Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
José María Pino Suárez 400-2 esq a Lerdo de Tejada. Toluca, Estado de México. 7223893475
RFC: ATI120618V12

Revista dilemas contemporáneos: educación, política y valores.
http://www.dilemascontemporaneoseducacionpoliticayvalores.com/
Año: VII Número: Edición Especial Artículo no.:112 Período: Noviembre, 2019.

TÍTULO: Responsabilidad administrativa de los funcionarios por violación de la legislación en la implementación de la autoridad para disponer de propiedad estatal y municipal.

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RESUMEN: La relevancia de la investigación está en que los métodos para proteger los derechos en las relaciones de derecho civil en la implementación de la autoridad para disponer de propiedad estatal y municipal no constituyen un mecanismo legal efectivo que garantice plenamente los derechos e intereses de población. El propósito del artículo es publicar los resultados de una investigación compleja intersectorial realizada de la práctica judicial y del arbitraje de la responsabilidad de los funcionarios establecidos por las normas de la legislación vigente en la implementación de la autoridad para disponer de propiedad estatal y municipal, identificar problemas legales existentes y hacer propuestas para su solución.

PALABRAS CLAVES: protección de los derechos, derechos e intereses de la población, propiedad estatal, responsabilidad administrativa, responsabilidad municipal.

TITLE: Administrative responsibility of officials for violation of legislation in the implementation of authority to dispose of state and municipal property.

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ABSTRACT: The relevance of the investigation is that the methods to protect the rights in civil law relations in the implementation of the authority to dispose of state and municipal property do not constitute an effective legal mechanism that fully guarantees the rights and interests of the population. The purpose of the article is to publish the results of a complex intersectoral investigation of the judicial practice and arbitration of the responsibility of the officials established by the norms of the legislation in force in the implementation of the authority to dispose of state and municipal property, to identify existing legal problems and make proposals for their solution.

KEY WORDS: protection of the rights, rights and interests of the population, state property, administrative responsibility, municipal responsibility.

INTRODUCTION.

The research of the selected topic is conducted for the first time. It is not possible to compare its results with other researches devoted to an approximate topic.

The research hypothesis is based on the assumption that existing gaps in Russian legislation and the existence of not fully effective legal regulation of the responsibility of officials in the implementation

of authority to dispose of state and municipal property do not ensure the rights and interests of the population of municipal entities and contribute to corruption.

The purpose of the research is to conduct a comprehensive (cross-sectoral) analysis of the responsibility of officials, for violating existing legislation, in the implementation of authority to dispose of state and municipal property, to identify existing legal problems and to make proposals for their solution.

Objectives of the research: to investigate the practice of realizing the responsibility of officials for violating the legislation in the implementation of authority to dispose of state and municipal property; to make proposals on the improvement (establishment and expansion) of the regulatory legal regulation of the institution of responsibility of officials in the implementation of authority to dispose of state and municipal property.

DEVELOPMENT.

Research methodology.

Dialectical method of cognition allowed to ensure the objectivity and comprehensiveness of the researched phenomena, general scientific methods were used (system, structural-functional, concrete-historical, comparative-legal), general methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.) and private-science methods (comparative law, technical and legal analysis, concretization, interpretation, etc.) [6, p. 32-40].

The conducted research is based on the materials of arbitration courts, 418 cases for the period from 2014 to 2017, decisions on which entered into force (Krasnodar, Rostov-on-Don). The goal and formulated objectives of the research predetermined the choice of a systematic approach to the research of state and legal categories, including public accountability of officials, which allowed the Russian legal system to be viewed as a complex, holistic legal phenomenon.

By analyzing of the theoretical basis of responsibility of officials in the field of state and municipal property protection was used the method of comparative law. Were analyzed the norms of criminal, civil-law and administrative responsibility under the Criminal Code of the Russian Federation, the Civil Code of the Russian Federation and the Code of Administrative Offenses of the Russian Federation.

The normative-interpretational method of research was applied during the analysis of the legal norms of the Civil Code of the Russian Federation regulating the ways of protecting civil rights (Article 12). In the process of research, were used private scientific methods of cognition, through which it was possible to track the movement of civil cases in the courts of various judicial instances (method-observation), to conduct conversations with litigants (method-conversation) using the method of content analysis, to analyze regulatory arguments of the courts, in court decisions.

Study results.

Under the current civil law, municipal property is property owned by the urban, rural settlements, as well as other municipal entities (Article 215) [8]. On their behalf, the rights of the owner to own, use and dispose of municipal property are implemented by local government bodies. This largely determines its vulnerability (insufficient legal protection) and increases the factor of crime, which refers to an event or state that causes a person's determination to commit a criminal act.

In practice, often, it depends on the will of one official whether or not to be property (object) in municipal ownership. The list of property located in the municipal property of settlements, municipal districts and urban districts may include not only immovable and movable property, but also land plots, ponds and even watered quarries. In general, all these forms of the economic basis of local self-government, in addition to the objects of municipal property (property) are financial resources of local budgets, as well as property rights of municipalities (Part 1, Article 49) [9]. A specific list of

objects of municipal property (property) is determined by the specific features of their legal status (type of education), development plans, the size of the territory, and other factors.

Property in municipal ownership is assigned to municipal enterprises and institutions for possession, use and disposal in accordance with the Civil Code, and local budget funds and other municipal property that are not attached to them constitute the municipal treasury of the corresponding urban, rural settlement or other municipal entity. A specific feature of the legal status of municipal property is its target character. Objects of municipal property are designed to address issues of local importance, meet housing and communal, socio-cultural, domestic and other needs of the population living in a particular territory.

In the event that municipal entities have the right to own property that is not intended to address issues of local importance, such property is the subject to conversion (change of purpose) or alienation in the manner and within the time limits established by the current federal legislation. Bodies of local self-government have the right to transfer municipal property for temporary or permanent use to legal and physical persons, state authorities, other bodies of local self-government, to make other transactions in accordance with the civil legislation. Privatization takes a special place in the list of alienation types of municipal property. Its procedure and conditions are determined by municipal legal acts, which must comply with federal legislation [10].

However, as shown by the conducted research of law enforcement practice of local self-government bodies, the research of judicial and arbitration reviews of civil cases in courts of different instances [11, 12, 13], in many cases (systematically) compliance with the legislation on the protection and conservation of municipal property is not in the interests of population of municipalities. There are numerous facts of offenses of land legislation. In a number of cases, only signs of corruption crimes are seen, in the absence of a legal crime. In support of this conclusion, we can give a few most illustrative examples, given the limited volume of this publication.

In accordance with the Decision of the City Duma of Krasnodar from 22.03.2012, No. 28 Clause 17, which approved the privatization program, municipal property objects of the municipal entity Krasnodar City for 2012 "the municipal unitary enterprise" Krasnodar City Pharmacy Management"(hereinafter - MUE) was privatized by reorganization in the form of transformation into a limited liability company (hereinafter - LLC) "Pharmacy Kuban".

The authorized capital of the new economic company created in the process of privatization was determined in the amount of 84 million 795 thousand rubles, which significantly exceeded the size established for the small business entities (100 thousand rubles), established by federal legislation. Only by this criterion the municipal unitary enterprise could not be transformed into a limited liability company. Moreover, during its privatization, the city administration did not take into account two other indicators: the average number of employees and the annual revenue from the sale of goods. At the time of privatization, 596 people worked at the enterprise, and its annual revenue was 769 million 431 rubles. And for these two indicators, the municipal unitary enterprise also could not be transformed into a limited liability company.

Despite this, the legal divisions of local government (the City Duma, Administration) ignored the requirements of federal legislation on privatization and their position in courts justified, guided by municipal non-normative acts and instructions of the city administration. Municipal Unitary Enterprise "Krasnodar City Pharmacy Management" was established in order to provide the population with medicines and was a pharmaceutical organization in accordance with the charter. Its structure included 24 pharmacies and 10 pharmacy points.

The legal position of representatives (officials) of local government in the court was that the implementation of pharmaceutical activities is not included in the powers of local government, and non-core property is a subject to alienation in accordance with the obligation provided for in part 5 of Art. 50 of the Federal Law No. 131-FZ. Moreover, it was argued that previously approved

municipal legal acts (1997) MUE was not included in the structure of the municipal health system. Therefore, they concluded: the position of art. 30 of the Federal Law on Privatization, which prohibits the privatization of health facilities, does not apply to the decision to privatize.

After consideration in the Arbitration Court of the Krasnodar Territory (May 15, 2014), then in the Fifteenth Arbitration Appeal Court in Rostov-on-Don (October 17, 2014), the Arbitration Court of the North Caucasus District at the cassation instance on May 12, 2017 took a final and legal decision (Case No. A32-38741 / 2013): “Решение о приватизации муниципального унитарного предприятия путем преобразования его в ООО «Аптека Кубань» является сделкой, совершенной ненормативными актами. В результате их казни была незаконно создана коммерческая организация. Право муниципальной собственности на управление городской собственностью (публичное право) прекращается, так как собственность имеет право собственности у общества с ограниченной ответственностью. Фактически, созданная коммерческая структура (сеть муниципальных аптек) готовилась к продаже частному лицу по цене, намного ниже рыночной.

Таким образом, муниципальные ненормативные акты нарушают права муниципального образования (населения) города Краснодара, поскольку органы местного самоуправления распоряжаются муниципальной собственностью с нарушением установленного порядка, закрепленного в федеральном законодательстве. В решении Арбитражного суда кассационной инстанции был приведен дополнительный аргумент, что согласно подпункту 2 пункта 4 ст. 29 Федерального закона от 21.11.2011 г. № 323-ФЗ «Об основах охраны здоровья граждан в Российской Федерации» муниципальная система здравоохранения состоит из медицинских и фармацевтических организаций, подчиненных органам муниципального самоуправления. правительство [14].

Но есть справедливый вопрос. Почему ни один из местных чиновников не понес каких-либо наказаний, по крайней мере административных? Ответ прост. У нас в России нет административной ответственности в сфере охраны муниципальной собственности. Если такая ответственность существует в соответствии с Кодексом Российской Федерации об административных правонарушениях [15], то соответствующие правоохранительные органы могут оперативно (быстро) провести административное расследование, привлечь к ответственности должностных лиц местного самоуправления и предотвратить годы судебных разбирательств.

Исследование материалов судебной и арбитражной практики показало, что не только в муниципальной собственности, но и в сохранении и использовании земель в муниципальных образованиях существуют серьезные проблемы. Необходимо разработать и принять более эффективные меры по сохранению муниципальной собственности и общественных земель. Как показывает правоприменительная практика, одной существующей гражданской ответственности недостаточно.

На наш взгляд, изменения в федеральном законодательстве давно назрели. Необходимо (при отсутствии признаков совершения уголовных преступлений) применение более жестких мер - введение административной ответственности за должностных лиц. В конкретных санкциях должна использоваться такая форма административного наказания, как дисквалификация. Под угрозой его использования чиновники будут более восприимчивы к принятию решений об отчуждении муниципальной собственности, отчуждении государственной земли. Дисквалификация заключается в лишении физического лица права замещать должности государственной гражданской службы, должности муниципальной службы, управления юридическим лицом и в иных случаях, предусмотренных законодательством Российской Федерации (статья 3.11) [15].

Это положительно скажется на работе арбитражных судов. Как показывает практика, решения, незаконно вынесенные должностными лицами органов местного самоуправления в арбитражные суды, рассматриваются годами, без должной гласности, без привлечения средств массовой информации и общественности. Как правило, они проходят все судебные инстанции (сначала апелляционная и кассационная).

Зачастую представители органов местного самоуправления доказывают в арбитражных судах юридическую обоснованность решений, принятых по отчуждению муниципальной собственности, приватизации, игнорируя явные нарушения федерального законодательства. Это невозможно объяснить незнанием нормативных актов, слабой правовой подготовкой соответствующих чиновников в органах местного самоуправления. По нашему мнению, здесь происходит скрытая коррупция. В настоящее время открытая кража муниципальной собственности уходит в прошлое, что повлекло за собой уголовную ответственность. Сегодня метод приобретения муниципальной собственности с использованием гражданского законодательства путем незаконных сделок стал актуальным.

Meanwhile, typical problems with security are not only in municipal facilities, they are inherent in state property. An example of this can serve as materials of civil case No. A32-11732 / 2017; 15AP-15145/2017, examined by the Fifteenth Arbitration Appeal Court on October 4, 2017 in Rostov-on-Don [12].

As follows from the case file, the head of the administration of the Novokubansky district of the Krasnodar Territory, in violation of the requirements of the legislation, transferred eight commercial land plots owned by the subject of the Russian Federation to the Krasnodar Territory under the agreement for 10 years. In the operative part, the court stated that the arguments set out by one of the parties in the appellate complaint are based on a misinterpretation of the norms of substantive law. Therefore, the court of the second instance left the decision of the Arbitration Court of Krasnodar

Region unchanged, and the appellate complaint was not satisfied. Under the court's decision, all land plots were returned to the property of the Krasnodar Territory to the Property Relations Department. In this case, the question has not been clarified.

Why did the head of the district administration conclude a lease agreement for agricultural land with a total area of several hundred hectares with a gross violation of the law? The commercial structure (ARGUS Capital LLC), having received land for lease, did not intend to deal with land cultivation, but immediately concluded an agreement on assignment of rights and obligations of the lessee with another commercial organization (LLC Novator), relying on the fact that it would go steady income from the lease of land. The above facts were not of interest to law enforcement agencies.

The results of the research show that there is a need to introduce appropriate amendments to the Code of Administrative Offenses of the Russian Federation with a view to improving and increasing the effectiveness of the legal mechanism for protecting public property, the rights of the population of municipalities, and bringing those responsible to justice. In administrative law, the regime of using public lands is not singled out separately among the objects of protection. It is proposed to amend the Code, including the following legal norm:

"Article 7.24.1.

Established by law, violation of the procedure for the disposal of immovable property and land plots in public (state or municipal) ownership:

1. An order by an official of a public authority or a local government body of immovable property objects that are in state or municipal ownership without complying with competitive procedures or with violation of the procedure established by law - shall result in a warning or suspension for a period of one to three years.

2. Disposal by an official of a public authority or local government body of land plots in state or municipal ownership located within the boundaries of the common use area or areas that are seized or restricted in civil traffic - entails a warning or suspension for a period of one to three years".

The implementation of our proposal will not only protect the property and other rights of the population of municipalities, but will increase the effectiveness of the fight against corruption in state authorities and local self-government. The introduction of administrative responsibility for officials will allow for pre-emptive action against this category of offenders.

As shown by the research, takes place the problem of the security of municipal and state property. The scientific hypothesis of the research was fully confirmed.

CONCLUSIONS.

The results of the research allowed to propose the draft of a new article 7.24.1 of the Code of Administrative Offenses of the Russian Federation "Established by law, offense of the procedure for the disposal of immovable property and land plots in public (state or municipal) property ". For this offense of the sanction of this article is provided administrative punishment for officials in the form of a warning or disqualification for a period of one to three years.

The significance of the research is determined by its relevance, novelty, and conclusions. The conducted research theoretically develops and expands the institution of responsibility of officials in the implementation of authority on the disposal of state and municipal property.

The conclusions contained in the article can be used for further researches of problems related to liability in the sphere of public property relations.

The proposal to improve the legal mechanism for the responsibility of officials, the introduction of its new type, is aimed at bringing the current administrative legislation in line with the challenges of time and the generated reality. This will reduce the level of corruption at the level of municipal authorities. Separate provisions of the article can be used not only in the normative and law

enforcement activities of local government bodies, but also by writing various academic publications, in the teaching of a number of legal disciplines.

Conflict of interest.

The authors confirm the absence of a conflict of interest.

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RECIBIDO: 8 de octubre de 2019. **APROBADO:** 19 de octubre del 2019.