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THE ISSUES OF LEGAL REGULATION OF STATE PROPERTIES IN UZBEKISTAN: CURRENT STATE AND PROSPECTS

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ABSTRACT

In this article the author made an attempt to analyze a special form of ownership in Uzbekistan – the management of state property, its role and significance in the life of the state and society, and for the ongoing reforms. The author approaches the issues of state property management both from a theoretical and practical point of view, paying special attention to the aspects specific to Uzbekistan, and puts forward his own proposals as an expert in this field.

KEYWORDS

State, state property, state property management (management), civil law, privatization, expropriation of state properties, market economy, republican (commom) properties, municipal properties, inviolability of property

INTRODUCTION

As its widely known among scholars-legal scientists, the right to property, as one of the key concepts and institutions of civil law, occupies a special place in the system of socio-economic relations. Indeed, in accordance with the legal regulation of property and material goods, who owns property and how it is

distributed among members of society, economic relations are formed and the future development of each country is determined.

It is generally accepted fact that in recent years, a large part of the state property objects in Uzbekistan were

taken out of state control and privatized. This situation has become one of the main factors in determining the status of the state as a subject of property rights. After all, the state property, which was considered the sole and only powerful owner in the society, was handed over to the owners in accordance with the market laws, and this, in turn, led to the application of the most important laws of the market economy, such as demand and supply, competition.

At the same time, privatization and decentralization of properties led to the end of the state monopoly in many areas of social life and the formation of healthy competition, as well as a radical change in the ownership position of the state. For example: the privatization of many organizations and assets in the fields of services such as communications, medical services, legal services created the basis for the rapid development of these sectors. That is, the dominance of state property was ended. These circumstances mean that the status of the state as a subject of property rights is becoming equal to the ownership status of other subjects of civil law. After all, as experts say, the distribution and redistribution of funds and reserves (resources) in the conditions of market relations is the leading factor in the proper organization of the economy.

THE MAIN FINDINGS AND RESULTS

Here our opinion is evidenced and proven by the rapid pace of privatization and expropriation and the expansion of objects that citizens and legal entities (companies and organisations) can own.

Besides, in order to effectively use and dispose of state-owned objects, state-owned objects that have recently been vacant through public auction, sale to foreign investors, competitive sale at “zero” sale price

based on the acceptance of the conditions of investment obligations, state bodies and organizations, in order to more effectively use the assets given to them on the basis of the right of operational management, the practice of transferring them to free use is being carried out.

It can be seen that the implementation of such measures in the field of privatization has the main goal of directing the ownership status of the state to certain sectors. In this case, the state is not the sole owner of the country as previously, but represents the needs of the state and society, owns, uses and disposes of property in order to manage the country and ensure the well-being of the people.

It should be underlined that since the beginning of market economy relations in modern Uzbekistan, the ownership position of the state has changed significantly. Now, the monopoly right of the state over all property in the country is slowly disappearing. For example, 82 percent of the gross domestic product is contributed by the non-state sector, 95 percent of new jobs are created by private enterprises. Of course, such a situation is closely related to the economic factors of the Uzbekistan’s development.

In fact, in the conditions of market relations, state property as a form of property is equally and legally protected as other forms of property (the Constitution of the Republic of Uzbekistan, Article no.53).

In the conditions of market relations, the past situation in relation to state property has ended (dominance of state property, tax collection or debts are not directed to state property, etc.), the following is manifested:

- state property is one of the forms of property and does not have any priority;

- the state - the main reformer, exercises its management powers not by directly influencing other participants of the economic transaction in the operative-command method, but by the means provided for in the legal documents [1];
- expropriation and privatization lead to changes in the amount and size of state property. This, in turn, ensures a change in the direction of the state's economic activity and the end of the monopoly of state property in a certain area. For example, in the early periods of independence, education was considered only the state's activity, but now the emergence of private educational institutions has led to the end of the monopoly of state property in this field;
- in the conditions of the market economy, state property is not subject to civil legal liability as before and is not "absolutely inviolable" property, but has become an object subject to civil legal liability like other forms of property;
- unlike before, when the state puts its property into economic circulation, it mainly uses contractual means, and in this state bodies try not to violate the principle of freedom of contracts, one of the most basic rules of the market economy;
- the non-compliance of operational management and business management methods, which are the main methods of managing state property and its economic circulation, with the laws of market conditions, requires the change of these methods, which means that the status of state property should be fundamentally "modernized" and be resistant to the criteria of market demand and supply, healthy competition provides;
- previously single and indivisible state property, which has now been put into economic circulation (property given to the management or use of state bodies and legal entities), kept in reserve and not put into economic circulation for a certain period of time (recovered from state bodies and legal entities and assets not yet included in economic circulation) were distributed to state property funds;
- the change of legal status in relation to land, which is considered the most basic and important source of state property, means that the types of objects of state property are not absolute and fixed, and this situation is one of the factors of economic development in the conditions of market relations;
- due to the conditions of market relations, the emergence of the need to define a clear border between two types of state property (republic and municipal property) serves to increase the role and role of administrative-territorial structures in economic development, and is considered one of the most important factors in determining the status of state property;
- in determining the legal status of state property, the acquisition of a new content of the principles and nature of state property management in the conditions of market relations is also important. Currently, the main attention in the management of state property is focused on the development of expropriation and privatization, support of entrepreneurship, implementation of entrepreneurship on the basis of state property, and not to harm the rights and interests of other persons.

The analysis of the study of legal regulation of state properties in Uzbekistan. In general, it is explained that state property objects are national wealth. At all times, the primary and main object of any state's property is the land area, natural resources, mines engaged in the extraction of various minerals and precious stones, rivers flowing through the territory of this state, flora and fauna, and in other words, natural resources are counted.

From the aforesaid ideas, it should be mentioned that the state is a specific subject of property right, like other subjects of civil law. As mentioned in the sources, however, the extent of state ownership and entrepreneurship will be limited in a market economy. It mainly serves to create opportunities for the effective development of any country's economy.

Of course, it is natural for each political organization to have its own property in the process of being recognized as a state. In Article no.7 of the Constitutional Law "On the Basis of State Independence of the Republic of Uzbekistan", it is stated that "the material basis of the state independence of the Republic of Uzbekistan is its property" is a proof for our opinion.

The state's status as an owner is determined by its participation in legal relations on an equal basis, its ability to perform any actions prescribed by law in relation to its property, its use of its property only for the purpose of improving the standard of living and ensuring the safety of the people, and other circumstances.

At the same time, it is necessary to take into account the use of civil-legal methods as well as administrative-legal methods in the management of state property and the introduction of material goods belonging to the state into civil circulation. Among such methods, it is possible to include the decision of the competent state body to attach the property from the state reserve to a legal entity belonging to any state, the decision to liquidate the state enterprise and transfer its property to the state.

In fact, the amount and weight of state-owned property in relation to any country's gross national product, the correct orientation of state property to

economic relations play an important role in the transition to market relations. One of the determining factors in the economic development of each country is determining the level of state participation in civil transactions and determining the legal status of public property that ensures such participation. Especially in the period of transition to the market economy, in the system of property reforms implemented in our republic, the role of public property as an economic category, its participation in the internal and external circulation of the country, plays a guiding role in economic relations. After all, a certain economic development can be achieved only through the correct distribution of public property, which is 92 % of the country's material wealth (in the case of Uzbekistan) that has been accumulated in the hands of the state for many years, among the participants of economic relations and is appropriately directed to market relations.

It is known that the economic development of the society and the state is determined depending on whether the existing material goods in the society are distributed correctly. This situation is clearly visible in the development of the country and the improvement of the well-being of the population. After all, the most important factor for the sustainable development of the economy of any state is the extent to which material benefits are divided among the subjects of social relations.

Even in economically developed countries, although it is generally recognized that they have abandoned centralized management of the economy, the share of state property in the main production funds of the country is big. This situation is especially evident in the fields of transport and communications, atomic energy, and military industry [2].

The existence of a certain level of property in the state is related to a number of factors (the operation of state bodies, ensuring security, financing the sphere of science and culture, ensuring the implementation of a strong social policy – in the example of Uzbekistan).

According to famous scholar-legal scientist Yu.K. Tolstoy, the preservation of a large part of the objects intended for production, social-cultural and other purposes as the property of the state can be explained by the following two factors:

First, in an unpredictable world, every country must consider its own security. This is security not only in the military sphere, but also in man-made, ecological, sanitary-epidemiological, production, and food spheres.

Secondly, the state also performs large-scale social functions, and it is necessary to have a sufficient material, technical and financial base for the performance of these tasks [2].

According to Uzbek scholar H.R. Rakhmonkulov, the state property is necessary not only to ensure socio-economic development and to meet the needs of the population, but also for the existence of the state and its bodies and the implementation of their tasks [3].

By agreeing with these opinions, it is possible to come to a general conclusion that the existence of state property is related to the realization of the common interests of the citizens living in this country, and the manifestation of the will of the people. However, this does not mean that the existing property in the country must be in the hands of the state. As a result of the stifling of property pluralism and the alienation of people from property, a sense of tyranny arose in the society.

As mentioned above, the significant increase in the share of the non-state sector in the GDP shows that the same entrepreneurial spirit, idea and practice have been formed in the members of the society.

In the 21st Country Goal of the “Development Strategy of New Uzbekistan for the Years 2022-2026”, it is worthy to say that “by ensuring stable high growth rates in economic sectors, in the next five years, the gross domestic product per capita will be 1.6 times, and by 2030, the income per capita will be 4 thousand US dollars”. And it was also aimed to “create the ground for entering the ranks of countries with higher than average income” [4]

In fact, the experience of foreign countries also shows that the state intervenes in economic relations in the most necessary cases, and the mass of state property is small.

Admittedly, due to the complexities of the transition period in the economic model of Uzbekistan, there was a significant influence of the state in the first quarter of the independence of the state. But according to economists, state bureaucracy also lies in the state's excessive intervention in the economy. State bureaucracy attempts to increase control by increasing state intervention in the economy. As a result, the state bureaucracy gets its “mediation” fee.

Another issue is the mutual ratio of the republican (common) state property and municipal property, which are currently considered two types of state property in the case of Uzbekistan.

According to H. Rakhmonkulov, in the Civil Code of the Republic of Uzbekistan, the differences in the powers of possession, use and disposal of the property belonging to the subjects of the republican (common) state property and municipal property are not defined,

there is no established procedure and clear conditions for the transfer of state property rights from one subject to another subject, which means that their own property as a subject of property rights causes indifference to their rights. This is an important issue that is waiting for its solution, especially in the case of expropriation and privatization of property. After all, in this process, it is necessary to determine who owns the state property [3].

It has been obvious that as long as there is a socio-political structure – the state, there will be a need for a form of state property.

Indeed, issues related to the state property and its legal regime were created in a certain consistency. For example, the Constitution (Basic Law) of the Republic of Uzbekistan, the Civil Code, the Land Code, the Housing Code, and the laws “On Ownership in the Republic of Uzbekistan”, “On Expropriation and Privatization”, “On Subsoil Resources”, the Decree no.355 of the Cabinet of Ministers of the Republic of Uzbekistan and also there are a number of legal documents, such as “The Procedure for Dividing the State Property of the Republic of Uzbekistan Into the Property of the Republic and Administrative-territorial Structures (Communal Property)” [5] approved by this decision. The analysis shows that the state-owned objects in them are scattered and there are no generalized (common) approaches to their legal regime. Also, today’s development of the society shows that the law defining the powers of state bodies that implement and manage state property, and ultimately their responsibility and liability. Considering the above, we also want to say that the need to adopt the Law “On State Property Management of the Republic of Uzbekistan” is an urgent issue. It is true that the draft law has been drafted, it has been in the round of discussions.

In fact, state property is a form of property in the Republic of Uzbekistan. The state independently owns, uses and disposes of state property. State property can be used for any purpose not prohibited by law.

At the same time, the implementation of property rights by the state should not violate the rights and interests of other persons protected by law.

In a word, the fate of state property, its legal regime should not be unstable.

It is also necessary to clearly define the border between republican (common) state and municipal property, to distribute the powers (functions) of state bodies in this regard, to establish a criteria for mutual exchange of property from the state property fund and municipal property fund, and to develop a simplified procedure and rules for the transfer of property from these property funds to the other.

For this reason, it is necessary to enumerate the following circumstances that clearly determine the legal status of municipal property and distinguish between republican property and municipal property:

- development of the criteria for the object to be considered municipal property and strict determination in the law;
- determination of the purpose of designation of municipal property objects;
- clearly defining the subjects of municipal property management;
- express the rules of transfer of property from republican (common) state property to municipal property.

As one of our suggestions, it would be expedient for these circumstances to be reflected in this draft law. After all, this issue also falls under the scope of this law.

REFERENCES

1. Te A., Rakhmankulov M., Ubaidullaev Z. Issues of Legal Personality in the Legislation on State Property. // The book “Law and Market: Theoretical Problems of Development” (in Russian). – Tashkent: “Fan” Publishing house, 1994. – P. 24.
2. Civil Law. The 6th Edition (in Russian). / Editors-in-Chief: A.P. Sergeev, Yu.K. Tolstoi. T.1. – Moscow: Prospekt, 2003. – P. 465.
3. Rakhmankulov H. Legislative Sources of Civil Law of the Republic of Uzbekistan and the Task of Improving Them (in Russian) // Collection of the Conference Materials of “Bozor Iqtisodiyoti Sharoitida Savdo Munosabatlarini Huquqiy Ta’minlash Muammolari” (in Uzbek). – Tashkent: TSUL, 2004. – P. 10.
4. Decree no. PF-60 dated 28.01.2022 of the President of the Republic of Uzbekistan “On the Development Strategy of New Uzbekistan for the Years 2022-2026” (in Uzbek). // National database of legislative information, 29.01.2022, no. 06/22/60/0082.
5. URL: <https://lex.uz/docs/481742>.

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