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TÍTULO: Análisis histórico y legal del desarrollo del Instituto de Derechos de Propiedad municipal en Rusia.

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RESUMEN: El artículo está dedicado al estudio histórico y legal de la formación y desarrollo del instituto de derecho de propiedad municipal en Rusia. El propósito de este estudio es formar una comprensión científica integral del desarrollo de la institución de derechos de propiedad municipal en Rusia. Los autores utilizan métodos del conocimiento científico de análisis, histórico y legal, y otros. Los autores llegan a la conclusión de que la propiedad municipal se separó en 1990 en forma de propiedad comunal del estado (público). Durante el período soviético, el derecho de propiedad municipal y propiedad no se consagró por separado, y de hecho, coincidió con la propiedad estatal. Los autores distinguen los períodos en que se formó el Instituto de Derecho de propiedad municipal.

PALABRAS CLAVES: períodos históricos, análisis histórico y legal, derecho de propiedad, propiedad pública, propiedad municipal.

TITLE: The historical and legal analysis of the development of Municipal Property Right Institute in Russia.

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ABSTRACT: The article is devoted to the historical and legal study of the formation and development of the municipal property right institute in Russia. The purpose of this study is to form a comprehensive scientific understanding of the development of the municipal property rights institution in Russia. The authors use methods of scientific analysis, historical and legal knowledge, and others. The authors conclude that municipal property was separated in 1990 in the form of communal property of the state (public). During the Soviet period, the right of municipal property and property was not consecrated separately, and in fact, coincided with state property. The authors distinguish the periods in which the Municipal Property Law Institute was formed.

KEY WORDS: historical periods, historical and legal analysis, property right, public property, municipal property.

INTRODUCTION.

In any state, a certain part of the property belongs to public entities. In Russia, such entities are municipalities in addition to the Russian Federation itself and its subjects. Thus, under these circumstances, municipal property becomes the main internal resource of urban and rural settlements, as well as other municipal entities, and plays an essential role in the mechanism of regulating social and financial relations in their territory.

It should be noted that the study of the history of municipal property is necessary in order to investigate the general laws governing the improvement of legal regulation on site. Therefore, the study of the development process of the institution of municipal property right seems necessary. On the pages of scientific and journalistic publications, most authors agree that the institute of municipal property right exists in the system of Russian law for a relatively short time, “since it originated in the 1990s” [1].

DEVELOPMENT.

A.I. Bondarenko and E.V. Vasilyeva note that “before this, there was a single fund of state property owned by the Soviet Union” [2], “and, accordingly, only the state - the USSR” could be the only owner” [1]. V.A. Barsukova has the same opinion, additionally pointing out that “the formation of municipal property as an independent form of ownership began with the privatization of previously existing public property in the form of state (public) and collective-farm (collective)” [3].

The concept of a single state property was revised by the Law of the USSR dated April 9, 1990. № 1417-1 "On the general principles of local government and local economy in the USSR", in which the legislator operated with the term "communal property". Thus, A.I. Bondarenko, Yu.M. Abidova and V.A. Baranchikov concluded, that “municipal property appeared through its separation from the state one” on April 9, 1990, initially “in the form of a communal property” [4].

There is also another position in the literature, according to which property relations related to municipal property arose simultaneously with the emergence of Russian statehood. Hence, it is necessary to say that the formation of the municipal property right institution in Russia has deep historical roots, although the term “municipal” was not used by Russian pre-revolutionary legislation until the end of the 19th century.

Methods.

To study the processes of formation and development of political and legal phenomena that existed in the past, the authors used the historical method of research. Due to the fact that the authors studied the legal acts regulating the institution of municipal property rights in certain historical periods, the authors used a specific historical way to research sources. Historical sources have been studied using legal interpretation methods.

The authors analyze the scientific works of modern scholars in order to restore the historical truth about the events and facts of previous times. Legal norms are considered taking into account the political organization and economic system in effect at the time.

The most important point is the selection of historical stages that the studied legal phenomena has passed, the first characteristic of the stages, and their interconnection. Historical and legal research of the institute of the municipal property right seems necessary in order to obtain reliable knowledge about the history of the formation and development of this institution of Russian law.

Results and Discussion.

Let us refer to some periods in the history of Russian statehood in order to determine the depth of the historical roots of the institution under consideration.

For the starting point, we take the period of feudal fragmentation (30th years of XII century - end of the XV century). At that time, as Kh. A. Tkhabisimov concluded, “The urban commune did not act as a subject of municipal administration due to the fact that cities did not have the authority to own and dispose of property, but received only rights to use movable and immovable property that was territorially assigned to it” [5].

By the middle of the XVI century, municipal property was allocated, and the powers of possession, disposal and use of territorially assigned property of a municipal entity directly executed with the aim of ensuring the social and economic welfare of urban citizens. The existence of municipal

property is indicated, in particular, by one of the surviving missive letters of that period, which contained, among other things, the following prescriptions: “the urban population is free to elect a council and a headmen from their midst to dispose of the city’s property while respecting the interests of citizens”.

In addition, in the second half of the XVIII century, the competence of the elected bodies of the municipality included the solution of current socio-economic issues and the use of municipal property. So, they ensured the safety of municipal property, maintained public city buildings in good condition, performed construction of objects necessary for citizens, including retail space, marinas, barns, and shops. Note that in the second half of the XIX century zemstvo (district council) institutions appeared, which were elected bodies of local self-government, and their incomes were formed from payments obtained due to using objects of municipal property.

In the Soviet period of national history, which began in 1917, the regulation of municipal property quickly faded away. It should be particularly noted that during the Soviet period, a tough and centralized vertical of power was created, and this circumstance did not allow the municipal property right institution to develop, as it primarily meant the decentralization of management. Local government was recognized as a bourgeois-democratic phenomenon. In this connection, the 1936 Constitution of the USSR consolidated only socialist property in the form of either state ownership, or cooperative-collective farm ownership. In the Soviet period, the country's economy was characterized by administrative-command methods of managing the national economy. In this case, the only subject of public ownership was the state.

The situation began to change in the second half of the 80s of XX century, when “the view began to be affirmed that local self-government is an independent level of the exercise by the people of the power constitutionally belonging to them, that the democratic structure of society is possible only if the local government is separated from state power” [1]. At the same time, the need to move from

administrative to economic methods of property management began to be recognized. According to the norms of the Law of the USSR dated April 09, 1990 No. 1417-1 "On the General Principles of Local Self-Government and Local Economy in the USSR", a certain autonomy was established for local Soviets of People's Deputies from other state bodies, and so, there has been a trend towards the transfer of material and production facilities, and other public property to municipal ownership. At the same time, this autonomy was provided mostly by the presence of the local economy and property, which marked the beginning of the formation of a new type of public property - communal. The structure of this type of property included property that "was acquired or created by local authorities at the expense of their funds, and that which was transferred free of charge by republican, federal bodies and other entities" [3].

The direct separation of municipal property from state property was continued by the Law of the RSFSR dated July 6, 1991. No. 1550-1 "On local self-government in the RSFSR," paragraph 1, article 37 of which stated that "a municipal property is the property of the population of the relevant territory". A.I. Bondarenko draws attention that this law had many flaws, in particular, "there was no specific mechanism for the formation of municipal property, and for the conversion of state-owned objects into municipal; there were no criteria for the necessity and expediency of transferring objects to local authorities.

The property in state ownership, at the time this law came into force, did not automatically become the property of municipalities"[2]. In the future, these issues should have been settled by law, but the Soviet Union collapsed. At the same time, the prospects for the future process associated with the isolation of a special type of municipal property were determined.

Already in December 27, 1991, the Supreme Soviet of the Russian Federation has adopted the Decree No. 3020-1 "On the delimitation of state property in the Russian Federation...", which was essential for the formation of municipal property; Annex 3 of which has indicated objects belonging

to municipal property and subject to transfer to municipal property of two types of settlements: cities (except for cities of regional subordination) and areas (except for areas in cities). On March 18, 1992 the President of the Russian Federation has approved the Order No. 114-rp on “Provisions about the item-by-item determination of the federal, state and municipal property and the procedure for registration of property rights on them”, which established the procedure for transferring property from state to municipal category and was used until 12 June, 2006.

With the adoption on December 12, 1993 of the Constitution of the Russian Federation, provisions on municipal property acquired a constitutional tone. According to Art. 8 of the Constitution of the Russian Federation, municipal property is recognized and protected, along with other forms of property in Russia, and art. 132 establishes the right of local governments to independently manage municipal property. Art. 124-126, ch. 5 of the Civil Code are devoted to the participation of municipalities in civil law relations, and Art. 215, ch. 13 of the Civil Code devoted to the municipal property right. Another milestone in the development of municipal property was the adoption of the Federal Law on August 28, 1995. № 154-FZ "On the general principles of the organization of local self-government in the Russian Federation", which in its ch. V prescribed the financial and economic foundations of local government. Later, the Federal Law of September 25, 1997 was adopted. № 126-FZ “On the financial basis of local self-government in the Russian Federation”, which until January 1, 2009 established the principles of local finance, listed the main sources of formation and use of financial resources of local self-government.

The landmark date in the history of development of the domestic municipal property right institute was October 6, 2003, when there was adopted the Federal Law No. 131-FZ “On the general principles of organization of local self-government in the Russian Federation”, which defines the concept of municipal property, the composition and the procedure for its formation, powers of local governments in the management of municipal property. I. Boyarintseva and T. Mikheeva come to

the conclusion that for the first time after the territorial reform of 1864, which laid the foundation for the establishment of local government in Russia, the 1993 Constitution of the Russian Federation established an algorithm for the modern development of the institute of local governments, created guarantees of the right to local self management. Federal Law No. 131-FZ has formed the legal basis for the further development of legislation on local self-government [6].

The current stage of development of the institution of municipal property right is also characterized by the adoption of the Federal Law dated August 22, 2004 № 122-FZ, which in its part 11 of Art. 154 has redistributed the powers between the Russian Federation, constituent entities of the Russian Federation and municipalities on the division of property: in addition to local governments and state authorities of constituent entities of the Russian Federation, federal authorities were also included in the list of subjects for transferring property to municipal ownership. Decree of the Government of the Russian Federation dated June 13, 2006 No. 374 defined the general procedure for transferring property, complicated by the introduction of requirements for documents necessary for making the decision on the transfer of property from state ownership to municipal ownership.

An analysis of foreign literature on municipal property right shows that the implementation by municipal authorities of their ownership powers is aimed at resolving issues of local significance; for example, H. Kong, analyzing municipal law, and in general, local self-government of Canada, believes that the main role of local authorities is to respond to the needs of local residents [7]. M. Baldussi in his report indicates that in Western countries, there is no special legislation regulating municipal property, and in central and eastern European countries, there are specific rules regarding municipal property. This difference is determined by the historical features of local authorities in eastern and western Europe [8].

According to R. Cooper, given the origin of democracy in the self-government of cities, there are convincing historical reasons for the new assessment of the municipal government, but supporters of decentralization missed some legal problems that were caused by the lack of constitutional status of municipal governments [9]. The paper by K. Pallis and P. Pallis [10] is also devoted to the study of local real estate issues, and also issues on financing instruments of municipalities in Greece.

In summary, defining our own periodization for the process of formation of municipal property in Russia, we define key dates. Those appear to be: April 9, 1990; December 12, 1993; October 6, 2003; January 01, 2009. In this regard, we believe that the institution of municipal property in Russia went through four periods in its historical development: the first period - from April 9, 1990 to December 12, 1993; the second period - from December 12, 1993 to October 6, 2003; the third period - from October 6, 2003 to January 1, 2009; fourth period - from January 1, 2009 to the present time. Thus, the analysis of the historical and legal aspects of the development of the municipal property institute of in Russia allows us to draw the following:

- ✚ The municipal property right institute exists in the system of Russian law for a relatively short time: initially, in the form of communal property, by separating in 1990 from state (public) property. A year later, the concept of municipal property became part of the legal lexicon. Until that time, other institutions had preceded municipal property as the material basis of the respective territory.
- ✚ Despite the fact that in the pre-revolutionary period of national history until the end of the XIX century, the concept of “municipal property” was not used; property relations early regulated by the institution under study had arisen long before that. During the entire Soviet period, state ownership was considered as such.

✚ By the end of the 80s of XX century the need to transfer from administrative to economic methods of property management has been recognized. Since that time, the institute of municipal property right went in its development through four periods: the first period — from April 9, 1990 to December 12, 1993; the second period - from December 12, 1993 to October 6, 2003; the third period - from October 6, 2003 to January 1, 2009; and fourth period - from January 1, 2009 to the present time.

CONCLUSIONS.

The conducted historical and legal analysis shows that the main dates that directly affected the process of forming the institution of municipal property were subject to systematization on the pages of scientific and journalistic publications, on the basis of which the periods of the formation of municipal property were distinguished. So, E.V. Vasilieva laid the dependence of the procedure for transferring property to municipal ownership and types of transferred property in the basis for the periodization of the municipal property formation process.

Based on that, the authors identify two periods of the formation of municipal property: the first - from April 1, 1990 to March 17, 1992, and the second period - from March 18, 1992 to the present days (the emergence of "a mechanism for transferring property to municipal property when delimiting state ownership and its actual implementation") [1], believing that "municipal property as the economic basis of local self-government first appeared in the form of municipal property" [4].

V.A. Baranchikov identifies two periods of the formation of municipal property: the first period - from April 9, 1990 to December 12, 1993; the second period - with the adoption of the Constitution of the Russian Federation and the Federal Law of August 28, 1995, № 154-FZ to the present time. Thus, knowledge of the history of development and formation of the institution of municipal

property right helps and facilitates the process of understanding the patterns of functioning and regulation of social relations in the modern Russian Federation.

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BIBLIOGRAPHIC REFERENCES.

- [1] Vasilieva E.V. The formation of the municipal property institute and the development of the system of municipal administration in modern Russia // Bulletin of the Chelyabinsk State University. Series: Law. - 2015. - № 4 (359). - p. 31.
- [2] Bondarenko A.I. The history of the formation and development of municipal property in the Russian Federation // Young Scientist. - 2016. - № 12 (116). - p. 569.
- [3] Barsukova V.A. The history of development and formation of municipal property as a result of the division of ownership between the Russian Federation, the subjects of the Russian Federation and the municipalities. Omsk University Bulletin. - 2009. - № 3. - p. 249.
- [3] Baranchikov V.A. Constitutional and legal development of municipal property // Lex Russica. - 2006. - V. LXV, № 1. - p. 44.
- [5] Tkhabisimov Kh.A. Some features of the formation and development of the municipal property institute in Russia // Actual problems of Russian law. - 2016. - № 3 (64). - p. 64.
- [6] I. Boyarinceva, T. Mikheeva (2016). "Current Trends in the Legal Regulation of Local Self-Government: Extension of Publicity". International Journal of Environmental and Science Education 11 (18):12841-12848.
- [7] Kong, Hoi. Something to Talk About: Regulation and Justification in Canadian Municipal Law. Osgoode Hall Law Journal 48.3/4 (2010): 499-541.

<http://digitalcommons.osgoode.yorku.ca/ohlj/vol48/iss3/4>

[8] M. Balducci. Management of Municipal Real Estate Property: Report. P.11.

<https://books.google.ru/>

[9] R. Cooper. Municipal law, delegated legislation and democracy. Canadian Public Administration. Volume 39, Issue 3. 1996. P. 290-313.

[10] C. Pallis, P. Pallis (2014). The development of municipalities property management as a financial tool: An empirical investigation", Journal of Property Investment & Finance, Vol. 32 Issue: 1, pp.78-93. <https://doi.org/10.1108/JPIF-09-2013-0054>

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