bears legal responsibility for actions of bodies and officials (Chirkin, 2011, p. 56-57).

As the Russian researcher notes S.A. Sesareva, public law formation are special subjects of civil legal relations, which include the state represented by the Russian Federation as a federal state entity consisting of subjects of the Russian Federation, and municipal entities. Public law formations engage into civil relations on an equal footing with other entities (citizens and legal entities), but at the same time they have special legal capacity, in particular they acquire and dispose of property on special grounds, in addition to general ones, and can also own things are restricted or prohibited in circulation (Sesareva, 2020).

It is necessary to tell what is valid, besides legal personality, public law formation has such features as main act; competence, including responsibility and the rights to adopt legal acts and to impose taxes; territory; property; budget; capital or administrative center; name and official symbols. It is necessary to distinguish legal entities of state, administrative or municipal property at establishment in main acts and in civil relations. In the first case this subject is people, population or local community, and in the second – public formation can be proclaimed. For example, state, townships, towns, cities, and counties are specified in the legislation as those (Sztranyiczki, 2016, p. 118-119). As a rule, public formation has capital or administrative center, but at some formations it is absent, for example, narrow states or capitals having status of federation’s subject.

Legal personality of public formation is its major property. The legislator always gives public formation with this property and all kinds of public formations belong to a sort of such phenomena as subject of legal relations. However, it is necessary to specify «to be a subject of legal relations» means only to have ability to enter them. Therefore anything and nobody can treat a sort of such phenomena as a legal entity or subject of legal relationship as ability is one of attributes. Also it is necessary to notice when public formation is called legal entity, often on a background the fact it is officials and bodies of public government (public administration and local government) ordered in structure and that the most important function of public formation – right ensuring. For example, according to Article 18 of the Constitution of the Russian Federation the rights and freedoms of man and citizen shall operate directly and determine the essence, meaning and implementation of laws, the activities of the legislative and executive authorities, local self-government and shall be ensured by the administration of justice. Therefore public formation is not only legal entity or local governments and also institute guarantying human rights, first of all the rights of citizens to participation in state power and local government and many other rights and freedoms ensured within municipal unit. Moreover, these rights out of public formation cannot be realized.

It is impossible to present public formation by not having potential to be a legal entity and being only a part of political construction. For example, municipality already in Ancient Rome was created as subject of relations which in the present are called civil which as notes the Polish researcher of B.W. Sitek, had more autonomy, than modern municipalities (Sitek, 2018, p. 127). Cities and towns won by Romans or other territory could perform before them duties and out of regularly existing rules, and only on the basis of particular instructions of officials on encumbrances (about monetary and other material contributions or enslavement of inhabitants, etc.), but development of Ancient Rome as the uniform state mechanism uniting the metropolis and colonies demanded to include the last in the civil relations in this state and to allocate attached cities with legal personality. In sphere of civil relations it became obvious legal personality of representatives of Roman municipalities and legal personality of municipalities are interconnected, but are not identical.

In modern Russia legal personality of public formation and legal personality of its bodies are also mutually depend on each other. On the one hand, public formation as phenomenon, ideal in terms of philosophy, cannot carry out any actions as legal entity without actions of people – bodies and officials. On the other hand, state and municipal bodies and officials or act as legal entities – representatives of state or municipality (for example, governor in relations with legal entities which exist out of state), or their legal personality is based they are recognized as a part of public formation, entering relations with its population or with other bodies and officials of this public formation. At the same time legal personality of public formation is not the sum of legal personality of all public bodies as neither particular bodies of public formation, nor all of them combined are legal entities of state or municipal property.

As it is a few scientific works about public formation, studying legal personality of public formation, it is necessary to address researches of legal personality of municipality and legal entity. Enquiring legal personality of municipality of O.I. Bakzhenov allocates the following elements: first, the general legal, indivisible on branch legal capacity as abstract ability to have subjective rights and duties, the including and abstract ability to carry out their (volatility), and, secondly, capacity as ability to carry out concrete rights and duties (set of intimate subjective rights and duties) (Bazhenova, 2010, p. 109-111). O.A. Yastrebov, studying structure of legal personality of legal entities, includes in it legal capacity and efficiency as which important element of tortivity which is subdivided into public (administrative and criminal) and civil acts. Capacity of potestar legal entities, according to this researcher, is subdivided into ability to exercise state power and tortivity (Yastrebov, 2010, p. 16). The scientist does not specify what he understands as the term «potestar legal entities», but as in Latin potestas is meant «by force, power», it is possible to draw a conclusion capacity of public formation having powers of authority includes also ability to carry out power.

One of aspects of legal personality of public formation is its ability to sign treaties, and not only civil. This property of public formation can be disclosed on the example of municipality. It is remarkable that, revealing the concept of the public contract in municipal law, researchers specify as sign of treaty of this type that on it municipalities (Semicheva, 2011, p. 9), but not local governments which signed contract assume obligations. Recently more and more questions are regulated by contracts in the sphere of public law or on the verge of public and private law. The Russian legislation allows the conclusion of treaties about:

formation of intermunicipal associations, establishment of companies and other intermunicipal organizations in order to pool finances, material and other resources for solution of issues of local importance according to federal laws and regulations of representative bodies of municipal units;

transfer by local governments of certain settlements which are a part of municipal district, to local governments of municipal district of implementation of a part of powers according to solution of issues of local importance at the expense of the interbudgetary transfers provided from budgets of these settlements in budget of municipal district according to the Budgetary Code of the Russian Federation;

transfer of settlements by local governments to municipal district which part specified settlements, in whole or in part powers on regulation of tariffs for connection to system of municipal infrastructure, tariffs of utility companies for connection, extra charges to tariffs for goods and services of utility companies, extra charges to the prices, tariffs for consumers are;

implementation of economic activity on improvement of territory, other economic activity directed to satisfaction of social household needs of citizens with bodies of territorial public self-government with use

of means of local budget. Besides, relationship of local governments with public authorities of territorial subject of the Russian Federation, enterprises and organizations, citizens and organizations representing other forms of local government can be a subject of municipal legal instrument. Unlike civil contracts relations in the field of management with participation of the municipal unit (Arbuzov, 2007, p. 37-38) can be a party to public municipal treaty. I.V. Babichev, N.M. Mironov and E.S. Shugrina provide data during a transition period of entry into force of the Federal Law of the Russian Federation «About the General Principles of the Organization of Local Self-Government in the Russian Federation» in full validity of nearly 80% of settlements in the territory of the country concluded treaties with municipal districts, having referred them for the decision a number of key issues of local importance, including budgetary matters (I.V. Babichev, N.M. Mironov, E.S. Shugrina, 2010, p. 625-626).

Unfortunately, some standards of the Russian legislation are formulated so that not clearly what local government has right to conclude treaties. Only in 2014 there was a norm according to which the order of the conclusion of treaties on transfer of implementation of powers by local governments on the solution of issues of local importance is defined by the charter of the municipal unit and (or) regulations of representative body of municipality (Paragraph 4 of Part 1 of Article 15 of the Federal Law of the Russian Federation «About the General Principles of the Organization of Local Government in the Russian Federation»). It is also necessary to note in this act there is no mechanism of an approval by representative body of the municipal formation of contracts signed by local governments. In the called law there has to be a norm according to which the listed contracts on behalf of municipal unit can be signed only by head of municipality or other representative in the order established by the legislation the person, and contracts should not come into force to publication of the act of representative body of the municipal unit which approved them. Other order can break special powers of representative body of municipal unit, for example on budget adoption. The contract signed by head of municipality can oblige the municipal formation to carry out expenses which are not provided by the municipal budget.

In the civil laws of Russia, the following specifics of responsibility of public legal formation are established:

1) the Russian Federation, subjects of the Russian Federation and municipalities are not liable for each other's obligations (Paragraph 4–5 of Article 126 of the Civil Code of the Russian Federation).

The only exceptions are cases when the relevant software has accepted a guarantee (surety) for the obligations of another software (Paragraph 6 of Article 126 of the Civil Code of the Russian Federation);

2) Public legal formations are not responsible for the obligations of legal entities created by them, unless otherwise provided by law (Paragraph 3 of Article 126 of the Civil Code of the Russian Federation). So, for example, according to Paragraph 2 of Article 7 of the Federal Law of November 14, 2002 № 161-ФЗ «On State and Municipal Unitary Enterprises», public legal formation is liable for the obligations of the state or municipal enterprise if the insolvency (bankruptcy) of such an enterprise is caused by the owner of its property (i.e. public legal formation).

In turn, the legal entities created by public legal formation are not liable for formation’s obligations;

3) Public legal formation is liable for its obligations with its property, which belongs to it by right of ownership, with the exception of property:

- assigned to legal entities created by the public legal formation on the basis of economic management or operational management;

- property that can only be in state or municipal property (Clause 1, Article 126 of the Civil Code of the Russian Federation) (Sesareva, 2020).

Results. Legal science has not sufficiently studied the institution of public law formation. There is an uncertainty what public formation is and what its attributes are. Public law formation has such features as main act; competence, including responsibility and the rights to adopt legal acts and to impose taxes; territory; property; budget; capital or administrative center; name and official symbols.

The most important attribute of public formation is legal personality. «To be a subject of legal relations» means only to have ability to enter them. Therefore anything and nobody can treat a sort of such phenomena as a legal entity or subject of legal relationship as ability is one of attributes. When public formation is called legal entity, often on a background the fact it is officials and bodies of public government (public administration and local government) ordered in structure and that the most important function of public formation – right ensuring.

Legal personality of public formation and legal personality of its bodies are also mutually depend on each other. On the one hand, public formation as phenomenon, ideal in terms of philosophy, cannot carry out any actions as legal entity without actions of people – bodies and officials. On the other hand, state and municipal bodies and officials or act as legal entities – representatives of state or municipality (for example, governor in relations with legal entities which exist out of state), or their legal personality is based they are recognized as a part of public formation, entering relations with its population or with other bodies and officials of this public formation. At the same time legal personality of public formation is not the sum of legal personality of all public bodies as neither particular bodies of public formation, nor all of them combined are legal entities of state or municipal property.

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ПРАВОСУБЪЕКТНОСТЬ ПУБЛИЧНО-ПРАВОВОГО ОБРАЗОВАНИЯ

Аннотация. В статье публично-правовое образование исследуется как организационно-правовое воплощение государства, а в публикации анализируется с использованием нормативных и системных методов, а также анализа и синтеза содержания российского законодательства и трудов ученых-правоведов.

Автор пришел к выводу, что «быть субъектом правоотношений» означает лишь иметь возможность вступать в них. Поэтому никто и ничто не может трактовать вид такого явления, как юридическое лицо или субъект правоотношения, поскольку способность является одним из атрибутов. Когда общественное образование называют юридическим лицом, часто на фоне того, что это должностные лица и органы публичной власти (публичное управление и местное самоуправление) упорядочены в структуре и что важнейшая функция общественного образования – обеспечение права.

По мнению автора, правосубъектность общественного образования и правосубъектность его органов также взаимно зависят друг от друга. С одной стороны, общественное образование как явление, идеальное с точки зрения философии, не может осуществлять никаких действий как юридическое лицо без действий людей – органов и должностных лиц. С другой стороны, государственные и муниципальные органы и должностные лица либо выступают в качестве юридических лиц – представителей государства или муниципального образования (например, губернатор в отношениях с юридическими лицами, которые существуют вне государства), либо их правосубъектность основана на том, что они признаются частью общественного образования, вступая в отношения с его населением или с другими органами и должностными лицами этого общественного образования. При этом правосубъектность общественного образования не является суммой правосубъектности всех государственных органов, ни отдельные органы общественного образования, ни все они вместе взятые не являются юридическими лицами государственной или муниципальной собственности.

Ключевые слова: публично-правовое образование, Российская Федерация, субъект Российской Федерации, муниципальное образование, правосубъектность, юридическое лицо, юридическое лицо публичного права, органы государственной власти, органы местного самоуправления.

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