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CIVIL LEGAL BASIS OF PRIVATIZATION OF STATE PROPERTY

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Abstract
The article examines scientific approaches to the civil-legal basis of privatization of state property. The development features of this civil law institution are shown in the norms of legal documents and scientific literature. Features of civil-legal institutionalization mechanisms of regulation of social relations in the studied area are given, its legal nature is defined and author's definition of this civil-legal institution is formed. Various approaches of scientists to understanding the specific features of the civil-legal regulation of privatization, the importance of legal facts in this process are shown. The article proves the origin of the institution of civil-legal regulation of privatization of state property and the fact that it has become a separate legal institution through the institutionalization of homogeneous and at the same time interrelated legal norms regulating the relevant group. The author's concept of the civil-legal regulation of privatization of state property is formed as a procedure for changing the form of property established by the norms of civil law, as a result of which the main subject (state property bodies of state law) gives the right of ownership to the object of privatization.

Keywords: privatization, state property, regulation of civil law, private property, institution of civil law.

Introduction

At the current stage of state formation, privatization in Uzbekistan is carried out in the context of economic reforms and the search for ways to provide all sectors of the economy with investment resources. At the same time, this field is accompanied by significant insecurity of the property rights of subjects participating in the process of privatization, which in turn leads to the violation of civil and economic legislation, creates an environment of civil-legal nihilism, and creates a particularly negative reality in the conditions of the imperative features of civil legislation.

It is necessary to pay attention to the regulation of social relations in this field by the norms of belonging to different fields, which in turn leads to the need for a scientific understanding of the role. Moreover, importance of civil-legal regulation of privatization in the legal system of Uzbekistan in the process of interaction with other

branches of both private and public law. Taking into account these trends, the analysis of researchers' approaches to the civil-legal basis of privatization of state property, the legal nature of legal facts in the field of social relations, and the institutionalization of normative-legal support for the property rights of privatization subjects is an urgent scientific problem.

For a long time, scientific literature has focused on the uniqueness of privatization as a legal form of alienation of state-owned objects, which is manifested in the emergence of a limited right of private ownership to the privatized property with the involvement of these objects in the sphere of private management. The owner of such property, in fact, continues to be in legal relations with the public owner, and a number of obligations are imposed on him, which are not typical of civil property relations.

According to A.A. Belyanevich, the scope of the rights of the owner (the person who bought the object of privatization) is determined by the grounds for the creation and cancellation of the right of ownership. The purpose envisaged at the stage of acquisition (purchase) of the relevant property, the sphere of use of the object of ownership, and this is the state should not discriminate or limit the rights of the buyer of his property as a new owner [1, p. 34].

The civil-legal content of the concept of privatization is somewhat clearly expressed in the following definition proposed by D.A. Hertsev. "Property that is part of state or municipal property regulated by legal norms is transferred to the property of individuals or legal entities for a fee or free of charge, strictly defined by legislation forms of privatization mean the conclusion of an agreement on the alienation of specified assets. Which provides for the issuance of a non-regulatory document expressing the decision of the state authority on the transfer of assets to private ownership and the procedure for the execution of this agreement" [2].

This concept, taking into account its completeness, in the opinion of D. A. Hertsev, causes a discussion about the type of non-normative document. In this regard, it should be noted that the process of privatization of state property was regulated by the decrees of normative legal documents in different periods [3].

In this regard, according to V.Shcherbina's opinion, the legislation on privatization consists not only of laws in terms of the form of normative documents, but also a set of other normative legal documents that regulate property-legal and organizational relations regarding the privatization of state property [4, p. 272].

There are reasonable opinions of researchers about dividing the complex of regulatory and legal regulation of these social relations into a separate sub-branch of civil law. The problem of legal regulation of privatization relations from the point of view of

separation of special privatization legislation from civil legislation has been researched several times, and different points of view have been expressed in this matter, of course. For example, A.Kh.Trofimov comes to the following conclusions: despite the complex nature of privatization legislation, which represents civil-legal and administrative-legal norms, privatization legislation is regulated by a single civil-legal method due to the classification of methods of influence, and in this regard, the legislation on privatization is civil it is appropriate to interpret it as a sub-field of law. According to this scientist [5, p. 24], such an approach allows paying attention to the specific features of privatization legislation while maintaining the unity of the civil-legal regulation method.

Yu.V. Aldanov [6, p. 171] rightfully defines the legal nature of the legislation on privatization and at the stage of modern development, as a special complex institution, the legal norms of privatization take priority in comparison with the general norms of civil legislation in the conditions of a certain place and time. In particular, the rules for the implementation and execution of privatization transactions, as well as legal regulations in the field of privatization such priority is evident in the issues related to the legal status of individuals and legal entities as the relevant subject of relations.

In our opinion, in accordance with the appropriate description given above by Yu.V.Aldanov, the privatization legislation, by its nature, acquires a special complex tone and at the same time creates a mixture of norms of civil, administrative, financial and other spheres of law. However, in terms of content, priority should be given to norms of civil law. Because in the future, taking into account the development of social relations in the field of ownership, the legislation of privatization should fully guarantee the rights of persons who have acquired property rights on a special basis in the future. In addition, a certain part of the privatization process preserves the functions of the state related to public legal regulation.

Other scientists, for example, M.A. Bogatyrev, the civil-legal content of social relations regarding privatization, on the one hand, the state, and on the other hand, between citizens and private legal entities, is expressed in the voluntary alienation of vacant property of the state to private property. M.A. Bogatyrev interprets privatization as an economic and legal process related to the creation and implementation of public relations related to privatization [7, p. 24].

Taking into account that the state, as an owner, has the legal rights of independent disposal of its property under civil law, V. I. Yakovlev suggests that the privatization of state enterprises should be understood as follows: first, making a decision on the alienation of a state-owned enterprise in the form of authorized state bodies.

Secondly, the actions of the parties participating in the contract of sale of the property being privatized in the procedures and forms established by the civil and special legislation and the processes of alienation and acquisition of the state enterprise are understood [8, p. 177].

In general, in the legal literature, N.M. Korshunov called the system of legal norms regulating privatization relations a complex interdisciplinary legal institution. At the same time, the norms of this institution regulate privatization processes that combine elements of administrative-economic activity with elements of administrative-procedural, civil-legal, civil-procedural and other types of activity. The system of legal norms regulating privatization relations can appear as an institution of civil law, which includes private and public legal norms contained in various regulatory legal documents. This state of the system of legal regulation of privatization relations corresponds to the information of the legal documents classifier, according to which the legal documents on privatization are referred to the section of civil legislation [9]. Therefore, we support the opinion of A. V. Zadorojni that the institution of privatization is included in the main institutions of civil law. The foundations of this legal institution are described in Article 182 of the Civil Code, which is directly related to the sphere of civil law regulation of privatization [10, p. 13]. "Privatization contracts" are special contracts for the purchase and sale of state property, subject to the relevant norms of the civil legislation on transactions, unless they differ from the legislation on privatization.

Privatization of state property in the civil-legal sense is defined as a set of measures to alienate public property to the property of physical and (or) legal entities for a fee, that is, a specific basis for the creation and cancellation of property rights. Taking into account this definition, the following signs of privatization of state property are distinguished: property belonging to the state; alienation of property; alienation for a fee; buyers - individuals and legal entities; property is transferred from public to private ownership [11].

To do this, privatization is the main legal facts that lead to the creation, change or cancellation of relations, which are legal documents - legal actions. Legal norms connect these actions with legal consequences, and as a result of these actions, specific legal consequences arise. Legal norms connect these actions with legal consequences, and because of these actions, specific legal consequences arise. In the process of privatization of state-owned enterprises, such documents include the forecast plan (program) of privatization of state property, as well as decisions made by competent bodies in accordance with the procedure established by the legal documents on the conditions of its privatization. Therefore, we support D.A. Hertsev's opinion that the

emergence of the privatization process is possible only if there is a complex legal structure with a strict sequence of actions of authorized agents [2, p. 30].

Thus, as one of the main elements of the mechanism of privatization-legal regulation, legal facts perform the main function, that is, they ensure the creation, change and cancellation of privatization relations. Legal facts in the right "Privatization" also perform additional functions. First, they are expressed as a guarantee of legality, which allows preventing the arbitrariness of obliged persons in the privatization of state property. In addition, according to researchers. [12, p. 111], One of the functions of legal facts in the "right to privatization" is the informational function that ensures the initial impact of legal norms on social relations in the field of privatization. Thus, legal facts are an active and effective element of the mechanism of legal regulation of the privatization process. Their consolidation in legislation is used, among other things, as one of the means of influencing the behaviour of the subjects of relations in the field of changing ownership forms from public to private.

Among the variety of such legal facts that determine the dynamics of the privatization process, the main place is occupied by the privatization contract, which formalizes the relationship regarding the transfer of property to private ownership. A sign of the normative nature of the privatization contract is its direction (goal) regarding the transfer of property to private ownership.

This criterion is a unifying sign that belongs to the group of obligations regarding the transfer of property to the privatization contract. However, N.V. Gorina rightly points out that the privatization contract has its own content (like any civil law contract), taking into account that each contractual relationship is characterized not only by certain unifying features, but also by specific features. According to this researcher, this is caused not only by the factual actions of the privatization participants, but also by actions that have a full economic and legal description and are therefore legally important. In the privatization contract, the fact of transferring the rights of ownership, use and disposal of the property to another person is also important [13, p. 224].

The civil-legal nature of the privatization of state property determines the existence of special subjects of privatization - sellers and buyers. Researchers emphasize that the seller has a special civil status in the legal relationship regarding the privatization of state property. Although O.V. Zadorojniy is a legal entity of public law, the rightful seller of privatization objects, their status in privatization relations is similar to the status of legal entities of private law. After all, the privatization body in such relations does not perform the functions of power management in relation to the buyer, but is a person representing the owner of the property, besides, the property is alienated

because of a civil law contract; the general principles of civil law are fully applied to it. The existence of a special subject - the buyer and the restriction of the rights of other persons who cannot be buyers is one of the signs that distinguish privatization from ordinary alienation as an element of public management activity. At the same time, the peculiarities of the civil-legal status of the objects of privatization as special property in the legal relations of privatization indicate that such objects of state property rights include all objects, except for those whose privatization is directly prohibited or limited by law [10, p. 8].

Thus, the civil-legal basis of privatization of state property is described by the following legalities:

- Firstly, the institution of civil-legal regulation of privatization of state property, based on laws and Government decisions, into a separate legal institution by institutionalizing homogeneous and simultaneously interrelated legal norms that regulate the relevant group of social relations regarding the change of forms of ownership, the transfer of state property to private property became;
- Secondly, the civil-legal regulation of privatization of state property is the procedure established by the norms of civil law for changing the form of property. In addition, because of it legal facts about the creation, modification and annulment of the legal relationship of privatization of property rights to the object of privatization of the main person (public law state property bodies) as a result. It is abandoned in favour of the secondary subject (individuals and legal entities of private law). In fact, this legal institution regulates the transfer of property objects from state entities to private law entities;
- Thirdly, in the process of regulation, the practice of applying the law of privatization of state property has an inter-sectoral nature, in which civil-legal norms take the leading place, while public law norms (administrative, financial, etc.) have a significant impact on the regulation of property relations in the sphere of privatization. The statement of the researchers about the institutionalization of the right to "privatization" is controversial and requires a separate research, which is a perspective for further scientific research.

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