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ADMINISTRATIVE RESPONSIBILITY OF OFFICIALS FOR VIOLATION OF LEGISLATION IN THE IMPLEMENTATION OF AUTHORITY TO DISPOSE OF STATE AND MUNICIPAL PROPERTY

Alexander P. Soldatov[1]
Sergey A. Komarov[2]
Alik G. Khabibulin[3]
Tatiana L. Komarova[4]
Vladimir S. Komarov[5]

Abstract: the existing means of rights protection in civil-legal relations of implementing the officials' authorities of the state and municipal property disposal do not represent an effective legal mechanism, comprehensively securing the rights and interests of the population. In the absence of apparent attributes of criminal actions in the sphere of public property relations, the sanctions of other branches of law are almost never used for legal regulation. The comprehensive (inter-branch) research of the judicial-arbitration practice of officials' liability when implementing the authorities of the state and municipal property disposal, stipulated by the existing legal norms, will reveal the existing legal problems and enable to make propose for their solution. The leading dialectic method of cognition provided the objective and comprehensive study of the phenomena, while the general scientific methods (systemic, structural-functional, specific-historical, and comparative-legal), general logical methods of theoretical analysis (analysis, synthesis, summarization, comparison, abstracting, analogy, modeling, etc.) and specific scientific methods (methods of comparative legal studies, technical-juridical analysis, specification, interpretation, etc.) allowed proposing the draft of the new Article 7.24.1 of the Russian Code on Administrative Offense "Violation of the legally stipulated order

[1] Management Academy of the Ministry of the Interior of Russia
[2] International University in Moscow
[3] Lomonosov Moscow State University
[4] Institute of law (St.Petersburg)
[5] Institute of law (St.Petersburg)

of disposal of real estate and land plots within the public (state or municipal) domain". The Article stipulates administrative punishment for officials: warning or disqualification for the period of one to three years. The research develops and expands the theory of the institution of officials' liability when implementing the authorities of the state and municipal property disposal. The proposal for improving the legal mechanism of the officials' liability and introducing its new type is aimed at bringing the existing administrative legislation into line with the challenges of time and the current reality. This will reduce the level of corruption of the municipal authorities.

1. Introduction

The research hypothesis is that the existing gaps in the Russian legislation and the imperfect legal regulation of the officials' liability when implementing the authorities of the state and municipal property disposal do not secure the rights and interests of the municipal entities' residents and promote corruption.

The research objective is, using the judicial-arbitration practice, to perform the comprehensive (inter-branch) analysis of the officials' liability for violating the current legislation when implementing the authorities of the state and municipal property disposal, to reveal the existing legal problems and to make proposals for solving them.

The research tasks are: to explore the practice of implementing the officials' liability for violating the legislation when implementing the authorities of the state and municipal property disposal; to make proposals for improving (developing and expanding) the normative-legal regulation of the institution of officials' liability when implementing the authorities of the state and municipal property disposal.

2. Materials and methods

The research was performed by the materials of arbitration courts, 418 cases from 2014 to 2017, the solutions on which came into effect (cities of Krasnodar, Rostov-on-Don). The objective and tasks of the research predetermined the systemic approach to examining the state-legal categories, including the public liability of the officials, which allowed viewing the Russian legal system as a

comprehensive, integral legal phenomenon.

When analyzing the theoretical basis of the officials' liability in the sphere of state and municipal property protection, we used the method of comparative legal studies. We analyzed the norms of criminal, civil-legal and administrative liability according to the Criminal Code of the Russian Federation, the Civil Code of the Russian Federation and the Code of the Russian Federation on Administrative Offense.

The normative-interpretational method of research was used for the analysis of the legal norms of the Civil Code of the Russian Federation regulating the means of civil rights protection (Art. 12).

Using the technical-legal method of research, we formulated the legal norms of the draft new Article 7.24.1 of the Russian Code on Administrative Offense "Violation of the legally stipulated order of disposal of real estate and land plots within the public (state or municipal) domain".

During the research, we used the specific scientific methods of cognition to trace the progress of civil cases in the courts of different instances (method of observation), to hold interviews with the participants of judicial proceedings (method of interview), and the method of content analysis to study the normative-legal arguments of the courts for the judgments rendered.

The present research did not include any experiment. The above methods were complemented with giving facts, as necessary argumentation, having evidential significance, for making conclusions and proposals on improving legislation.

3. Results and discussions

The selected theme is researched for the first time. It is not possible to compare the present research results with any other research on the adjacent topic.

According to the current civil legislation, municipal property is the property belonging to urban and rural settlements, as well as other municipal entities (Art. 215) [1]. On behalf of them, the local self-government bodies implement the owner's rights of possessing, using and disposal of municipal property. This, to a large extent, determines its vulnerability (insufficient legal protection) and increases the criminal factor, the latter

understood as an event or state causing determination of a person to commit a crime.

In practice often the will of an official determines whether an object of property would be a municipal property or not. The list of municipal property of settlements, municipal regions and city districts may include not only movable and immovable assets, but also land plots, pools, and even mines. All this constitutes the economic basis of the local self-government, comprising, besides the objects of municipal property, the financial means of the local budgets and the property rights of municipal entities (part 1 Art. 49) [2]. The particular list of the objects of municipal property is determined by the features of their legal status (type of entity), development plans, size of the territory, and other factors.

The municipal property is assigned to municipal enterprises and establishments for possessing, using and disposal in compliance with the Civil Code, while the means of the local budgets and other unassigned municipal property constitute the municipal exchequer of the corresponding urban or rural settlement or another municipal entity. The feature of the legal status of municipal property is its target character. The objects of municipal property are designated for solving the local problems, satisfying the dwelling-communal, social-cultural, everyday and other needs of the residents of the specific territory.

If a municipal entity acquires a right to property not designated for solving the local problems, such property is subject to re-designation (changing the target) or alienation in the order and terms stipulated by the current federal legislation. The local self-government bodies are entitled to transfer the municipal property for temporal or permanent use of physical persons, state authorities, and other local self-government bodies, make other deals in compliance with the civil legislation. Privatization stands apart in the list of types of alienation of municipal property. Its order and terms are stipulated by municipal legal acts which are to comply with the federal legislation [3].

However, as shown by the research of law-enforcement practice of the local self-government bodies and the judicial-arbitrary reviews of the civil

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cases in courts of different instances [4, 5, 6], in many cases (as a system) the observance of legislation in the sphere of municipal property protection and preservation does not comply with the interests of the municipal entities' residents. There are numerous facts of violating the legislation on land. In some cases there are the signs of only corruptive malfeasance, without juridical corpus delicti. To prove this conclusion, we can consider just a few most vivid examples, given the limited volume of this publication.

Thus, in compliance with the Decision of the Krasnodar City Duma of 22 March 2012 No. 28 clause 17, which adopted the "Program of privatization of the municipal property objects of Krasnodar municipal entity for 2012", the municipal unitary enterprise (further – MUE) "Krasnodar city pharmacy office" was privatized by reorganization into a Limited Liability Company (further – LLC) "Pharmacies of Kuban". The authorized capital of the new economic entity was established in the amount of 84 million 795 thousand rubles, which significantly exceeds the value stipulated by the federal legislation for small businesses (100 thousand rubles). This criterion alone is sufficient for the municipal unitary enterprise not subject to transforming into a limited liability company. Moreover, during its privatization the city administration did not take into account two other indicators either: the average number of employees and the annual sales proceeds. At the moment of privatization, 596 people worked at the enterprise, and its annual sales proceeds was 769 million 431 thousand rubles. By these two indicators, the municipal unitary enterprise could not be transformed into a limited liability company either.

Despite this, the juridical departments of the local self-government bodies (City Duma, city administration) ignored the requirements of the federal legislation on privatization, substantiating their position in courts with municipal non-normative acts and directions of the heads of the city administration. According to the Charter, "Krasnodar city pharmacy office" MUE was founded for providing the population with medications and was a pharmaceutical organization. Its structure comprised 24 pharmacies and 10 pharmacy branches.

The legal position of representatives (officials) of the local self-government bodies at court was that pharmaceutical activity is not within the local self-government bodies' authority, while non-core property is subject to alienation in compliance with the duty stipulated by part 5 of Article 50 of the Federal Law No. 131-FZ. Moreover, it was argued that the previous municipal legal acts (1997) did not include the MUE into the structure of municipal healthcare system. Thus, the conclusion was made: provision of Article 30 of the Federal Law on privatization, which stipulates prohibition for privatization of healthcare objects, cannot be applied to the adopted decision on privatization. After adjudication in the Arbitration Court of Krasnodar krai (15 May 2014), then in the 15th Arbitration Appellate Court in Rostov-on-Don (17 October 2014), the Arbitration Court of North Caucasus region in cassation instance made a final and lawful decision on 12 May 2017 (Case No. A32-38741/2013): the decision to privatize "Krasnodar city pharmacy office" MUE by reorganizing it into a "Pharmacies of Kuban" LLC is a deal executed under non-normative acts. As a result of their execution, a commercial company was unlawfully formed. The right of the city administration for municipal property (public right) was terminated, as property right of the LLC arose. Actually, the new commercial structure (a network of municipal pharmacies) was prepared to be sold to a private person, at a price significantly lower than its market value.

Thus, the municipal non-normative acts violated the rights of a municipal entity (residents) of Krasnodar city, as the local self-government bodies disposed of the municipal property with violation of the established order stipulated by the federal legislation. The decision of the Arbitration Court of cassation instance adduces that, according to subclause 2 clause 4 Article 29 of the Federal Law of 21 November 2011 No. 323-FZ "On the bases of health protection of citizens of the Russian Federation", the municipal healthcare system is comprised of medical and pharmaceutical organization subject to the municipal self-government bodies [7].

However, a lawful question arises: why not any official was punished, at least administratively? The

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answer is simple. In Russia, there is no administrative liability in the sphere of municipal property protection. If there was such liability according to the Code of the Russian Federation on Administrative Offense [8], the law-enforcement bodies could have effectively and promptly carry out administrative investigation, hold liable the local self-government bodies' officials and prevent the years-long legal proceedings.

The research of the judicial-arbitration practice showed that there are grave problems not only with municipal property but also with preservation and use of lands in the municipal entities. It is necessary to elaborate and adopt more efficient measures for municipal property and public lands protection. As law-enforcement practice shows, the currently existing civil-legal liability is not sufficient.

In our opinion, changes in the federal legislation are long overdue. It is expedient (in the absence of features of criminal cases) to apply more severe measures – to introduce administrative liability of officials. The specific sanctions should include such kind of administrative punishment as disqualification. The threat of disqualification would make the officials make more responsible decisions on disposal of municipal property and public lands. Disqualification implies depriving a physical person of the right to take civil and municipal service, to run a juridical person, etc., in compliance with the Russian legislation (Art. 3.11) [8].

This would also have a positive impact on the functioning of arbitration courts. As practice shows, the unlawful decisions of the local self-government bodies' officials are investigated for years, without due publicity, without involving mass media and the public. As a rule, they go through all judicial instances (first, appellate and cassation).

Often, in the arbitration courts the representatives of the local self-government bodies prove the juridical appropriateness of the adopted decisions on disposal of municipal property or privatization, ignoring the obvious violations of the federal legislation. This cannot be explained by unawareness of normative acts or poor juridical knowledge of the local self-government bodies' officials. In our opinion, this is the evidence of hidden (latent)

corruption. Today, the open misappropriation of municipal objects, entailing criminal liability, is a thing of the past. The modern means of municipal property abstraction with the use of civil legislation is by illegal deals.

The specific problems with municipal objects preservation also refer to state property. An example is the civil case No. A32-11732/2017; 15АП-15145/2017, examined by the 15th Arbitration Appellate Court in Rostov-on-Don on 4 October 2017 [5]. As the case papers show, the Head of administration of Novokubanskiy region of Krasnodar krai, abusing the legislation requirements, leased eight agricultural land plots, belonging to a subject of the Russian Federation – Krasnodar krai, to a commercial company for ten years under a contract. In its resolution, the court stated that the reasons listed by a party in the appellation are based on the wrong interpretation of the substantive law norms. Therefore, the court of the second instance left the decision of the the Arbitration Court of Krasnodar krai unaltered, and the appellation – unsatisfied. In compliance with the court decision, all land plots were returned to the Department of property relations as the property of Krasnodar krai. The question which remained unsolved in this case is why the Head of administration of the region signed the contract on leasing several hundred hectares of agricultural land with grave violation of legislation. The commercial company ("ARGUS Kapital" LLC), having taken the lease, had no intentions for cultivating the land but immediately transferred the rights and obligations of a leaseholder to another commercial company ("Novator" LLC), hoping for the permanent profit from the rent of land. These facts left the law-enforcement bodies uninterested.

4. Conclusion

The research results show that there is a long due necessity to introduce amendments into the Code of the Russian Federation on Administrative Offense in order to improve the efficiency of the legal mechanisms of protecting the public property, the rights of the residents of municipal entities, and holding the officials accountable. The Administrative Code does not stipulate the regime of public lands use as an object of protection. We propose to introduce amendments into the above

Code, including the following legal norm into it:

Article 7.24.1.

Violation of the legally stipulated order of disposal of real estate and land plots within the public (state or municipal) domain

1. Disposal of a real estate object within the state or municipal domain by an official of a state authority or a local self-government body without observing the competition procedures or with violation of the order stipulated by law entails warning or disqualification for a period of one to three years.

2. Disposal of land plots within the state or municipal domain, located on public territories or plots withdrawn from or limited in civil circulation, by an official of a state authority or a local self-government body entails warning or disqualification for a period of one to three years.

Implementation of our proposal would not only enable to protect the property and other rights of the residents of municipal entities, but promote the efficiency of struggle against corruption in the state and local self-government bodies. Introducing administrative liability of the officials would allow preventive measures against this category of offenders.

As the carried out research showed, the problem of preservation of state and municipal property is still topical. The research hypothesis has been confirmed.

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