

Russian Federation Participation in Private Law Relations

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Abstract: The Russian Federation, being a sovereign in its legal nature – i.e. a power holder, acts as a private law subject in a number of cases. With this, the state accepting no advantages of the public authority and appearing in the circulation on equal terms with other subjects of the civil legal relations, has nevertheless a legal status of meaningfully specific features. In the article, the Russian and foreign scientists' opinions are given concerning the status of the state in the private law relations and the conclusion is made about the feasibility and the necessity of acknowledging the Russian Federation to be a fully valid subject of the private law relations. The opinion is criticized about the Russian Federation being a legal person of the public law. The justification is made of the conclusion that the civil legal status of the state is influenced by the idea of the public and the private law convergence: the state, remaining a public sovereign, participates in private relations as an equal with other persons at law.

Key words: Legal nature • Private law subject • Civil legal relations • Private law convergence.

INTRODUCTION

Legal Nature of the Russian Federation as One of the Private Law Subject When characterizing the Russian Federation as the private law subject it is necessary first of all to clarify its legal nature and define its place in the system of the civil legal relations subjects in the Russian legislation currently in force.

There is no agreement of opinions on this issue in the Russian legal science. Vice versa, scientists propose the most diverse ideas including the ones very original or disputable.

One of such concepts is worded in works by D.V. Pyatkov who came to the conclusion that speaking about the state as a civil law subject it is necessary to distinguish between the state and the civil judicial personality admitting that the state as a public legal party does not have this judicial personality it [1].

Such views are not widespread and they were repeatedly reasonably criticized by outstanding Russian scientists. For example, academician O. Ye. Kutafin noticed that such an approach can lead to the conclusion that there are two Russian Federations minimum in the country [2].

Yu. N. Andreev also criticized the views of the author mentioned above, pointing out that the proposed legal construction of the entity that could act in the property

turnover with the account for the public and private interests “suffers from amorphousness, uncertainty, ambiguity and the realization of such a proposal will cause even greater confusion in law-enforcement practice” [3].

It appears that such judgments do not indeed comply neither with the history of the development of the state notion as the subject of the civil legal relations subject, no with the provisions of the Russian legislation in force. The scientist's attempt to solve the issue of the state civil legal status features as of the private law subject by justifying the conclusion about the existence of some “economic public organization” is wide open to criticism; at least because such organizations cannot inherently possess property that differs from the one possessed by the state, they do not have the bodies of their own (besides the state bodies), they cannot be answerable for their obligations with any property that differs from the property belonging to the state. It is not also clear how such public authority organizations could be created, what will happen to them in case- for example - the Russian Federation territories are merged, in case- for example - the municipal reform is carried out (when the municipal formations merge etc.).

It is necessary to admit and this is supported by practically all Russian researches, that the territories and the municipal formations are kinds of the civil law subjects equally with the private persons and the legal persons,

but with this they are not kinds of legal persons although due to their activity direct indication by the law they are covered by the legal persons norms operation [4].

It is important to mention that the state, acting in the civil turnover, does not refuse its public authority and the sovereignty, but following the of the civil legal participants equity principle- it does not use its powerful (administrative and command) authority in regard to other participants of the property turnover. With this, the Russian Federation keeps the essential features of the public law subject and has two types of judicial personality: the constitutional and the civil legal one.

There is no doubt that the legislator granted them with a sufficient contractual capacity and legal capability for performing the functions of the public authority that are realized by providing a public legal entity with a civil law subject status.

With this applying to them the legal norms that define the participation of the legal persons in the relations controlled by the civil legislation, unless the law or the public legal entities properties require otherwise (item 2 of article 124 of the Russian Federation Civil Code), cannot mean qualifying these subjects as legal persons, but is only a widely spread method of the legislative technique.

Critical Evaluation of Category “Legal Person of the Public Law”: The following opinion existing in the Russian scientific doctrine is deemed to be insufficiently justified. It includes the idea that public legal entities do not possess a full judicial personality, should be recognized as quasi-subjects (quasi-legal persons) and are a kind of a legal person (legal person of the public law, or public legal person depending on the view and the terminology).

Let us state our opinion about the idea given in modern juridical press concerning the separation of the “public law legal person” category and referring the state to the variety of this group subjects [5]. Using term “public law legal person” as applied to the civil legislation is inappropriate in our opinion, as there are no practical reasons for introducing such a qualifying characteristic which would be the basis for dividing the legal persons into private and public in the civil turnover. The special features of any legal person performing public functions in civil turnover (state corporations or state bodies), could be fixed in special laws and that is being currently done by the Russian legislator.

For civil law science purposes, the statement is deemed to be inaccurate that the legislator provides public legal entities with only some of the legal person features, or names them as “equated” to legal persons, this causing the researches to come to an incorrect conclusion about some derivation of the civil and legal status of the state.

Consequently, the most favorable idea for defining the civil legal nature of the state as of the private law subject is deemed to be the idea of combining the public and private principles in regulating the status of the state and distinguishing it as a special subject of the civil rights together with the private persons and legal persons.

Such an approach is most well-balanced and gets a worthy support in the research community [6, 7]. It is fairly mentioned that one of the state activities is the economic activity, which is not least in determining the country economics’ development and due to that public and legal entities necessarily become the participants of the civil and legal relations. The necessity of such participation is evident and is caused by the necessity to use such mechanisms for coping with a number of the state tasks resulting from the state public functions.

It is important to follow the “legal registration” of the state characteristics as of the civil legal relations subject at the level of the subject varieties but not at the level of the legal person varieties.

Russian Federation as an Independent Subject of the Private Law Relations: Taking into account all the mentioned above and considering the active polemics on the researched issue in the Russian legal science, we deem it necessary to formulate the system of our own views on the legal nature of the Russian Federation acting as a subject of the legal relations.

The realization of all the internal and a part of external public functions causes the necessity to use the civil and legal means (deals, contracts, civil and legal liability *etc.*).

The Russian Federation and other public legal entities of the civil turnover act as equal participants of the property relations. The legislator agrees that the state is a special type of subjects, by extending over it the effect of norms defining the legal persons participation in relations regulated by the civil legislation.

Some authors’ attempts to prove that the Russian Federation as a public legal entity is not a civil law subject, - combined with the thesis of a “similarly-named economic public organizations” appearing in the civil

turnover with the state's participation- do not rest on the provisions of the legislation in force and do not reflect historical logics in the development of the private legal relations participants learning. In this case there is no artificial divarication of the judicial personality.

In this situation public legal entities do not use powerful (administrative and command) authorities in respect to the other participants of the property turnover, but act as equals with other civil law subject, however not losing the signs of the public law subject, i.e. they are the carriers of several judicial personality types simultaneously, including the civil and legal one.

As V. Orlov correctly notices, there is no state immunity typical for the public entities in the civil legal relations, the state cannot influence the will and the decisions of the contractors and in case it fails to fulfill its obligations it can be subject to sanctions [8].

The theory of the public legal and private legal entities is realized by many highly developed legal systems [9]. The European law is based on the thesis that the state has similar rights and duties as any other civil law subject [10]. In the USA all the law subjects have equal positions for the rights and duties which are to be followed in the legal turnover [11, 12]. In China, all the civil legal relations participants are considered to be equal with no division of them into public and private [13].

It is necessary to insist that the Russian Federation as well as other public legal entities, when acting in the civil turnover are the true subjects of the civil law. The legislator granted the Russian Federation with a volume of legal and contractual capacity which are enough for performing all the functions of the public power and which are realized through its *sui juris* participation in relations set by the civil legislation, with the corresponding declaring it as the one having the civil law subject status.

The Russian Federation and other public legal entities being the true subjects of the relations, form up an independent group of the civil law subjects together with the private and legal persons. The understanding of the state as an independent type of the civil and legal subject (which is not a legal person) fully complies with the historically determined tendencies of the domestic legislation and the civil law development.

The formation of the modern approach to the classification of the civil law subjects classification demands the necessity to use generic term "legal personality" for specifying all the variety of the civil law

subjects, that will indicate the common feature of a community or a private person to participate in the civil turnover as a subject of it, i.e. this is a more general notion defining an equal opportunity of any phenomenon (but not exclusively of a legal person) to be acknowledged as a law subject by the legal order.

The legal person concept is one of the central ones in the legal systems of the European countries, it is rooted in the positivists doctrine, which sets the public entities into equal positions with private and legal persons [14]. For defining specific varieties of the civil legal relations, correspondingly, such terms should be used as "private person", "legal person", "the state (other public legal entities)".

And finally, the Russian Federation, having acknowledged for itself the necessity to act as a private law subject for realizing a public function, should completely waive the public authority immunity and provide for the equity of other participants of the civil turnover in relations started and this should be done through a complex of the corresponding legal safeguard with the account for the constitutional provisions on the legal character of the Russian state and the supremacy of law.

Convergence of the Private and the Public Law as the Basis for the State Participation in the Private Law Relations:

The modern view of the state as a subject of the civil law will be incomplete with no indication on one principally important circumstance.

At the modern phase of the law development the widespread convergence is evident-the mutual penetration and the mutual influence of the public and the private law. Such a situation results from an idea proposed by Spenser and later developed by G. Shershenevich, in accordance with which the theory of the state and private interest parallel existence and development is a dominating one in the sphere of the private and the public law existence and development. This state and individual interest is juridically expressed in dividing the law into public and private [8].

It is evident that dividing the law system into private and public is insufficient and it is necessary to create the conditions for their consolidated existence for their normal functioning, what is apparently impossible without mutual influence of these two systems, without public elements penetration into the civil law and vice versa.

With this solving the issue of the public and the private law “synchronization” is a principally important task for the normal functioning of the legal system. As the European researchers correctly notice, there should not be a competition between the norms of the public and the private law and so it is necessary to equally treat the public entities and the private companies in some aspects, for example in the trade law and business law, in the contractual law, when following the intellectual property rights [16].

An extremely meaningful example of this fundamental theoretical thought about the combination of the public and the private is combining the public and the private in the sphere of the state participation in the civil law regulation.

It is evident that the public private essence of the state cannot avoid influencing the private law relations for which it is the subject. The public and the private elements closely interweave particularly in the state as in the private law subject.

CONCLUSION

The Russian Federation is a true independent participant of the private law relations equally with the private persons and legal persons. For uniting all the private law subjects into one it is necessary to use generic term “legal personality”.

One of the most important condition of the state’s participation in the private law relations is waiving the public legal immunity and participation in the civil turnover with other subjects using the equity principle.

The attempts made in the scientific literature to characterize them as a type of a legal person, in particular as a “public law legal person” having the well-known legal status, do not result from the norms of the current Russian legislation and do not account for the historical regularities of the civil law subjects learning.

Solving the issue of setting the optimum balance of the public and the private law regulation is a necessary condition for the creation of a modern efficient model of the state participation in the civil turnover.

REFERENCES

1. Pyatkov, D.V., 2003. Participation of the Russian Federation, Russian Federation Territories and Municipal Entities in Civil Legal Relations: through the Example of the Public Property Delimitation. SPb.: Yuridichesky Centr Press, pp: 58-59.
2. Kutafin, O., 2007. Ye. Russian Federation, its Territories and Municipal Entities as the Civil Law Subjects // *Xhurnal Rossiyskogo Prava*, 1: 53.
3. Andreev, Yu. N., 2003. Participation of the State in the Civil Legal Relations. SPb.: Yuridichesky Centr Press, pp: 74.
4. Arkhipov, S.I., 2004. The Law Subject: Theoretical Research. SPb.: Yuridichesky Centr Press, pp: 469.
5. Chirkin, V., 2005. Ye. Legal Person of the Public Law // *Zhurnal Rossiyskogo Prava*, 5: 16-26.
6. Yakovlev, V.F., 1997. The Civil Code and the State // *Vestnik VAS RF*, 6: 133-138.
7. Sukhanov Ye, A. 2001. On the State Liability for Civil Legal Obligations // *Vestnik VAS RF*, 3: 116-125.
8. Vladimir Orlov, 2011. Introduction to Business Law in Russia. Ashgate Publishing, pp: 25.
9. Verma, S.K., 2004. An Introduction to Public International Law. PHI Learning Pvt. Ltd, pp: 1-3.
10. Hans Kelsen, 2007. General Theory of Law and State. The Lawbook Exchange, Ltd., pp: 196-199.
11. Cristopher, C. Joyner, 2005. International Law in the 21st Century. Rowman and Littlefield, pp: 51.
12. Marianne, M. Jennings, 2010. Business: Its Legal, Ethical and Global Environment. Cengage Learning, pp: 684.
13. Jianfu Hen, 1995. From Administrative Authorization to Private Law. Martinus Nijhoff Publishers, pp: 120.
14. Boleslaw Adam Boszek, 2005. International Law: A Dictionary. Scarecrow Press, pp: 75.
15. Shershenevich, G.F., 1901. Civil Law Course: in 2 volumes. Kazan: Nipo-lit. Imp. Kazan. University, pp: 77.
16. Reiner Schulze, Hans Schulte-Nolke, 2011. European Private Law- Current Status and Perspectives. Walter de Gruyter, pp: 3-4.