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Vladimir (Aleksandrovich) Nizov

**THE CONSTITUTIONAL BASIS FOR THE ADMINISTRATION OF THE
PUBLIC LAW ENTITIES' PROPERTY**

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Academic supervisor:
Candidate of Sciences,
Associate Professor,
Svetlana Maslennikova

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5.1.2. – Public law (State law) sciences

Relevance of Thesis Research Topic. After the collapse of the USSR, the public property administration in Russia was in crisis. This crisis was largely triggered by a change in the Constitutional basis of the State. In the 1990s, State property was a subject to accelerated privatization, among other things, in order to meet new constitutional ideals. At the same time, privatization was seen as a tool to solve the problem of inefficient public administration. The share of private property has increased significantly. However, the new owners did not become effective managers. Moreover, a new situation has developed whereby private individuals own a large amount of former State property and yet have no social obligations to the people. Privatization proceeded without fair compensation to the State, which also caused inefficiencies in the exercise of public functions.

According to N.S. Bondar, there has always been a politicization of property in Russia. At the current stage, the Constitutional regulation of property rights is also relevant and should reflect the path of socio-economic modernization of society¹.

However, it cannot be said that such a path has already been found. In response to the discrepancy between Constitutional principles and reality, the State began to concentrate the management of property at the beginning of the twenty-first century. The very fact of property concentration does not always allow us to implement Constitutional principles and find a balance between private and public interests. If the system of necessary State and Public institutions (authorities and organizations) is not built, then public property will not be used effectively. Thus, the Russian legal system still faces the task of forming such institutions that would comply with modern Constitutional principles. Moreover, the formation of State and public institutions must take into account the protection of private property, the guarantee of local self-governance, as well as other principles of Constitutional law.

The Constitution of the Russian Federation has consolidated the concept of "forms of ownership" and identified private, municipal, state, and other forms of

¹ See: Bondar N.S. Constitutionalization of socio-economic development of the Russian statehood (in the context of decisions of the Constitutional Court of the Russian Federation). Moscow : Vikor-Media, 2006. P. 27-28.

ownership. At the same time, Russian Constitutional regulation of property rights has a liberal approach: practically any property can be either state or municipally owned or owned privately.

The management of State property is a power of State authorities. In recent decades, various legal institutions have been created for effective management, which were previously not peculiar to the Russian legal system. The legislation stipulated the status of special legal entities, holding the ownership rights to the property transferred to them and performing public functions. Such legal entities include: State Corporations, Foundation for Development of the Center for Elaboration and Commercialization of New Technologies. (Skolkovo Foundation), Public-Non-Commercial Organizations, the Russian Highways State Company (State Company Avtodor) and others.

When analyzing the legal status of these legal entities, we can conclude that it differs significantly from the status of other participants in civil legal relations. The legal status of special legal entities needs a deep doctrinal justification from the standpoint of constitutional principles. These legal entities belong to the category referred to in the domestic literature as "legal entities of public law. The legal institute of property rights of legal entities of public law contains a number of topical issues that have not been resolved in science and legal regulation. First of all, it is not clear: whether such property can be considered as public property; whether there are criteria to determine - in which cases a legal entity of public law should be guided exclusively by the provisions of civil law, and when it is limited by the norms of public law in general and constitutional principles in particular.

Currently, the concept of "public property" is sufficiently justified in theory and in practice. Disposition of property by legal entities of public law is the subject of legal research, including from the perspective of constitutional law. The importance of this topic is underlined by the fact that legal entities of public law control a large array of property and have a significant impact on social, economic and political processes in the country.

The relevance of this thesis research is determined by the fact that there is not enough doctrinal substantiation of the public law legal entities' ownership rights in legal science, as well as the specifics of the legislative regulation of the such property management have not been previously highlighted from the perspective of constitutional law. Of particular importance is the analysis of specific examples of property management of the relevant persons, which are indicated in the legislation of the Russian Federation. Especially important in this case is to analyze specific examples of relevant persons' property management, which are outlined in the legislation of the Russian Federation. In the practical aspect, suggestions for improving the legal regulation of the status of public law legal entities are extremely important.

The degree of scientific development of the problem. Property administration is a popular subject in many branches of law, as well as state and municipal administration. Moreover, there are the studies that comprehensively examine the constitutional basis of such a concept as “public property” (for example, the publication of V. D. Mazaev "The constitutional basis of public property in the Russian Federation"), or a comparative view to public property is offered (A. V. Vinnitsky "Public Property"). Among the significant studies in the field of concern, the publications of V. E. Chirkin can also be noted, particularly his monograph "Legal Entities of Public Law", as well as the work of O.E. Kutafin "Subjects of the constitutional law of the Russian Federation as legal entities and persons equated to them". However, the legal status of legal entities of public law requires further research, since at the present stage this issue has an insufficient degree of scientific development.

The administration of public property is also considered within the framework of administrative law and institutional economics. In national legal science, the problem of the constitutional and legal framework for administration of public property, or the property of legal entities under public law, is considered only in the context of other, broader problems, for example, the problem of constitutionalization of socio-economic development. Presently, it is practically impossible to name the

studies that would be devoted exclusively to the administration of the property of legal entities of public law from the point of view of constitutional law.

The following publications were the theoretical basis of the dissertation research:

– Soviet and Russian scientists – specialists in constitutional law: S.A. Avakyan, I.A. Alabastrov, G.N. Andreeva, N.S. Bondar, A.V. Venediktov, N.V. Vitruk, G.A. Gadzhiev, V.A. Grigoriev, G.A. Grishchenko, V.D. Zorkin, D.A. Kovachev, E.I. Kozlov, N.M. Kolosova, M.A. Krasnov, O.E. Kutafin, K.E. Lagutenko, И.В. Leonov, V.D. Mazaev, E.A. Mazur, V.V. Melnikov, A.A. Mishin, L.A. Okounkov, V.G. Postnikova, V.A. Rzhevsky, O.A. Snezhko, A.F. Khramtsov, V.E. Chirkin, B.S. Ebzееv and others;

– Soviet and Russian scientists – specialists in other branches of law (civil, administrative, etc.): S.S. Alekseeva, G.V. Atamanchuk, G.Yu. Atayan, O.N. Amvrosova, S.I. Arkhipov, O.A. Belyaeva, E.A. Voinikanis, D.M. Genkin, D.D. Grimm, N.V. Kozlova, Yu.M. Kozlov, A.N. Kozyrin, D.L. Komyagin, V.V. Laptev, E. A. Lukasheva, M.H. Marchenko, V.A. Mau, D.I. Meyer, V.P. Mozolin, S.D. Mogilevsky, N.N. Pakhomova, E.B. Pashukanis, M.I. Piskotin, B.I. Puginsky, T.A. Skvortsova, K.I. Sklovsky, E.A. Sukhanova, E.V. Talapina, Yu.A. Tikhomirov, Yu.K. Tolstoy et al;

– Soviet and Russian scientists – economists: L.A. Karaseva, L.I. Kondrashov, V.A. Petrishchev, E.A. Sorokova, D.Ya. Travin and et al;

– foreign scientists – lawyers and economists: Anne Davies, Arnold Harberger, Bruce Ackerman, Charles Reich, David Millon, Henry Hansman, Joseph Sax, Reza Dibadj, Richard Epstein, Richard Mulgan, Rolf Knipper, Stephanie Palmer, Teemu Ruskola, Thomas Grey, Malcolm Thorburn, Ugo Mattei, et al.

The regulatory legal basis of the dissertation research was the Constitution of the Russian Federation, federal laws, other federal legal acts related to the subject

of the research; decisions of the Constitutional Court of the Russian Federation, constitutional acts of foreign states, other court decisions.

The object of the dissertation research is social relations arising in the field of property administration of legal entities of public law with a context of constitutional regulation.

The subject of the dissertation research is the legal doctrine, constitutional principles and norms, first of all, of constitutional law, which determine the fundamentals for administration the property of legal entities of public law and the status of these entities.

The purpose of the dissertation research is a study of the nature of property of legal entities of public law with a constitutional regulation context and a design of the drafts of law in the relative social relations.

The objectives of the dissertation research.

1. Specification of the definitions in the field of property administration of legal entities of public law, which is used in the doctrine of constitutional law, as well as in court decisions and legislation of the Russian Federation.
2. Specification of the role of the Constitution of the Russian Federation in the development of the institution of public property.
3. Development of classification of legal entities of public law.
4. Disclosure of the constitutional meaning of legal entities of public law and their administration.
5. Comparison of different legal models of public property administration by legal entities of public law.
6. Identification of problems of exercising control over legal entities of public law in the context of public property administration.

Methodological background of the dissertation research. General scientific methods were used: analysis and synthesis, induction and deduction, comparison, generalization and classification to achieve the goals of study. Special legal methods were used: formal legal method, historical method (for understanding the institutional development of the field of property administration), comparative

law method (when studying the constitutional and legal regulation of public property in foreign countries).

The formal legal method was used to analyze Russian legislation, particularly, to establish the norms of the Constitution of the Russian Federation that regulate property issues or influence the development of the institution of public property, as well as the norms of laws and by-laws on this issue. Particularly, this method was used to analyze the legal status of such entities as state corporations, public companies, the management company of the Skolkovo innovation center, etc.

The historical method was used to show up the idea of public property and a legal entity of public law in Russian and global legal thought. Particularly, the subject of the study was analyzed from the point of Roman law, as well as in accordance with the pre-revolutionary and Soviet doctrinal ideas.

The comparative law method was used in studying the legal regulation of the institution of public property and a legal entity of public law in foreign countries. Normative regulation, decisions of constitutional and supreme courts, as well as doctrinal conceptualization of the understanding "public property", "property administration" and "legal entity of public law" were compared.

The scientific novelty of the dissertation research is associated with analyze of the constitutional basis of the administration of public law entities' property. The conceptual construct in the field of property administration of legal entities of public law has been clarified. The classification of legal entities of public law was developed.

A comprehensive study of the institution of a legal entity of public law and its property from the point of constitutional law has been exercised. The author's concept of ownership of legal entities of public law is formulated, and its practical significance for rule-making and law enforcement activities is substantiated. There was proposed a balance of powers of legislative and executive authorities in the Russian Federation in the field of influence on the administration of public property.

Based on the research, the author formulated the following **provisions, which are presented for defense.**

1. It is necessary to single out the features that make it possible to distinguish legal entities of public law from other legal entities. One of these signs is the purpose of the activity of the subject, and the other is the fact of compliance with the formal status of such a subject.

Considering the purpose of the activity of the subject and the fact of compliance with its formal status, the understanding "legal entity of public law" is singled out. This is a legal form created for participation in relevant public relations, the purpose of which is to satisfy the public interest, and which can be defined in the legislation as a "legal entity of public law". While such an interest must be officially recognized by the state and formalized in the relevant source of law. Moreover, the legal regulation may expressly state that a particular legal entity or the organizational and legal form of the legal entity, where it is created, is a legal entity of public law.

2. Public property is subject to constitutional regulation. Despite the fact that public property is not directly formulated in the Constitution of the Russian Federation, its content as a legal institution is disclosed primarily in the legal determinations of the Constitutional Court of the Russian Federation.

A distinctive feature of public property is that it can only be possessed by entities that carry on business in the public interests. The constitutionality of public property is predetermined by the constitutional powers of public authorities in the relevant field of public relations, as well as constitutional provisions on the social state (Part 1 of Article 7 of the Constitution of the Russian Federation), the federal state (Part 1 of Article 1 of the Constitution of the Russian Federation), etc.

The constitutional and legal content of public property provides the necessary material basis that is needed in democratic states to embody the will of citizens and respect for human rights. Thus, the relations in the sphere of public property are subject to constitutional regulation and constitutional guarantees.

3. Part 2 of Article 8 of the Constitution of the Russian Federation establishes that private, state, municipal and other forms of ownership are recognized and protected in the Russian Federation in the same way. Public property is not separately named in the text of the Constitution of the Russian Federation, but

is mentioned in the practice of the Constitutional Court of the Russian Federation. Thus, according to his legal position, public property is a generalized understanding for the definition of state and municipal property. The emergence of property rights for such persons as state corporations and public law companies requires the expansion of the subject composition of public property – the inclusion of legal entities of public law into it. The nature of state property, municipal property and property of legal entities of public law is universal. This property is used for public interest purposes.

4. Property administration of legal entities of public law should be exercised in the interests of the multinational people of the Russian Federation. Taking into account local, national and other peculiarities, the administration of public property can also be exercised in the interests of the people of the subject of the Russian Federation, the population of the municipal structure. This emerges from the provisions of Parts 1 and 2 of Article 3, Part 1 of Article 9, Articles 71-73, Part 1 of Article 132 of the Constitution of the Russian Federation.

Property administration of legal entities of public law can be exercised by: creating rules of conduct, implementing these rules in the social and economic sphere of public relations. The people, as the only source of power, should be able to influence the administration of the property of legal entities of public law, primarily through state authorities and local self-government authorities. Without taking into account this principle, the property of legal entities of public law loses its purpose.

5. According to paragraph "д" of Article 71 of the Constitution of the Russian Federation, the Russian Federation is in charge of federal state property and its administration. According to paragraph "р" of Article 72 of the Constitution of the Russian Federation, the delimitation of state property is in the joint jurisdiction of the Russian Federation and the constituent entities of the Russian Federation. With this consideration in mind, the powers to manage state property are exercised by state bodies. State property is used primarily to satisfy the public interest. At the same time, not in all cases the ownership of property is directly assigned to the state

and its bodies. Such property may be owned by legal entities of public law. Its administration in order to satisfy the public interest is achieved by establishing the legal regulation that would extend the requirements for the activities of legal entities of public law or establish a special legal regime of public property. As a rule, such a regime is expressed in significant restrictions on real rights to specific property. Property administration in this case is exercised through a restriction on the alienation of property without special permission from the state, the establishment of the intended purpose of property (restriction on the use of property for other purposes), the owner's reporting to the state for his activities, etc.

6. The author is proposing the classification of legal entities of public law. The main classification criterion is the form of the legal entity.

There are three types of legal entities of public law:

- 1) legal entities — public authorities (particularly, ministries, services, agencies, etc.);
- 2) legal entities with a special public legal form (such as state corporations, public legal companies);
- 3) legal entities that are incorporated in the form provided for civil legal relations (joint stock company, limited liability company, etc.), but act to satisfy the public interest.

The proposed classification makes it possible to understand which norms of law will prevail in regulating the legal status of a legal entity — public or private. Public law will primarily apply to legal relations involving these legal entities in cases where their activities will be exercised in order to satisfy the public interest.

7. The following legal models of public property administration through legal entities of public law have been identified:

- 1) creation of a subject in a special form of a legal entity that will have the right of ownership of the transferred property (state corporations and public law companies);
- 2) creation of a subject in a special form of a legal entity that will have real rights (use, disposal, etc.), other than the right of ownership, to the transferred property (the state company Avtodor and state unitary enterprises);
- 3) granting a special

status to a legal entity established in the form provided for civil legal relations (Development Fund of the Center for the Development and Commercialization of New Technologies); 4) conclusion of an agreement with a legal entity under which it will manage property in the public interest (public-private partnership agreement with RT-Invest Transport Systems LLC for the administration of the Platon system).

The main criterion for this classification is the completeness of property rights of a legal entity: the existence of a property right or separate property rights. Additional criteria are: the form in which the legal entity was created, and the way in which the intended purpose of public property is ensured.

8. A direct pattern has been established between the constitutional model of the functioning of public authority in the Russian Federation and the strengthening of the centralization of public property administration. The relatively centralized system of the federal structure of Russia, as well as a significant amount of powers of the President of the Russian Federation, resulted in a concentration of powers to manage public property.

With the help of the creation of such legal entities as state corporations, public companies, the management company of the Skolkovo innovation center, there was an expansion of the powers of the federal executive authorities in general and the President of the Russian Federation in particular. Thus, the state corporation Rosatom, the state corporation Roskosmos, the Skolkovo Foundation and some other legal entities of public law have significant public authority and are controlled primarily by the President of the Russian Federation through his participation in the formation of the management bodies of the mentioned legal entities.

To ensure a balance in the system of separation of powers, it is necessary to consolidate additional control powers of the Federal Assembly of the Russian Federation. Thus, the State Duma and the Federation Council should have the right to appoint their representatives to the supervisory boards of the state corporation Rosatom and the state corporation Roskosmos.

9. The following proposals are formulated to improve the constitutional and legal regulation of the institution of legal entities of public law.

The legal status of a state company is practically identical to that of a state corporation and a public company. In this regard, it is proposed to amend the Federal Law dd. January 12, 1996 No. 7-FZ "On Non-Profit Organizations", namely, to exclude Article 7.2, which establishes such a form of a non-profit organization as a state company. The Russian Highways State Company as the only legal entity existing in this legal form, should be reorganized into a public company.

The subject of regulation of the Order of the President of the Russian Federation on the establishment of a public law company and the subject of the Charter of a public law company, which is approved by the Government of the Russian Federation, are not sufficiently distinguished. In this regard, it is proposed to revise the Federal Law No. 236-FZ dated July 3, 2016 "On Public Law Companies in the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation" in terms of specifying the subject of regulation of these acts. Article 4 of the Federal Law "on Public-Law Companies in the Russian Federation and on Amending Certain Legislative of the Russian Federation" shall be extended with a purview on an open list of issues that shall be reflected in the Articles of Association of a public company.

The Federal Assembly of the Russian Federation does not have enough power to control such state corporations as Rosatom and Roskosmos. So, it is proposed to amend Federal Law dd. July 13, 2015 No. 215-FZ "On the State Corporation for Space Activities "Roscosmos"" and Federal Law dd. December 1, 2007 No. 317-FZ "On the State Atomic Energy Corporation (ROSATOM) in terms of securing the powers of the State Duma and the Federation Council to appoint its representatives to the supervisory boards of these state corporations. Part 2 of Article 23 of the Federal Law "On the State Atomic Energy Corporation (ROSATOM)" and Part 2 of Article 22 of the Federal Law "On the State Corporation for Space Activities "Roscosmos"" shall be reworded as follows: "The Supervisory Board of the Corporation consists of eleven members: three representative of the President of the Russian Federation, three representatives of the Government of the Russian Federation, four representatives of the Federal Assembly of the Russian Federation

(two from each chamber of the Federal Assembly), as well as the General Director of the Corporation, who is a member of the Supervisory Board of the Corporation.” It is advised that the provisions of other federal laws and by-laws be brought in line with the proposed norm.

Theoretical importance of the dissertation research is determined by the use of constitutional and legal regulation of the analysis of property and the system of power that influences the model of property administration. The results of the dissertation research enrich the theory and practice of constitutional and legal regulation, can form the basis of proposals for improving the institution of public-private partnership, the status of legal entities of public law, as well as its individual types, such as a state corporation and a public law company.

Practical importance of the dissertation research. The proposals and conclusions presented in the work can be used in law-making and law enforcement activities, as well as in the regulation of the corporate area of activity of these legal entities. The justification and conclusions set forth in the dissertation can be included in the training courses of legal, economic academic disciplines, the discipline "State and Municipal Administration", as well as other academic disciplines, which consider the issues of property administration.

The degree of reliability of the results of the dissertation research is conditioned upon to the use of both general scientific and special legal research methods. The conclusions of the defender of thesis are based on the analysis of foreign constitutional legislation and decisions of foreign judicial bodies, approaches that were used during the Soviet period, scientific sources, Russian legislation and decisions of the Constitutional Court of the Russian Federation, as well as the wide use of scientific literature in Russian and foreign languages.

The results of the research were evaluated in the course of presentations at the following conferences and forums:

- International conference "Europe – 2015. The Perestroika effect: Regimes and Risks of Polyphonic Knowledge", which took place on

May 15–16, 2015 at the European Humanities University (city of Vilnius, Lithuania);

- scientific and practical Russian-American Summer School on Constitutional Justice, which was arranged on June 21–26, 2016 (Moscow, Russia);
- International Conference "Modern Problems of Public Administration in Post-Soviet Eurasia", which was held on October 5-6, 2018 at Nazarbayev University (city of Astana, Kazakhstan);
- Forum of young lawmakers and experts "Development Strategy: A Challenge to the Young", which was held on December 13–15, 2018 at the Campus of the Sberbank Corporate University.

A separate research was conducted as part of the Endeavor Research Fellowship at the Melbourne Law School (University of Melbourne). Its results were presented at a meeting of the Centre for Comparative Constitutional Studies on May 29, 2018.

Certain issues of public property administration were discussed during research visits to the Federal Constitutional Court of Germany (March 2017), the Regional Parliament of Lombardy (October 2017), the Constitutional Council of France (May 2019), as well as to other state bodies of the Russian Federation, Australia, Germany, Italy and France.

The main results of the research are reflected in the summary and scientific publications of the author.

Thesis structure. The dissertation consists of an introduction, two chapters with seven paragraphs, a conclusion and a list of references and scientific literature.

THE MAIN CONTENT OF THE DISSERTATION

Chapter 1 "Theoretical fundamentals of property administration of legal entities of public law" aims to summarize the doctrinal approaches to understanding the institution of property, as well as the institution of a legal entity. This chapter describes such understandings as "legal entity of public law", "public property", "property administration", etc.

Para. 1.1 *"The term of legal entities of public law and their classification"* contains the analysis of the legal institution of a legal entity of public law, defined in doctrinal sources. Based on the research, the paragraph proposes the author's classification of legal entities of public law. The understanding of "legal entity of public law" is singled out through a retrospective analysis of such terms as "person" and "legal entity". Attention is drawn to the importance of taking into account the historical development of the institution of a legal entity of public law in the perception of the features of this institution in different countries. This confirms the universality of this institution. The ideas and prototypes of legal entities of public law existed in ancient Rome; in the Russian legal tradition, the concepts of a legal entity of public law are finally formalized by the end of the 19th - beginning of the 20th century.

The paragraph highlights in detail the various theories of legal entities, and also discusses the features of the functional purpose of legal entities in various societies. Taking into account the classification of T. Ruskola on the features of regulation of political, economic and intimate spheres, depending on the basic social approaches, an analysis was made of the functional purpose of the institution of a legal entity. Based on this comparative analysis, a conclusion was made about the role of the institution of a legal entity, depending on the society, where such an institution is applied.

Also, the criteria that make it possible to isolate legal entities – legal entities of public law from the community is appraised. It is observed that there is criticism of the concept of a legal entity of public law by Russian civilists. Meanwhile, the paragraph substantiates the need for such a legal institution from the point of constitutional law. For a more intimate understanding of the development prospects of the idea of legal entities of public law in the Russian Federation, an summary comparative analysis of the regulation of the institution of legal entities of public law in foreign countries is carried out.

In paragraph 1.2 *"Property as a constitutional and intersectoral category"* discloses the prerequisites for the emergence of the institution of property, the

significance of its constitutional regulation. A critical analysis of the institution of property as a legal, economic and psychological category is carried out. The need to consider property as a certain set of property rights of a person is confirmed. The arguments of researchers who critically comprehend the institution of property rights are analyzed and propose to refuse from it in modern regulation. As a result of the analysis of this criticism, a conclusion is made about the expediency of preserving the institution of property in constitutional law to regulate modern social relations.

The paragraph emphasizes the importance of historical and cultural aspects in formation of the public understanding of property. The constitutional law within the legal system should serve as a guide in determining such historical and cultural aspects. A comparative analysis of the regulation of the institution of property rights and public property rights in countries such as France, Great Britain, Bulgaria, etc. is carried out.

The existing classifications of types of property are analyzed. The classification of property according to three forms, which are described in the Constitution of the Russian Federation (state, municipal and private), is subjected to critical analysis. Based on a systematic review of constitutional regulation, it is concluded that there are more forms of ownership in the Russian Federation, for example, such a form as "public property" exists *de facto*, and the subject that acts as the owner can be not only the state and the municipality, but also a legal entity of public law. The need of developing the doctrine of public property in the constitutional law of the Russian Federation is justified, since the current doctrine does not solve the existing problems of legal regulation, and also does not fully correspond to the nature of the implementation of public functions in the modern state.

The distinctive features of public property are singled out, as well as the features of the property of legal entities of public law are determined. The paragraph describes two main approaches to the definition of public property: the primacy of the intended purpose of property and the primacy of the form of ownership. It is

observed that the property of legal entities of public law, the property of the state and the property of municipalities are the types of public property.

In paragraph 1.3 *“Property administration as a function of public authorities: correlation with the related concepts”*, a comparative description of synonymous terms that are used in public administration is carried out.

The phenomenon of power is considered as a required condition for the management activities of the state, including property administration. The authoritative powers of state bodies and the rights of the owner to specific property are correlated. It is summarized that property administration is derived from the functions of the state (primarily the economic function).

It is observed that property administration is a multi-level system, which is characterized by the adoption of generally binding rules of conduct, the creation of mechanisms for the implementation of these rules, as well as the introduction of performance evaluation criteria. The management theories of R. Coase on agency costs and M. Olson on the effectiveness of small groups were analyzed in the shadow of constitutional and legal regulation. The constitutional and legal status of persons who are involved in the management of public property is a determinant for the adoption of generally binding rules and their implementation. At the same time, the constitutional norms-principles allowing to maintain a balance of private and public interests, a balance of achieving economic and other goals can directly effect management decisions in the field of property. The priority in the application of such norms-principles is attributed to the Constitutional Court of the Russian Federation.

In Chapter 2 "Legal regulation of property administration of legal entities of public law", the author of dissertation aims to highlight the problems of legal regulation of property of legal entities of public law, establish the role and importance of constitutional law in the management of such property, and also propose the ways to solve the identified problems.

Paragraph 2.1 *"The role of the Constitution in the legal regulation of property issues of legal entities of public law"* explains the features of the constitutional regulation of property, considering its historical development. For a better visual

understanding of the variability of the constitutional regulation of property, the tools of comparative studies are used. The distinctive features of the Russian constitutional regulation of property are brought out, foreign court decisions that influenced the development of the doctrine of public property are analysed. Separately, the development of the interaction of civil and constitutional law in the issues of property regulation is analyzed. Based on classification of L. Barroso there was a conclusion that the Russian Federation is going through the stage of constitutionalization of civil law. The systemic problems that slow down this process are pointed out. Particularly, the limitation of the Russian courts in the direct use of the norms of the Constitution of the Russian Federation is pointed out. It was observed that the constitutional regulation of property is directly related to the constitutional paradigm, which is described in the text of the Constitution of the Russian Federation. The attempts to form a constitutional regulation of property that ideologically or politically do not coincide with the constitutional paradigm will violate the systemic nature of constitutional law.

Doubts are expressed about the need for detailed regulation of property issues in the text of the Constitution of the Russian Federation. The texts of the constitutions of different states are comparatively analyzed; some of them contain detailed regulation of property issues, while others do not contain it at all. It is noted that the briefness of the provisions of the Constitution of the Russian Federation on property is partially compensated by the decisions of the Constitutional Court of the Russian Federation. It is being noted in the paragraph that the management of the property of legal entities of public law is considerably predetermined by the model of formation of public authority, as well as the definition of the powers of specific public authorities.

The nature of the emergence of the right of ownership of legal entities of public law is analyzed in paragraph 2.2 *“Constitutional and legal and other grounds for the emergence of the right of ownership of legal entities of public law and the termination of this right”*. The main concepts of regulation of property rights are considered: as an absolute right and a simple set of certain rights in rem. A

distinction is made between primary and secondary methods of acquiring property rights in the shadow of their application to the property of legal entities of public law. It is concluded that the emergence of property rights in legal entities of public law is influenced by the norms of both civil and administrative law.

It is stated that the current normative legal regulation is not ready for the comprehensive incorporation of the institution of a legal entity of public law, as well as for the allocation of property of such persons. The statement is made that it is constitutional law that should be the main guideline in the formation of the legal institution of a legal entity of public law and its property.

The paragraph considers specific examples of the emergence of property rights in legal entities of public law. Particularly, the author analyzes the emergence of property rights in state corporations, the Skolkovo Foundation, and public companies. Separately, constitutional novels are considered in terms of the emergence of property rights in the federal territory "Sirius". The lack of systematic approach in the legal regulation of the property rights of legal entities of public law, as well as many topical legal problems that are associated with the transfer of property rights to legal entities of public law has been found. Particularly, there is no special procedure for the return of property that the state transferred to the Skolkovo Foundation free of cost. The constitutional importance of the existence of such procedures and the inadmissibility of hidden privatization of state property are pointed out.

In paragraph 2.3 *""Legal models of public property administration"* the goal was set – to identify and classify the legal models of public property administration available in Russian legislation with the help of legal entities of public law. It was found that the legal entity of public law is used as a tool for decentralization of administration (including property administration). Such first manifestations could be seen in ancient Rome through the example of municipiums.

It is found that a legal entity of public law must perform the public functions in line with the functions specified by the Constitution of the Russian Federation. For this purpose the role of the subject of constitutional law, which is the source of

power in the Russian Federation (the people), is analyzed. The organizational necessity for delegating the authority from the people's part to the individuals (small groups) for more efficient implementation of public functions has been established. This thesis leads to the conclusion that the legal entities of public law can perform the functions of managing public property more efficiently than the population itself.

In the paragraph, four legal models for administration public property with the help of legal entities of public law are identified and considered with specific examples: 1) the creation of a subject in a special form of a legal entity that will have the right of ownership of the transferred property; 2) the creation of a subject in a special form of a legal entity, which will have property rights that are different from the ownership of the transferred property; 3) granting a special status to a legal entity established in the form provided for civil legal relations; 4) conclusion of an agreement with a legal entity under which it will manage property in the public interest.

The problems in the administration of the property of legal entities of public law, which have a constitutional nature, were identified. Particularly, the existing legislative strengthening of the competences of the President of the Russian Federation and the Government of the Russian Federation in relation to public companies may lead to a conflict between these two authorities.

Special attention is paid to constitutional restrictions related to the transfer of public functions to legal entities. Based on the example of the concession agreement on the Platon system, recommendations were given for the preparation of regulatory environment for such transfer of powers. It has been found that it is inadmissible to transfer authority to issue statutory instruments to a legal entity, which was incorporated in the form traditional for civil law. At the same time, attention is drawn to the need for more detailed regulation of the status of legal entities that, subject to the contract, manage property in the public interest. Particularly, there has been established the need to resolve issues of the specific character of the bankruptcy of such legal entities, the return of property administration functions to the state, etc.

Paragraph 2.4 “*Control over the activities of legal entities of public law by public authorities*” aims to reveal the specific nature of control that is exercised over the activities of legal entities of public law in the shadow of exercising constitutional powers by public authorities. The control functions of the Federal Assembly of the Russian Federation, the Government of the Russian Federation, the President of the Russian Federation, as well as the Constitutional Court of the Russian Federation have been analyzed.

The paragraph observes that with the help of the creation of legal entities of public law, the imbalance in the system of controls and balances takes place. For example, the creation of such state corporations as Rosatom and Roskosmos made it possible to broaden the powers of the President of the Russian Federation. Such decisions are a continuation of the general constitutional approach to broadening the powers of the President of the Russian Federation and are predetermined by the special role of the President of the Russian Federation laid down in the text of the Constitution of the Russian Federation.

Based on the constitutional model, which is described in the Constitution of the Russian Federation, it is summarized that it is necessary to expand the powers of the legislative branch of government. Particularly, the State Duma and the Federation Council must have the authority to appoint their representatives to the collegiate management bodies of legal entities under public law that manage significant portions of public property. The President of the Russian Federation must also be excluded from the procedure of forming the membership of the Accounts Chamber of the Russian Federation, thereby making this body a tool of parliamentary control.

In the Conclusion, the defender of thesis formulates the conceptual and theoretical conclusions of the study and offers practice-oriented recommendations for the further development of legislation.

MAIN PUBLICATIONS ON THE RESEARCH TOPIC

*Publications in journals indexed by international academic citation databases
(list C):*

Nizov V. Public Property in Australia and Russia : The Concept and the Role of the Constitution / V. Nizov // Russian Law Journal. 2019. № 7(2). P. 5–52.

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