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LEGAL ENTITY OF PUBLIC LAW IN CIVIL LEGISLATION AS PHENOMENON OF GLOBALIZATION

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Abstract

Separate civilizations are presented by open systems within which the processes of interaction of various human spheres of life take place. By all means, each of these areas reflects the peculiarities of this civilization. Processes of globalization affect changes taking place in law, in civil law, since it is the most flexible, receptive and constantly in need of updating in order to meet the emerging needs of society.

The relevance of the topic of this article is predetermined by the fact that in Russia at the present stage of development of relations governed by civil law. In modern national law, the status of the state as a subject of civil law so far remains not entirely consistent with such feature of the method of civil law regulation as equality of participants in these relations. In this regard, there are discussions reflecting points of view about the possibility of equating and applying in civil law a unified approach to legal entities and the state.

Issues are closely related to introducing public law into Russian law, as in German law and some Anglo-Saxon states. The presence of globalization processes in law is evident, since the problem of incorporating a legal entity of public law into Russian legislation is the most discussed issue in science and lawmaking. However, two unresolved problems stand in the way of such incorporation.

There is uncertainty in the mode how public and private beginnings should be combined in civilian circulation if the state participates in it.

Keywords: Legal entity, state, civil law, incorporation.

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1. Introduction

The processes of globalization have a significant impact not only on the content and development of international and national law, but also on the trends and nature of the interconnections and interrelationships of the legal systems existing in the world. It should also take into account the existence of common civilization foundations of legal systems. Western civilization actually gave rise to essentially similar Romance-Germanic and Anglo-Saxon legal systems. The commonality of "Romano-Germanic and Anglo-Saxon law itself by the very logic of their historical process inevitably presupposes their peculiarity. Otherwise it would be difficult to explain their relatively independent, separate existence and even more active functioning" (Marchenko, 2010). In the context of globalization, the legal systems of different states should be able to coexist and interact with each other, which certainly contribute to ensuring a stable rule of law and strengthening the role of law as a social institution (Zorkin, 2007).

We should not forget about the negative impact of globalization, when there is a "denial of the self-sufficiency of national legal systems" (Napalkova, 2010). We agree that overcoming this denial objectively contributes to the triumph of democracy (Chervonyuk & Ivanets, 2003). The process of convergence of the Romano-Germanic and Anglo-Saxon legal systems, caused by the intensification of integration processes in the modern world, is particularly intense in the civil law of economically developed countries, most associated with economy. There is a steady trend towards interstate unification of the national norms of civil law, due to the quantitative and qualitative expansion of international economic relations. The new impulse was received by the legislation on the legal entity as an organizational structure, which has, first of all, its own legal personality and property isolation.

In international legal order, recognizing the division of the right to private and public, legal entities of public law are presented by organizations pursuing public interests. Under the conditions of striving for the unification of the norms of civil law, "the dominant tendency of development of their legal status is presented by the submission to private law when they participate in property circulation" (Batyr, Isaev & Klopov, 2007). According to the German Civil Code, such a legal entity is traditionally the state as a subject of civil law (Sadrieva, 2016), since it is precisely it that faces large-scale political goals and objectives. As a subject of civil law it has arisen historically; the rules on the creation, reorganization, liquidation and bankruptcy of legal entities are not applicable to it. In this regard, in theoretical and practical terms, an important place is occupied by the problem of the specifics of the state as a subject of civil law and the impact of this specificity on the scope of its rights, duties and responsibilities. In order to realize political goals and public functions, the Russian Federation is forced to enter into civilian circulation on equal terms with other subjects of civil law and therefore needs a legislative definition of its civil legal personality, allowing it to freely implement this principle.

2. Problem Statement

The performance of state in relations governed by civil law is dictated by the implementation of socially useful functions and the achievement of political goals, which at the same time predetermines the presence of its authority. As a result of this duality, the following problem arises: in civil law, the legislator

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constantly has to find a balance between respecting the principle of equality and the domineering nature of the state, which takes place in public law (Yakovlev & Talapina, 2016).

The method of civil law regulation is characterized by the recognition of the equality of all participants of relations regulated by it, which is contained in paragraph 1, Article 1 of the Civil Code of the Russian Federation (hereinafter - the Civil Code of the Russian Federation). At the same time, separately in the provisions of the Civil Code of the Russian Federation it is established that the state - the Russian Federation acts in relations governed by civil law, on an equal principles with other participants of these relations - citizens and legal entities, as defined in paragraph 1, article 124 of the Civil Code of the Russian Federation. The repeat of the obligation to observe equality in a slightly different form as a speech on an equal principle is most probable due to the fact that the legislator assumes the possibility of a violation of this fundamental principle by the mentioned public authority.

From a legal point of view, equality should be considered as the performance in relations regulated by civil law, with the presence of equal rights and obligations with other subjects of civil law. The solution of this problem will have a positive effect on increasing the responsibility of all subjects of civil law and improving the impact of the regulatory function of civil law.

3. Research Questions

According to the paragraph 89 of the section of the third German Civil Code, the list of legal entities of public law includes the treasury, public law corporations, legal entities in the form of institutions and public authorities. The rules of paragraph 31 of the Regulations governing the responsibility of the union as a legal entity for the actions of its bodies are applicable to legal entities under public law. Legal entities of public law are responsible for damages caused to a third party by the actions of an authorized person in accordance with the charter of representative, which were carried out in the performance of the duties assigned to them. The rules on insolvency and reorganization of legal entities are not applicable to the state as a legal entity under public law; the activities of legal entities under public law are regulated by civil law with some exceptions. In France, the state is also classified as a legal entity under public law (Sandevoire, 1994).

As established in the provisions of the Constitution in the Russian Federation, private, state, municipal and other forms of ownership are equally recognized and protected, which is the basis of the principle of equality of rights, duties and responsibilities of civil law subjects. However, this equality is subject to imbalance, if such a subject acts as a state in the relations regulated by civil law. In this regard, in theory and law enforcement, the definition of the civil law essence of a state has always been accompanied by endless discussions.

In the Soviet period, the civil law of Russia the concept was grounded and legally established, enshrining the idea of the state as a special subject of civil law. The Soviet state, as the owner of fixed assets, being endowed with legal privileges, could not but rise above other subjects of civil law. These political and economic backgrounds predetermined the approval of a special approach to understanding the essence of the state in modern civil law. The doctrine of the state that emerged during the Soviet period as a special subject of civil law is currently unable to guarantee the true personification of the Russian Federation in civil law. The currently prevailing civility approach to the essence of the state does not

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correspond to the general trends of legal regulation present in almost all countries that recognize the dualism of law, that is, its division into private and public. The legal form of state participation as a special subject of civil law does not correspond to the principle of equality of subjects of civil legal relations. It can be implemented only if the nature of the Russian Federation in civil law will be considered through the form of a legal entity.

For the purpose of participation in relations regulated by civil law, the state in its status should be as equal as possible to other participants in these relations. On this occasion, researchers write that equality of participants in public relations, discretionary nature, initiative and legal decentralization are the criteria for distinguishing the right to public and private (Gadzhiev, 1996). The peculiarities of the civil legal capacity of the Russian Federation are determined by the fact that it participates in property relations in order to achieve socially significant goals and solve the political tasks facing it. Therefore, its legal capacity is not of a general universal, but of a special nature (Ushnytsky, 2016), that is, according to the principle of its certainty and direction, as in non-profit organizations.

The appeal to the approach of personification of the state in the course of historical process contributed to a qualitatively new restructuring of relations of power-subordination, called subordination, into relations based on equality and mutual responsibility provided by the system of necessary legal guarantees of the relevant legal statuses.

The Russian Federation as a subject of civil law is introduced into the system of public authority and operates within the framework of a special legal regime, which predetermines the special legal capacity of the state in civil law relations. The special nature of the legal capacity of the state as a subject of civil law does not affect the legal possibility of using the form of a legal entity to participate in relations regulated by civil law. The legal possibility of state participation in the form of a legal entity under public law is the recognition in civil law of its essence as a legal entity.

4. Purpose of the Study

It is presented that the implementation of the proposals expressed in the research will be a step forward for balancing the interests of the individual and the state based on democratic principles, with clear ideas about the Russian Federation as a subject of civil law and, ultimately, for the formation of the rule of law. The conclusions made in this study allow a deeper understanding of a number of characteristics of the Russian Federation as a subject of civil law (Sadrieva, 2018). The conclusions made in this study allow a deeper understanding of a number of characteristics of the Russian Federation as a subject of civil law.

5. Research Methods

In the course of the research the method of comparative law was used, which allowed analyzing and comparing the signs of the state as a legal entity under public law in the legislation of Russia and Germany. It was necessary to compare the concept of a legal entity of public law in order to identify common features and peculiarities, due to which it is possible to find common approaches to the concept of a state as a legal entity of public law in Germany and Russia. Under modern conditions “law acts as a tool of globalization

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and at the same time a means of managing its processes. These circumstances cause deep changes in both national and international law, including the nature of their interaction" (Lukyanova, 2004).

The use of this method made it possible to carry out a comprehensive study of the status of the Russian Federation as a subject of civil law, to identify shortcomings and gaps in legal regulation, as well as to formulate and put forward theoretical propositions and practical proposals for the improvement of legislation.

6. Findings

In the theory of civility the postulation of the state as a person possessing the form of a legal entity under public law as close to legal entities as possible, is intended to ensure compliance with the principles of private law. The use of this approach eliminates the use of signs of sovereignty with the aim of exemption from civil liability, reducing its scope, in relations with other participants**.** This consequence is very valuable, since all arising, changing and terminating legal relations between the subjects of civil law are assumed to be equivalent. A legal entity of public law is intended to ensure the existence of an equivalent nature of civil legal relations arising between all subjects and lead to equality of civil responsibility of the state with the responsibility of other participants in such relations.

7. Conclusion

The form of a legal entity is necessary in civil law for the formulation and expression of the legal personality of all non-physical persons. In this regard, it seems correct to conclude that state and municipal entities are generally identified with legal entities, which makes it possible to suggest that they have a common generic concept - organizations (Andreev & Kirpichev, 2014). In general, it is precisely the purpose that is of decisive importance when a form of legal entity arises. The concept of a legal entity can be derived by identifying the main economic purpose of specified institution (Kulagin, 1997).

Similar social organizations, in particular, the state in different legal orders may or may not be recognized by legal entities, this depends on the historical and civilization peculiarities, theoretical approaches that have emerged in science and practice in individual countries. However, despite some peculiarities of public legal entities in the developed legal systems of the world, the state is a legal entity under public law in all legal systems that recognize the division of legal entities into private and public.

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