European Proceedings of
Social and Behavioural Sciences
EpSBS

www.europeanproceedings.com
e-ISSN: 2357-1330

DOI: 10.15405/epsbs.2021.05.180

ISCKMC 2020

International Scientific Congress «KNOWLEDGE, MAN AND CIVILIZATION»

GOVERNMENT BODIES: SUBJECTS OF CIVIL LAW OR STRUCTURAL PARTS OF PUBLIC-LAW ENTITY?

Rezida Ravilovna Sadrieva (a)*, Valentina Vyacheslavovna Levochko (b)
*Corresponding author

(a) North-Eastern Federal University in Yakutsk, st. Stroda, Yakutsk, Russia, resida84@mail.ru,
(b) North-Eastern Federal University in Yakutsk, st. Bestuzhev-Marlinsky, Yakutsk, Russia, heartval@inbox.ru

Abstract

The article analyzes the existing position in the doctrine and Russian legislation regarding the civil-legal status of government bodies. In theory and practice, there is no consensus on whether government bodies are legal entities. It is known that most government bodies are registered in the unified state register of legal entities. At the same time, the form of state government bodies may change. For example, bodies may be created that do not have the legal entity status. Administrative decisions to create new bodies, reform old ones by merging them, and liquidate them are very common actions aimed at solving political, socio-economic problems of society and the state. The article analyzes the issues of transition of rights and obligations existing within the framework of civil-law relations entered into by government bodies. These issues cannot be resolved through the provisions of the Civil code of the Russian Federation on the reorganization or liquidation of legal entities. The authors conclude that government bodies are not and cannot be legal entities because the rights and obligations remain with the state as a subject of civil law. These conclusions are based on the analysis of the Civil code of the Russian Federation and other regulatory legal acts, as well as litigation practice. The position proposed by the authors takes into account the legal nature of civil-law relations, the basic principles of civil law aimed at ensuring the stability of civil circulation and protecting the property rights and interests of civil law subjects.

Keywords: Government bodies, legal personality, legal entity, civil law

https://doi.org/10.15405/epsbs.2021.05.180
Corresponding Author: Rezida Ravilovna Sadrieva
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

1. Introduction

The Russian Federation is the legal successor of the USSR, a Soviet state that had a special legal system that was aimed at ensuring the functioning of the planned administrative economy on the principles of "power-subordination". The transition towards the development of market relations has also changed the state status as a participant in property relations. According to the current Civil code, the state, the Russian Federation, and its constituent entities of the Russian Federation (regions) are public-law entities that have the civil capacity. A distinctive feature of civil law is its horizontal structure, equality of all civil law subjects, which provides a legal basis for direct compensation for harm from illegal actions (Raff, 2015). At the same time, the state as a law subject has organizational unity. Unity is ensured by an internal structure consisting of government bodies. The Russian Federation consists of the Federal bodies of state power and Federal public authorities. Constituent entities of the Russian Federation as independent subjects of civil law consist of state authorities of these subjects of the Russian Federation and government bodies of the Russian Federation subjects. In this regard, their status in civil law should correspond to two trends: ensuring the integrity of the Federal state and each subject of the Russian Federation separately, as well as the ability to directly participate in civil circulation.

2. Problem Statement

The main problem is that public-law entities and their government bodies are primary subjects of constitutional and administrative law, thereby ensuring the existence of the state, managing social relations on the principles of vertical influence (power-subordination). At the same time, they are also participants of civil-law relations based on the principles of horizontal interaction (equality and autonomy of will) with natural and legal persons. Meanwhile, only the correct legal qualification of legal relations can ensure the effectiveness of law enforcement. This problem led to the differentiating problem of the civil-law status of public-law entities and their government bodies. Public authorities and government bodies are formed and act as organizational and functional parts of the state. Organizational functionality means that they are divisions that implement strictly defined functions called legal powers (defined in their regulations). Such divisions are not owners of the property assigned to them. It is assumed that they own the property based on operational management. Thus, article 161 of the Budget Code of the Russian Federation regulates the legal status specifics of public establishments, and paragraph 11 of this article applies to public authorities. In this regard, government bodies established as legal persons are public establishments and own property based on operational management. The legal status of public establishments is determined by articles 123.21 and 123.22 of the Civil code of the Russian Federation. A public establishment by clause 4 of article 123.22 of the civil code of the Russian Federation will be liable for its obligations with monetary funds at its disposal, and if they are insufficient, the owner of its property (i.e. the Russian Federation or a subject of the Russian Federation) will bear subsidiary liability for the obligations of any government body. This dual participation of public authorities and government bodies in different legal nature relations is not clearly distinguished in the legislation, which leads to problems in practice related to the defense of the rights of other civil relations subjects.

https://doi.org/10.15405/epsbs.2021.05.180
Corresponding Author: Rezida Ravilovna Sadrieva
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

3. Research Questions

The research object in the article is property relations based on the equality principles and autonomy of will, which are entered into by government bodies as institutions and organizational parts of public-law entities.

1. The article researches the doctrine of civil law on the issues of the civil capacity of government bodies, public authorities, their civil-legal nature, and its correlation with the civil-legal nature of public-law entity, as well as theoretical aspects of distinguishing relations of different legal nature with the government bodies participation.
2. This article researches the legislation of the Russian Federation, regulating questions of participation of government bodies in civil-law relations, case law, as well as the Development concept of civil legislation of the Russian Federation on the prospects of civil-legal nature of government bodies.

4. Purpose of the Study

The research purpose is to determine the civil-legal nature of government bodies and their correlation with the civil-legal nature of public-law entities.

5. Research Methods

Analysis, comparative legal method, technical legal method.

6. Findings

In the legal theory, there are several main positions regarding the relationship between the legal nature of government bodies and public-law entities. The lack of opinion unity in the literature is due to specific contradictions in legislation, as well as the "lack of a unified methodology" (Ushnitsky, 2018).

One of the positions is that government bodies, using the property assigned to them on the right of operational management, act as separate entities of civil law-legal persons, and about other state property, they act on behalf of the state (Rudakova, 2015). Another-to the fact that the distinction should be made depending on the interests that are satisfied in specific legal relations: state or purely economic of the government body (Boldyrev, 2012). The third position is related to the fact that government bodies and public-law entity are both a part and a whole, so the reform of legislation should be conducted along this path (Rudakova, 2015).

The literature also suggests developing the theory of diagonal legal relations, diagonal transactions that are a cross between public (vertical) legal relations and horizontal (civil) legal relations. This leads to the fact that government bodies will combine the public authority status and bargaining power and will be a direct personification of public-law entities (Tsyplakova et al., 2006).

In respect of property assigned based on operational management by the government bodies of the Russian Federation, its owner remains the state. A similar state of things exists about institutions and

https://doi.org/10.15405/epsbs.2021.05.180
Corresponding Author: Rezida Ravilovna Sadrieva
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

unitary enterprises, which are not owners of the solitary property, although they do not cease to be recognized as legal persons. However, these organizations cannot be legal persons, since these organizational-legal forms do not have full property autonomy.

At the same time, civil legislation regulates only relations based on equality, the autonomy of will, and property autonomy of participants (clause 1 of article 2 of the civil code of the Russian Federation). Based on this fundamental principle, only owners should participate in civil circulation. The organizational legal forms of unitary enterprises and institutions are legal persons that remain from the administrative-command system of state administration of the USSR. In the future, they should be excluded from the civil legislation provisions.

This trend can be seen in paragraphs 7.2.1 and 11.1 of the Development concept of civil legislation of the Russian Federation. First, it contains a proposal to eliminate the existing dualism of rights to property management is owned by the central or local government, leaving only the right of operative administration. Second, it is proposed that at the current improving stage of the civil code, the institution structure as a legal person that is not the property owner can be preserved. However, in the future, according to this Concept, we should focus on the modernization of the civil-legal status of acting as the owner of its property, responsible for obligations to creditors with all its property (like the German Stiftung). Stiftung is a legal person usually created for non-commercial purposes, a closed fund company.

Currently, many government bodies are created as legal persons, being separate legal entities, in contrast to the bodies of legal entities that also perform strictly defined functions, which are not recognized as legal entities. However, in essence, a legal person is always a legal entity. A legal person is an abstract entity created by the law and has free will, rights, duties, and legal personality that give it a separate identity within the framework of legal relations and make it a generator of economic, financial, and commercial obligations (Adriano, 2015).

In the literature, in the same perspective, it is possible to introduce the concept of "legal person of public law" by analogy with the legal systems of the European States. However, we support a critical attitude (Udaltsova, 2009) to such proposals, since they blur the boundaries of the concept of a legal entity, the purpose, and the meaning of creating government bodies.

In cases where the authority acts on behalf of the state, its actions give rise to rights and obligations directly for the Russian Federation. There is an opinion that in some cases government bodies that are legal persons act in a turnover on their behalf (see clause 7.2.3 of the Development concept of civil legislation of the Russian Federation). For example, the Federal Ministry purchases furniture for the equipment of employees ' offices. In this case arises not from the state the rights and obligations under the transaction, but directly from the public authority. At the same time, to the defense of the rights of suppliers, it is necessary to apply to the court with civil law claims. Civil-legal protection is very effective in procurement activity for state needs, which is also recognized in other countries (Tadelis, 2012).

We believe that government bodies do not and cannot have their own internal needs. They (such needs) are the very procedure for using certain goods, services, or performed works necessary for the performance of public functions. This may include various housekeeping and domestic, household and practical needs, which may be either systematic or disposable, depending on the circumstances. All the needs of government bodies are related to ensuring the public functions of the state. Providing furniture

https://doi.org/10.15405/epsbs.2021.05.180
Corresponding Author: Rezida Ravilovna Sadrieva
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

for the equipment of employees ' offices or providing them with stationery products-all this is aimed at ensuring the implementation of the public interest. After all, these employees perform strictly defined functions, but as a result of their activities is achieved the public interest.

In judicial practice, there is a similar position: within the meaning of articles 124 and 125 of the civil code of the Russian Federation, participants of civil-law relations are public-law entities, but not central or local authorities created by them. According to paragraph 1 of article 125 of the civil code of the Russian Federation, public authorities within their competence can appropriate and exercise property and personal non-property rights and obligations, and speak in court on behalf of the constituent entities of the Russian Federation. If a different position is adopted, ambiguous situations arise in regulatory enforcement, creating legal conflicts.

Thus, government bodies, being separate legal entities, will avoid civil-law liability by abusing the status of an independent organization. As it was in case no. A40-150006/2017. In the determination of the Supreme Court in this case from "14" Aug 2019 stated: the arguments of the complaint of the Ministry of Finance of the Russian Federation about the violation of procedural rules and regulations, expressed in the failure to participate in the proceedings proper defendant – the Russian Federation represented by the Ministry of Finance, and also about the illegal imposition on the Russian Federation represented by the Federal Property Management Agency of the obligation to the repayment of interest for using another's money funds was in order rejected. According to the current legislation, Federal Property Management Agency is the authorized Federal body that performs functions in the field of privatization and the powers of the owner, including the shareholder rights, in the property management field of the Russian Federation. Thus, the court came to the correct conclusion that instant claim is subject to satisfaction from the public treasury of the Russian Federation by collecting the declared amounts from its funds (allocated to Federal Property Management Agency) (see Arbitral award of the Moscow district in case no. A40-150006/2017 dated August 14, 2019).

It is also wrong to identify the liquidation of a legal entity and a government body. Thus, the liquidation procedure initiated against a government body does not relieve it from the obligation to execute a judicial decision that has entered into legal force. This position was disclosed by the European Court in Kuks V. the Russian Federation (see Decision of the ECHR of 15.06.2006 "The Case of Kuks V. the Russian Federation" (complaint no.35259/04). In respect of the debtor under the judicial decision-the administration of Yakutsk, the liquidation of which began in 2003.

In the case of a different view of the government bodies liquidation identifying such liquidation with the same procedure in respect of a legal person, the authorities of the Respondent state will use this circumstance to avoid paying the debts of the authority. This is true because changing needs to force public authorities to make changes to the organized structure, new and eliminating old authorities forming.

7. Conclusion

As a result of the conducted research, we conclude that government bodies, despite their registration in the form of institutions, cannot be recognized as separate legal entities, otherwise, the state would not be able to have unity and integrity, and other entities would not be able to achieve full judicial

protection of their civil rights and legitimate interests. Government bodies form and express the state will without special instructions due to the very fact of their creation as organizational and functional parts without organizational and legal entity form. The practice of registering government bodies as institutions does not correspond to the essence and main tasks of the state as an undisputed independent participant of civil-law relations. Legislation should be developed taking into account the features of a collective-abstract subject-the state, which is implemented only through government bodies.

References

Adriano, E. A. Q. (2015). Natural person, juridical persons and legal personhood. *Mexican Law Rev., Elsevier, 8*, 101–118. https://doi.org/10.1016/j.mexlaw.2015.12.005

Boldyrev, V. A. (2012). *Construction of a non-owners legal entity: the experience of civilized research.* Statute.

Raff, M. (2015). The importance of reforming civil law in formerly socialist legal systems. *Int. Comparat. Jurisprud., 1*, 24–32. https://doi.org/10.1016/J.ICJ.2015.10.007

Rudakova, V. D. (2015). Civil status of government bodies and public authorities. *Bull. of the Univer. named after O. E. Kutafin, 10*(14), 107–115.

Tadelis, S. (2012). Public procurement design: Lessons from the private sector. *Int. J. of Industr. Organizat., 30*(3), 297–302. https://doi.org/10.1016/j.ijindorg.2012.02.002

Tsyplakova, E. G., Kovyazin, V. V., Kondrat, E. N., & Murmuridis, P. E. (2006). Problems of bargaining power of public-law entities and public authorities in the light of the theory of diagonal relations. *Bull. of the Saint Petersburg Univer. of the MIA, 4*(32), *217–221.*

Udaltsova, N. G. (2009). *On the need to introduce the category "legal entity of public law" into civil law. Public audit. Law. Economy, 2,* 80-85.

Ushnitsky, R. R. (2018). On the paradigm of subjective right and legal relations in the methodology of civil law. *Bull. of the North-Eastern Fed. Univer. named after M.K. Ammosov. Ser. history, polit. Sci., law, 4*(12), 27–34.