

УДК 34

DOI 10.21661/r-114075

*Е.А. Бурибаев, Ж.А. Хамзина***УПРАВЛЕНИЕ ГОСУДАРСТВЕННОЙ СОБСТВЕННОСТЬЮ**

Аннотация: данная статья определяет механизм управления государственной собственностью, раскрывает способ образования и основные виды законодательных норм государственной собственности как объекта управления, рассматривает правовые свойства понятия «государственная собственность», а также сущность и значимость управления государственными активами, подтверждает систематичность управления государственной собственностью, предоставляет анализ правового режима механизма администрации в области применения прав государственной собственности, исследует проблему повышения эффективности правовой поддержки динамики административных отношений, воспринимая государственные активы как объект.

Ключевые слова: государственная собственность, управление, право.

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Abstract: this article determines the mechanism state property management, presents a study of formation and the main trends of legislative regulation of state property as an object of management, examines the legal characteristics of the phenomenon of state property, as well as the nature and significance of the state assets management, substantiates the systemic nature of state property management, presents an analysis of the legal framework of the mechanism of administration in the sphere of exercising state property right, investigates the problem of increasing the efficiency of legal support of the dynamics of administrative relations, the latter having state assets as their object.

Keywords: state property, management, right.

Methods/Statistical analysis: The principal methods employed in the study of the problem are dialectical, logical legal, social legal, comparative legal, and systemic-structural, which ensured the complex consideration of the problems of managing state property.

Findings: The investigation led to formulation the following conclusions and recommendations: the main parameters of the legal mechanism of performing management of state property are identified; the principal trends in the evolution of legislative support of state property management are detected; the system of agencies engaged in state property management is defined, the current trends of its functioning are detected. The role of local authorities in the mechanism of state property management is investigated. The corporate state property management system is revealed, its subjects are defined, their organizational and legal forms of activities are explored, the principles of their activities in state property management are summarized. The agencies, that perform administrative activities related to management of state property are systematized, by the constitutional foundations of their interaction are laid forth. The problems of legal coverage of the effective management of state assets are detected, recommendations for law-making in this area are provided.

Application/Improvements: The identified main parameters of the legal mechanism of ensuring state property management are to enhance the legal coverage of the effective management in the lawmaking process in this area.

Introduction. Among the factors that determine the relevance of this work, and thus its timeliness and high topicality, there are: the dramatic changes of the state property management system that have taken place in recent years, significant gaps in performance of control and supervisory functions in the field of regulating the state property management activities, inefficient administrating the management process in the area [10]. Whereas non-state owners tend to focus on market orientation and performance of the company, state shareholders put political objectives above profit maximization. Researches in the area evidence that the state-controlled companies actually show a lower

degree of market orientation than private organizations, market orientation of a company is relatively high when the property is in the hands of non-state shareholders [22].

In addition, when choosing the direction of scientific analysis, the authors were considering the following shortcomings of the state property management mechanism in Kazakhstan: improper legal groundwork for the existence and actualization of public relations, which have state property for its object; the limitations of the theoretical-methodological and conceptual justification of the essence, content, framework of the state property management, with the aid of corporate players' possibilities in particular; fragmentation of government management levels and branches, lack of clearly defined objectives of exercising the state property right; poor performance of state property management evidenced by monitoring; insufficient transparency in management procedures.

Since the 1980s, the number of quasi-governmental organizations has increased dramatically in most West European countries, which evidenced the obvious preference of politicians for the development of neo-institutional economics [23; 21]. In Kazakhstan, the intensification of the process started only in 2005–2007, when the foundations were laid for the modern management of state property through quasi-state organizations.

Governments around the world hold a wide range of property, from large areas of land for public housing projects to water supply systems and roads. As a rule, state property management is highly fragmented; the responsibility for each asset type is placed with a certain public authority [9]. Almost in all countries, the various property classes are managed in accordance with specific internal rules, which often follow the traditional practices [5]. However, researchers hold that current requirements for state assets management standards require the use of standards of cost-effectiveness and of efficient organizational management with management quality assessment [12; 19]. On the current stage of development, the legislation does not properly cover the peculiarities of corporate governance as a means of managing state assets [3; 6].

The bulk of state property in the current conditions is constituted by state-owned shares and state ownership interest in business partnerships [1]. Redefining the role of the state as a regulator and a rightful participant of market relations determines the need to

raise the efficiency of state property management, further development of the national companies, national holdings and other new corporate government agencies engaged in public administration of the management of state property [11; 18].

A progress in the development of complex property rights can be observed, as a rule, as a market reaction to the demand of legal regulation of property rights [20; 24]. A new area of legal and organizational support of economic reforms is the realization of the law-making process considering the regulation of activities of corporate structures (specially established companies) that perform management of state property.

The aforesaid was the basis for determining the concept of our research, its nature, specificity, structure and methods of research.

The theoretical significance of the work lies in performing a comprehensive ordering of the existing and elaboration of new scientific developments in the field of legal groundwork for state property management, the status of entities that control the property of the state. The work may serve a basis for further investigation into the legal aspects of state property management.

Methods and materials. The normative legal basis of the research was the legal framework the Republic of Kazakhstan and foreign countries. In the analysis of the legislation on specific issues of players' status performing management of state property in the Republic of Kazakhstan, a relevant comparison with the legislative provisions of several foreign countries was made, namely, of the countries of the European Union, China, and the countries of the Eurasian Economic Union. The practical basis of the research was provided by the practice of application by the entities managing state property and other bodies engaged in the administration in the sphere, of the current legislation in the field of property management. Information from statistic agencies, data on financial performance of state property management and judicial rulings were also involved.

The methodological basis of the research was constituted by dialectical, logical legal, social legal, comparative legal, systemic-structural methods and some others. While studying the trends in the development of the state property management doctrine and its legislative regulation, the authors used the historical legal method.

In the course of the study, applied were provisions of the doctrinal philosophy, general theory of law, constitutional law, administrative law, civil law. The statistic data on the activities of government bodies and corporate entities that manage state property were studied.

Results. Modern financial and economic conditions bring to the limelight the issues of legal coverage of state property management, which is explained by a significant change in its role and importance for the national economic system. The public sector of the economy is essential for maintaining the function serving by the state, as well as for further effective development of society as a whole. The future efficiency of addressing the state property management issues depends primarily on the adoption of new and amending and supplemented the existing legislative (and not subordinate) regulations, as well as with the further settlement of the question of the correlation of normative legal acts of equal and different legal validity that regulate relations in the field of managing state property by means of civil legal, and administrative legal methods [13; 14].

It was found out that one of the newest areas of legal and organizational groundwork for economic reforms is realization of the law-making process regarding the regulation of activities of corporate entities engaged in the management of state assets.

State property is managed by a system of state agencies belonging to the executive branch, and the work is headed by the President of the economy of Kazakhstan, according to the special importance of the control object for the state economy. Direct management of the state property is performed at the present stage by the Government of Kazakhstan, with the ever more conspicuous trend of delegating powers of the central executive body to the National Welfare Fund «Samruk-Kazyna». Involved in state property management are also branch ministries – through the institution of state representatives in the of management bodies of legal entities with state participation [4; 7]. The fund activities should be aimed at the formation of the welfare state. «Building a welfare state aimed at ensuring respect for social rights and heightening the role assumed by the state in promoting economic growth and international competitiveness» [8; 15–17].

The constitutional powers of the Government of the Republic of Kazakhstan in organization of state property management are not limited by the scope of exercising by

an owner of his powers. Organization of property management is only a component of the management process, the essence of which is to coordinate the actions of the elements of the system, to achieve the mutual correspondence in the functioning of its parts through the exercise of property rights. As far as «the property of management appears in various forms» [2], managing state property should be viewed as a more complex process and a system that is manifested through a variety of forms: law-making, law enforcement, control, supervision, monitoring, administration, etc., where the exercising of the state-owner of his rights is a necessary, important, but not the sole element.

The lack of control and supervisory powers of maslikhats in the sphere of managing public municipal property, one of the most important areas that largely influences the financial health of the relevant territory, runs counter to the very essence of the maslikhats, as is defined in the Basic Law that maslikhats express the will of the population of respective administrative-territorial units and, with proper consideration given to the national interests, determine the measures needed for its realization, and control their implementation.

Several basic characteristics of entities of state property corporate governance can be identified. Firstly, the formation of state-owned assets assigned to a manager – legal entity with state participation, is carried out through the transfer of legal entities previously established or to be established in the future as a trade-in for its share capital. Secondly, the activities of these companies are accountable to the state represented by the authorized bodies. In the third place, performing various operations with property is at least reported to the public authority or granted its consent or permission. Fourth, the state authorities monitor the consistency of actions of business entities that manage state assets.

The performed analysis allowed us to identify the main problems that are of a systemic nature and make the major factors inhibiting the goal achievement, that is, increasing the efficiency of legal groundwork for the activities of the companies that manage state assets:

- poor correspondence of the current state of the legislation regulating the activities of companies managing assets to the level of necessary and sufficient legal coverage of principal areas of the proclaimed and implemented state policy in the field;

– a significant number of shortcomings in the legal regulation of administrative relations, which have state-owned assets as their object, lack of effective mechanisms of public control over the activities of the companies resulting in fostering opportunities for corruption;

– lack of proper systematization and unification of the legislation in the sphere of activities of managing companies, which makes it impossible to define the general principles of their activities, the basics of their legal status, rights and obligations, general rules of behavior in management relations.

Discussion. The subject of inquiry is legal relations in the sphere of state property functioning. The research process was carried out through a series of stages. In the first stage, the legal characteristics of the category of «public property» have been identified, a study of the legal content of the term «public assets» as the most important object of right of state ownership was carried out. Further on, we identified the basic parameters of the legal coverage of state property management in the Republic of Kazakhstan; we performed an analysis of the provisions of the Constitution and permissive rules of the Republic of Kazakhstan that define realization of relations in state property management; we studied the constitutional powers of the Government of the Republic of Kazakhstan regarding state property management; we outlined the system of state property management. An ordering of principles, techniques and procedures of local governance of state property management was performed; the system of corporate governance of state property was explored; an analysis of the status of entities performing corporate governance was carried out. An analysis of the system for administering the state property management activities was attempted; the problems of legal groundwork for enhancement the efficiency of companies managing state assets were examined.

As a result, a complex of problematic issues of defining the mechanism of legal coverage of state property management was considered, identifying the legal status of the entities responsible for management of state property in the Republic of Kazakhstan was attempted, a theoretical interpretation of the methods of public administration in the sphere of state property management was performed.

The specificities were established that make up the legal construction of the concept of «state property», the correlation between the concepts of «state assets» and related legal categories was analyzed, a particular value attached to state assets in the system of objects of state ownership right is observed.

The main parameters of the legal mechanism of ensuring state property management are detected; the principal tendencies of the evolution of legislative coverage of state property management are identified.

The content of the constitutional powers of the Government of the Republic of Kazakhstan regarding state property management is revealed.

The system of state agencies managing state property is represented, the current trends of its modern functioning are detected.

The role of local authorities in the mechanism of state property management is considered.

The corporate system of state property management is revealed, its acting entities are identified, their organizational and legal forms of activities are studied, the principles of their activities relating to state property management are summarized.

The agencies administering state property management are systematized, the constitutional foundations of their interaction are defined.

The problems of legal coverage of the effective management of state assets are exposed, recommendations for law-making in this area are given.

Conclusions. During the investigation, we were consistently retracing the tendency of development of legal groundwork for state property management in the Republic of Kazakhstan, aimed at rendering our state an effective owner.

The changes crisis nature taking place on the present stage of development of the world economic system make the governments of almost all countries of the world review the state policy in the field of economic relations, and as one of the most important and significant areas of consideration are viewed the increasing state involvement in economic relations, the introduction of administrative methods of management of the entire economy, and not only of the public sector.

The current state of the economy and new global challenges call forth more active state involvement in economic processes, strengthening of the state management of the economy, with the aid of non-standard methods in some cases. In order to control the public funds allotted for maintaining the financial well-being of the strategic companies, states are ever more often wending the way of acquisition of their ownership through the acquisition of share ownership in authorized capital and shareholdings. State control of the economy is becoming a major stabilizing means of regulating economic relations. The current situation does not only suggest strengthening of the role of government in the economy, but is even more insisting in enhancing the efficiency of state management of the economy assisted by the optimal combination of the controlling influence of the state and democratic principles of economic activity.

State property management is currently being performed through the activities of state agencies and specially created corporate structures. The state becomes an active participant of economic processes and ensures state property management. State property management allows the economy to reach and use concentration of resources inaccessible to the private sector, necessary for overcoming the negative effects of the global economic crisis in the Republic of Kazakhstan and implementing, under these difficult economic conditions, the major social, environmental, scientific and technical programmes.

Multibranch assignment of administering functions in the sphere of state property management activities impedes the development of a uniform policy, unified approach to strategic planning and exercising of state property right because of discordance of the corporate goals pursued by public authorities in their activities.

The study revealed the shortcomings of the existing system of administration of the companies activity that are involved in state assets management, which boil down to a lack of a uniform policy by central and local executive bodies, of a unified approach in the management of state-owned shares (shares of ownership in authorized capital) of legal entities with state participation because of diverging corporate interests.

The process of formation of the state as an effective owner under market conditions is not yet completed. The state is looking for new ways and methods of influence on economic relations responsible for the construction in the Republic of Kazakhstan of a

social, legal state able to face the world financial and economic challenges. Exercising the state property right makes it possible to foster the necessary and proper behavior of managing entities. Exercising property right together with other ways of state authority influence takes state property management process to the next level, where everything is subordinated to the interests of the public will.

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