Middle-East Journal of Scientific Research 12 (9): 1231-1237, 2012
ISSN 1990-9233

DOI: 10.5829/idosi.mejsr.2012.12.9.1910

The Right of State Ownership

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Abstract: The author discusses the legal nature of property owned by Kazakhstan Republic and problems arising from ownership, management and use of such property. The notion of state property is not fixed in the legislative regulations of Kazakhstan Republic that results in confusion inadmissible in relation to the legislative acts. At the conditions of current equality of ownership rights, assuming absence of opposition between different forms of ownership and their equal legal protection, many scientists, who discuss the identity of such right, are not inclined to divide ownership into state and private. The author of the article believes that distinguishing state ownership, as a separate form, is sound. At the same time, the notion of state ownership contains a number of peculiarities that should be necessarily considered at the development of the legislative definition. This article attempts to define the state-owned property. At the same time as the economic concept of "public property" and the legal concept of "state property rights"; substantiates the need for legal and theoretical dividing ownership forms: public and private, defined branch of state property.

Key words: Constitution of the Republic of Kazakhstan · The Land Code of the Republic of Kazakhstan · The right to private ownership of land · The right of state ownership of land · The land · The land owner · The state · Control of the land · The state needs

INTRODUCTION

"State property" is an economic category and it is defined as social relations over public property.

The state property is often understood as the property belonging by the right of ownership. Sometimes the term "property" is identified with the "right of ownership". However, according to the theory of right and economic theory this understanding is incorrect because it is impossible to confuse the object as an object of social relations, the property as the social relations itself and social relations regulated by the law the right of ownership. First of all, such kind of confusion should not take place in the legislation act. Nevertheless not all contemporary civil codes of post-Soviet states have avoided this.

Thus, according to paragraph 1 of art.214 of the Civil Code of RF declared: "The state ownership is property owned by right of ownership (federal property) in the Russian Federation and property belonging to the ownership to subjects of the RF". Therefore, the Russian legislation is identified the concept of state ownership to the state property.

The Civil Codes of Republic of Kazakhstan have the same mistakes. For example, under Part1 paragraph 2 of art.192 of the Civil Code of RK declared: "The Republican property consists of the national treasure and property assigned by the state legal entities in accordance with legislative acts».

Main Part: A clear definition submitted in the paragraph 1 of art.326 of the Civil Code of Ukraine: "The property including funds is state-owned. Because the term "state property" contents the economic statement then it is not correct form.

In the relevant articles of the Civil Codes, the legislator's attempts made to refer to the subject of state property (state, political subdivision, federal subject, territorial communities, etc.) and an object of state ownership (property). If in the Civil Codes were used following formulations; and they had some of the success that they looked for.

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- The subjects of the right of ownership are the Republic of Kazakhstan and public subdivision (the Russian Federation and the subject of the RF, Ukraine and an administrative and territorial communities, etc.)
- The right of ownership extends to the treasure and property to government legal entities are assigned.

There are two forms of ownership in the Constitution of the RK: state and private property. According to the Constitution of the RK both of forms of properties are recognized and equal protections (paragraph 1, art.6 Constitution of the RK).

Because of state property in the pre-revolutionary Russia, or USSR, we concluded that in independent Kazakhstan and other post-Soviet governments in the scientific literature of civil law throughout history present tendency to allocate of state property as a special, public character [1].

Thus, Pobedonostsev K.P. distinguished "the things that are not referring to private holding on Russian law": boundaries, roads, water communication lines, fortresses, ports, harbour, church buildings, public cemeteries, etc [2, p.98-102]. Sinaiskii V.I. distinguished "state property" which serve either the state or public purposes (roads, escheat, mismanaged property and etc.) [3, p.138]. Pokrovskii I.A. put a question about social and national significance of real estate assumed that the principle of private property might to enter into a conflict with national interest. In author's opinion, real estate is not only private but also national patrimony [4, p.204-205]. Shershenevich G.F. distinguished the state property:

- state property belonging to the state where in civil circulation equates to a private person;
- the social thing though belonging to the state to overall enjoyment of all citizens given. [5, p.148].

In the Soviet period it is emphasized socialist state property belonging to all people (see art.10,11 of Constitution of the Kazakh SSR in 1978). For instance, Agarkov M.M. noted that the subject of the right of socialist ownership is the Soviet state and so the state property is national property [6, p.398].

It should be noted that in the world history the right of state ownership appeared during the transition from the feudal state to republic. This is proved by the provision 3 of Section IV of the Constitution of the USA of 1787: "The Congress has a right to manage land or any other property owned by the states" [7, p.152].

All further history proves that the developed Western countries tried to escape from ownership giving it out to private persons [8, p.649] and saved the title only for protection of natural resources from destructive use by private persons [9. p.623].

The state socialist ownership originated in the Revolution in 1917, as a result and was a phenomenon that needed of scientific understanding and justification. "The establishment of a socialist state property, development methods of management, or formation of special legal protection it is marked process of new social and legal phenomena to be thoroughly examined" stated Yoffe O.S. [10, p.345].

In the contemporary study authors has been giving the description of the state property take into account that it is designed to provide public "general" interest. For instance, the state property is a public property described Bibikov A.I. [11, p.30]. In Don An Kuang's research on the objects and contents of state property in Vietnam, he argued for replacing the "public" property with the "state" property [12, p.5]. The creation for separation of state and private property is social which expresses the interest of all citizens living in area believed Zhanaidarov I.U. [13, p.128]. The author distinguished two form of ownership. First of all, right of ownership is one whole. It is subjected to the general rules of market economy. For market economy, the right of state property is an exception, which exists to maintain in the range of minimum functions of government and ensure the normal functioning of the right of private ownership. In other words, private ownership is not specific but subordinate concept. Secondly, the right of ownership is subordinate concept, or right of state and private is specific concept. The author explained this approach by the various legal order of property adopted by a legislator for the private and state property. It follows from the specific functions of government and due to the singularity of subject [14, p.23-24]. Zhussupov A.T. considered that "in the subjective meaning the right of state property consists of proprietary rights provided by law and does not differ from the rights of owners". There are some features of the right of state property:

- Firstly, within the State can be any property including confiscated or have limited transferability property.
- Secondly, in some way for acquisition of facilities in property may only be used by the state (e.g. taxing and collection of duties).

- Thirdly, the state itself adopts under their right of ownership and the limits of its implementation and subjects their activities as law [15, p.125].

Sukhanov E.A. considered that the right of private ownership and public domain is no longer seen as a "varieties of ownership" (with various capability for the corresponding owners), but the general forms of differences in the legal regime of the right property of individual subjects [16, p.207]. Andreev V.K. did not sharing Sukhanov's position and noted that there are a number of features of possession, title and interest of property depending on whether its private or public domain. The author argued that existence of different forms of ownership (public, private and municipal) entail not their equal rights as stated in economic and legal literature but its equal protection [17, p.35]. Skvorsov O.Y. shared ownership to the private and public. Under the public ownership means ownership of public entities (state, subject of federation and municipal unit) [18, p.25-26]. Shchennikova L.V. believed that the right of ownership has not the forms, but there are varieties of subjects [19, p.24]. Sklovsky K.I. considered that the form of ownership should be viewed as a method of determining the property belonging to a particular type of subjects [20, p.164]. Skriabin S.V. (in continuation of Sosnoi S.A.) identified the public property as the public domain and believed that the govrenment stand out not as an owner meanwhile, but a society's representative which has exercise control over the property by others [21, p.141; 22, p.58]. D.A. Bratus's suggestion has a similar meaning and introducing the concept "private property" instead of "property". To avoid confusion between the categories of sort and kind the position of perfect property of none freely transferable state property must be designated by another term, for instance, "the right of public property" [23, p.279]. According to M.K. Suleimenov's onion does not exist the form of ownership, but there is one concept of ownership and property rights. It is being understood in different ways in diverse legal systems and representatives of various economic and legal theories, but back then, the concept should be the integrated [24, p.23]. At the same time, Suleimenov M.K. did not share the concept of "national (public, social) property". He noted that the subject of rights to natural resources should come out for government not people in order to expressing the will of the citizens [25, p.8].

Western legal literature, although rather indirectly, studies the problems of state ownership in the main context of categories: "public interest" [26, ñ.4], "prohibit of discrimination of ownership rights" [27, p.152], demand of state debts in favor of private persons [28. p. 23], vesting right to vote [29, p.18], [30, p. 32], transfer of state owned objects to asset management [31, p. 577] and collecting payments fir their use [32, p. 28]. Thus, in the Western legal literature the notion of state ownership right was studied rather poorly.

Summing up all of the above it should be noted that that some scientists insist on the unity of ownership and not shared it into forms (state and private). As a rule, these scientific views of contemporary writers are not reflected in current legislation. Thus, in accordance with the Civil Codes of the Republic of Kazakhstan and the Russian Federation the property it is owned based on the state property right to state and other legal education (art.192 of the Civil Code of RK, art.214 of the Civil Code of RF). It is assigned different approach in the Civil Code of Ukraine. In accordance with the article 324 and 326 of the Civil Code of Ukraine legislator distinguished and separated of nation ownership and state ownership.

We take the view that the most appropriate approach in Kazakhstan and Russian.

First, the contemporary constitutional division of property (state and private) it is not intended to contrast to each other. In other words, the terms "state ownership" and "private ownership" are not antonymous such as "entrepreneur" and "consumer" are components of general concepts of "property". For instance, the concepts "state-run enterprise", "the economic partnerships", "joint-stock company", "production cooperative" are components of "commercial organizations". The opposition of state and private property existed in conditions of Soviet's legal reality. As Yoffe O.S. rightly pointed out "the state ownership defending itself many advantages compared with the property of citizens and sometimes cooperative and social organizations". Specific issues on the right of ownership and the law of obligation secured these benefits in part. These facts are in direct contrast with the specificity of civil rights when it is recognized individual right that proclaimed all equality its subjects. The new codification of civil legislation completely illuminated benefits from earlier legalizing all-around specific method of civil law regulation [33, p.26]. Thus, the norms "establishing the unlimited vindication of state property, non-proliferation

of limitation of action the requirements for the return the state property to from unlawful possession closing out claim to real estate and other properties of state-run enterprises necessary for their normal activities as well any properties of state legal entities" had ceased [34, p.29]. Therefore, contemporary legislation denies the opposition of state and private form of ownership. S.S. Alekseeva's opinion «the state property as a social living it is consigned to the past» [35, p.384].

Secondly, we cannot deny the existence a number of features of the state property, which do not allow withdrawing a subordinate concept "property" and specific name "the state property" and "the private property". There are four groups:

- In the state property may be special objects that cannot belong to the private property: land, mineral resources, water, wildlife and habitats (flora and fauna), natural resources.
- The subject of the state property is so-called legal public education: the state and territorial entity are the special subjects of civil law for a variety of reasons extrinsically to other participants of civil relations.
- Specific of the possession, use and management of the state properties is the subjects of the state property (state and territorial entity) possess, use and dispose theirs property through their bodies by passing the state property to the last. Besides, the governmental body as opposed to bodies of legal entity are subject of law.

In addition, use and management of the state property is in particular order. For example, the National Fund of Kazakhstan consumed only in three areas agreed on the Budget Code of the Republic of Kazakhstan. The administrative acts of the President of the Kazakhstan in relation to the National Fund are strictly limited by the legislative framework and predetermined purposes of the National Fund. Likewise with the other state property.

- The right of state property may arise and cease through special circumstances uncharacteristic to the right of private ownership (nationalization, requisition, confiscation, privatization, etc.). In relation with special circumstances, the right of state property can be divided into general and special characteristics.

It should be noted that the presence of features of ownership depending and whether it is belonging. It is indicated in the Civil Code of the Russian Federation: "Specially acquisition and stopping the right of ownership, possession, use and management in terms of whether the property is on citizen or legal body, or the Russian Federation, or the subject of the Russian Federation or municipal unit established by laws" (paragraph 3, art.212 the Civil Code of the Russian Federation).

In modern conditions when the right of state ownership and the right of private ownership are not opposed and protection equally and other characteristic property forms should be established only by legislation act as adopted in Russia. The similar relations should be settled in Kazakhstan.

Thirdly, there is no separating property right as the object of independent forms, which is people's property or so-called "social, national or public property". The question is that the state is foundation providing the interests of society in whole. The single source of governmental authorities is the people according to paragraph 1 art.3 the Constitution of the Republic of Kazakhstan. Accordingly, any state property serves the interest of people. Unreasonable of separation together with the state property intended to provide the interests of state property yet the social (public, nation) property designed to protect the interests of society as whole. Sukhanov E.A. rather proved conclusively the forlornness concept of a national property. In his view, the practical implementation of this idea is impossible. Under abstractness and vagueness of this category "nation in whole" cannot be a real subject of ownership: practically impossible and to hold referendums on every occasion using a particular objects of "a national property' [36, p.70-75].

CONCLUSION

In connection with the foregoing it should recognized the need of both legal or theoretical existence of ownership the state and private.

The right of state property as well as "the right" usually considered in the objective and subjective meaning. The right of state property in the objective meaning is a body of laws, which regulate the ownership, use and management of the state property. The right of state property in the subjective meaning has legally

provided possibility of the government and political subdivision by authorized persons to possess, use and management of the state property.

A regulatory legal act dedicated regulates of the state property is not available in Kazakhstan. During the stage of developing and adopting the law draft "Of the state property and national companies in the Republic of Kazakhstan". Thus, the rules regulates relations on the state property is can be found in the Civil Codes. Moreover, issues of the state property are governed by other regulatory legal acts of the Law of the Republic of Kazakhstan: "On the state monitoring of property in the economic sectors of strategic importance", Land Code of the Republic of Kazakhstan, Water Code of Kazakhstan, the Law of Kazakhstan "On subsurface and subsurface use", the Law of Kazakhstan "On housing", the Law of Kazakhstan "On state-run enterprise", the Law of Kazakhstan "On privatization", the Law of Kazakhstan "Transport Act", etc.

Relations regulates by norms of the branches of law relating to the state property. For instance, the federal executive body of financial law is rental income of the state property from republican budget; the federal executive body and administrative law is illegal access of a land located in the state property; the constitutional right is transfer from the state property to a municipal property, etc. In the literature of Andreeva V.K., Braginskogo M.I., Vitkyavichousa P.P., Golubsova V.G., Egorova N.D., Talapina E.V., Tolstoy Y.K., Shengely R.V., Yakusheva V.S. opens question on the industry concerned of the state property. The opinions of the authors can be divided into three groups. According to the first asserts of the state legal standards that make up the institution of the state property (Braginksy V.I., Yakushev V.S.). This group may be attributed Andreev's V.K. opinion "The state property in earlier socialist period cannot be described as ownership of civil law; it was the institute of administrative law. Nowadays, the presence of government implies the existence of the state law element in respect of the state property and on natural recourses [37, p.42]. Second group that had been described by Egorov N.D. is to ensure that the rules on legal nature the right of property is civil law because they are part of the civil law (including the right of state property) [38, p.38]. And finally the third group the supporters Tolstoy Y.K., Golubsov G.V., Talapina E.V. whom opinions is that the right of state property had been regarded as a comprehensive legal education including the norm of the industry concerned [39, p.348; 40, p.22; 41, p.154]. The right of state property is an institution of civil law, which effects influence of social property and a number of legal statuses will be enshrined with acts, which have a different industry concerned partial of the state property [42, p.22].

We agreed with E.V. Talapina's opinion that "almost of every part of the legal discipline exploring property's relation. Of course, the main role belongs to civil law. However, only the Civil Code cannot guide many recognized on property rights, primarily is to the state property. There are constitutional law defines the basic principles of sharing of the state property; civil law justifies the status of the government as a subject of civil law relations; administrative law shares the competence of the state property and determines property's regime; financial law decides to distribution of income from the state property" [43, p.154].

Summing up these point of view, the following assumptions can be made regarding. The dominant among the norms of industry concerned regulates relations associate with the state property is the civil law. These norms are regulating the right and obligation of subjects of the state property, beginning and stopping of the state property and then protection of the state property.

In summary, the right of state property is the sum total the rule of law, the dominant is the civil law [44].

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