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UNITY OF PURPOSES AS A BASIS FOR THE FORMATION OF THE SYSTEM OF OPERATIVE MANAGEMENT CONTRACTS

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Introduction: *the article is devoted to complex scientific and practical study of the unity of purposes, which is the basis for formation of the operative management contracts system. The system of operative management civil contracts is considered with regard to its multi-level structure, division into subsystems, as well as to the laws of goal formation in the legal system as a whole.* ***Purpose:*** *to determine the purpose of operative management, as this will allow one to understand the economic and legal result of providing services, to model a special universal design of the contract on delegation of authority, reflecting its essence.* ***Methods:*** *empirical methods of comparison, description, interpretation; theoretical methods of formal and dialectic logic; specific scientific methods (the legal dogmatic method and the method of legal norms interpretation).* ***Results:*** *it is proposed to understand the goal of operative management focused on economic results as timely provided values of parameters for the management object during a certain time, providing those values are agreed upon the needs and interests of the founders. The attention is drawn to the fact that the contract on delegation of authority and the contract of operative management are two separate contracts: each has its own subject matter and can have different contracting parties.* ***Conclusions:*** *the operative management contracts system is tailored to regulate public relations in providing services of timely implementation of the operator's authority given to them by the principal(s) in order to ensure the given values of parameters of the management object during a certain time.*

Keywords: operative management; operative management contract; management; delegation of authority contract; system; system of contracts; unity of purposes; goal orientation

Information in Russian

ЦЕЛЕВАЯ ОБЩНОСТЬ КАК ОСНОВА ПОСТРОЕНИЯ СИСТЕМЫ ДОГОВОРОВ ОПЕРАТИВНОГО УПРАВЛЕНИЯ

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Введение: *статья посвящена комплексному научно-практическому исследованию целевой общности, являющейся основой построения системы договоров оперативного управления. При этом система гражданско-правовых договоров оперативного управления рассмотрена с учетом многоуровневости данной системы, разделения ее на подсистемы, а также с учетом закономерностей целеобразования, присущих правовой системе в целом.* ***Цель:*** *определить, в чем заключается цель оперативного управления, так как это позволит уяснить, что является экономическим и юридическим результатом оказания услуг; смоделировать универсальную специальную конструкцию договора о передаче полномочий, отражающую его сущность.* ***Методы:*** *эмпирические методы сравнения, описания, интерпретации; теоретические методы формальной и диалектической логики. Применялись частнонаучные методы: юридико-догматический и метод толкования правовых норм.* ***Результаты:*** *под целью оперативного управления, ориентированной на экономический результат, предложено понимать своевременное обеспечение согласованных с учетом потребностей и интересов учредителей управления значений параметров объекта управления в течение определенного момента времени. Также обращается внимание на то, что договор о передаче полномочий и договор оперативного управления являются различными договорами: у каждого из них свой предмет и может быть неодинаковый субъектный состав.* ***Выводы:*** *система договоров оперативного управления имеет целевую направленность на регулирование общественных отношений по оказанию услуг своевременного осуществления оператором властных полномочий (правомочий), переданных ему принципалом (ами), для обеспечения заданных значений параметров объекта управления в течение определенного момента времени.*

Ключевые слова: договор оперативного управления; оперативное управление; договор о передаче полномочий; управление; система; система договоров; целевая общность; целевая направленность

Introduction

It should be noted that in spite of commonality of the civil law contracts of operational management they are varied in form. Given circumstance supposes not only theirs union but also differentiation that implies on multilevel of that system. Dividing system on subsystems, when the research of the system can be carried on the basis of research of the subsystems including their impact on each other and interact, is using the decomposition method (diakoptics) [12, p. 56]. The concept "subsystem" means that there is allocated relatively independent part of the system that have system attributes and also have subgoal for the reaching those the subsystem orients. [3, p. 25] Each subsystem can be examined as independent system. The legal unit can be as a part or a subsystem of other more volume system just as in the borders of its organic unit can disjoin on internal subsystems (or other level system) [7, p. 235]. Consider from these point of the civil law contracts of operational management system.

Main content

First off, all turn attention to the regularity of the goal formation (regularity of goals origin and formulation, regularity of the goals structure formation). There are no legal systems without goals. "The goal as a philosophic category is on the basis of legal phenomenon and processes researches, determines lawmaking, law itself, legislation and it's realization, improvement and development of law system" [7, p. 270]. It is the subject to contracts of operational management system, which in that case are instruments to reach defined goals and interests of the participants of treaty relations. The interest determines the goal area, considers B. I. Puginsky. It can be understood as a form of necessity displaying, where commitment to satisfaction is provided

through understanding and definition of goals activity [11, p. 73].

Regularity of the goal formation cannot be separate from the other regularities of development and system operation. Particularly this includes regularity of emergence, which always causes for construction of goals tree. Given regularity appears when getting into the system element loses a part of its attributes and is forced to obey the system goals, at that time when system is not reduced to the sum of attributes of included elements and obtains functions which each particular element is not able to realize. The emergence (integrality) attribute of system allows showing unobvious goals. V. N. Volkova notes that "if goal is not explicit and displayed entity are observed integral attributes, it is possible to determine goal and expression that connects goal with instruments of reaching (goal function), and framework criterion, by studying appearance causes of regularity of the integrality". [4, p. 60].

Regularity of the goal formation is interdependent with the regularity of hierarchic regulating system. The one level goals are linked to the other level goals such way that goals at higher level of system hierarchy are changing, goals at the low levels are changing too.

D. A. Kerimov was considering that "if it is necessary the goal realizes to a certain material or mental notable form which one is a result of a necessity realization in the end" [7, p. 272]. It is necessary to clear up a question what is the necessity of subjects at a law civil contract for a giving the goal definition of interest system. From our point of view the necessity consists in need for legal regulation of social relations that possessed certain specificity. Meanwhile it is worth noting that the law civil contracts have not goals. The goal is a subjective category that can only be subjects and every angle can have their own goal [8, p. 42]. The contract as an agreement is a result of adjustment for counteractant cross purposes and characterized by goal focus. According to this in the construction of tree goal we will keep in mind that the question is about goal focus levels of the law civil contracts system. The word "goal" instead of the word "goal focus" will be used only for observation terminology of system theory.

Thus the main goal of the contracts of operational management system is law civil regulation of the treaty relations for rendering of services operational management. However it is easy way to understand a goal because it does not provide insight into rendering of services and reflect economic and juridical results fully. Accordingly we will stop on an informative aspect of given goal in further detail. For this we should understand what the goal of operational management is. Being that we can understand what the economic results of rendering services is. Furthermore it is necessary to elicit juridical result to which the goal of contracts of operational management system is directed to.

It is necessary to take into account in solving performance tasks that contracts system of operational management is open and connected in structure and functionality with both high level systems and one level systems. The sphere of bankruptcy is the one of sphere of operational management that demanding extra contractual law civil regulation. The system of civil law on insolvency (bankruptcy) is the one level system in relation to the system of operational management contracts. The civil law regulation of social relation on the operational management also finds reflection in property law specifically in civil law institution of operational management [19]. For this reason goals of operational management contracts system must be relevant to the goals of other institutions such as institution of operational management in property law and include juridical result on which they are directed to.

We need to note that the control goal is a component part of a control process if we are saying about economic result [15, p. 16]. "We can say that the goal into control is represented as ideal image (logical model) of desirable state of subject or control object that framed on the basis of knowledge and list of objective regularities and organizational forms, necessities and interests" [1, p. 164]. Every state is characterized by parameter value in a certain time moment. Parameter set can be different relating to the varied objects of operational management. As for example L. Yu. Mikheeva reasonably notes that trust administration of property can be aimed not only deriving revenue from that property but increasing property or simp-

ly keeping it in proper condition [9, p. 12]. Consequently parameters of such management can be amount of revenue earned, property quantity and quality. Given conclusion is just for every contract of operational res management.

The amount of revenue earned acts as a main parameter for the contracts of intellectual rights management. The main management parameters that characterized the state of management object such as activity are connecting to the existence. For example such parameters like time and delivery speed to point of destination are typical for transport activity. The goal of the operational management of transport activity is assurance for continuity, delivery timeliness of cargo, passengers, luggage or means of transport to the point of destination and also coordination of action of transportation process participants.

Take all these points together we can formulate the goal of operational management that oriented on economic result. Under the goal we understand *timeliness assurance of coordinated with the list of necessities and interests of the founder value parameters of object management during the certain time moment*. We need to pay particular attention to that one of the framework moments of advancing goals process by subject management is property knowledge and interests those in which interest management is happened (management objectivization) [1, p. 166].

The management activity goals must not be a phantom of the unreal imagination of the transport operator as a management subject. His interests and necessities should be recognized secondary in relation to the interests of those transportation process participants which behavior he controls and also in relation to the interest and necessities of those which are consumers of transport services (shippers, receivers, passengers, owners of tows). Orientation to the consumer interests, consideration and interest defense of the contract weak party, aligning legal position of participants of legal relations, are usual for the civil law regulation. According to this the conclusion about priority on interests of contractors of management subject looks natural.

The goal focus of civil law management must be oriented not only to the economic but to the juridical result. The right of operational management is represented as complex of law possibilities. The legal nature of these possibilities is equal in the system of civil law contracts of operational management and others civil law institutions that regulated operational management relations because of these goal solidarity and consistency. According to this it is admissible to use scientific service hours and civilian conclusions in researches system of contracts operational management relating to insolvency (bankruptcy) and law of property of operational management. We will keep this object in mind in solving the task about defining juridical results on which is oriented the goals of operational management contracts.

Whereas all contracts of operational management have common focus we need to pay attention on Yu. V. Romantsa confirmation about contract of confidential management. Author notes that standards of given contract reflect focus on rendering services for administration of property. Further he accents the focus of contract of confidential management on rendering services for *effectuation power of owner* in relation to the contractual property within a given time according to the tenor of deriving profit [13]. To our opinion the fact of lodgment authorities to the management subject is juridical condition of rendering services on the operational management and as a result management subject has a juristic opportunity to make management action. Such situation is indicative for the contracts of operational management property or intellectual rights. In that cases when operational action management regulates by contracts juridical characteristic of civil law contracts focus will emerge not in transfer authorities to the subject management but in lodgment.

It should be noted that there are two mutually exclusive conclusions about legal nature of authority in the science of civil law. Some scientists hold to the opinion that it represents subjective right (O. A. Krasavchikov) [17, p. 214], and others are strongly recommend against (see [10, p. 76; 16, p. 34; 18, p. 107]). Yu. S. Kharitonova suggests considering authority as secondary right [18, p. 154]. We should agree with this. Secondary right it is a possibility to modify subjective right at a concrete

legal relations and legal relation itself. It is the difference to the civil legal capacity which represents more abstract possibilities of acquisition, effectuation, enjoyment and regulation of rights. The object of secondary right is always "singular concrete subjective right" [18, p. 154]. So here it is that secondary right cannot be in isolation from subjective civil law. Given decision is important for reflection of right specificity of operational management in civil law. V. P. Yakovlev attends to that peculiarity according to the right possibilities that innate standards of interests in property. Author notes: "The right of operational management is not native, it is aligning as derivative from property right and by its content, by enclosed right possibilities it is much tight then property right" [19]. Consequently ***operator credential (authority) as a subject management is always derived from legal capacity of a face who delegating responsibility (principal).***

Within this framework it should be noted that principal is a full-fledged participant of given process along with the subject management. It appears in civil law nature of operator authoritative powers. V. P. Yakovlev notes: "The further difference works out in that if property right is administered subject to "own power", "at its own convenience" then *the right of operational management is administrated not only by power of its subject but joint owner power* (emphasis added. – *A. A.*). Clothed facilities the right of operational property management the government as a joint owner determines frames of legal freedom by statue to the property management that facility has in place" [19]. Same confirmation is projecting easily to the effectuation scale of the right of operational management based on civil law contract. The face that delegating responsibility under contract is involved in restricting frames of operator legal freedom on operational management in agreeing on contractual stipulation. Consequently the conclusion is justified that ***in a civil law the limits of subject authoritative powers of operational management are always derived from face intention delegated responsibility.***

The result of analysis body of laws about concerning insolvency (bankruptcy) also confirms given conclusions about delegating power responsibility. That insolvency is external system of higher level relating to the contracts system of operational management. Accented that management in economic sphere is acquired integrated nature E. G. Dorokhina notes that with the market evolution management relationship which were regulated by administrative right until quite recently became inalienable companion of economic (property) relations. As author said bankruptcy fairly is needed in input control by the creditors side or other bankruptcy participants [5, p. 43]. Constitutional Court of the Russian Federation expresses other position at numerous resolutions. Particularly it is noted: "As pointed out by the Constitutional Court of the Russian Federation in the Resolution of 22 July № 14-P in the case of the verification of constitutionality of certain statue of the Federal Law "On Restructurisation of Credit Organizations" paragraphs 5 and 6 of Section 120 of the Federal Law "On Insolvency (Bankruptcy)", bankruptcy processes are public law, they suppose coercion creditors minors by a majority and consequently impossibility of working out singular opinion by other way, intention parts form on other, different principles from action proceedings"[1] .

From our point of view it is more convincing the dissenting opinion of a judge of Constitutional Court of the Russian Federation A. L. Kononova who reasonably confirms that insolvency (bankruptcy) institution relates to the private department of civil right not only because of doctrine and long-standing tradition but in the first instance because it is the phenomenon of market economy, exists in the sphere of commercial entrepreneurial activity, connects to the satisfaction of property interest and creditor's claims as a subjects of civil circulation. On the reasonable judge observation there are no foundation for confirming that "insolvency practitioner also possesses some sorts of administrative or other state power authorities and attributes him public law status. It is odd why Constitutional Court considers that insolvency practitioner's func-

[1] In the case on the constitutionality of the eighth paragraph of paragraph 1 of Section 20 of the Federal Law "On Insolvency (Bankruptcy)" in connection with the complaint of a citizen A. G. Mezhentsev: the Constitutional Court on December 19. 2005 № 12-P // Coll. Ros legislation. Federation. 2006. № 3, p. 335.

tions formed by points 4 and 6 of Section 24 of the Federal Law "On Insolvency (Bankruptcy)" – to take measures on defense debtor's property, to analyze his financial state, to act reasonably and in good faith etc. – are public law. Evidently that it is not so. All these demands are directly from the Civil Code of the Russian Federation."

From our point of view M. A. Egorova expresses disputed opinion on that question. She writes "By contrast obligation for judgment execution of insolvency practitioner by others faces does not signify that authority responsibilities are "delegating" to him and he is getting the status of public law subject because his solutions on their own are results of acting enacted responsibilities to insolvency practitioner" [6, p. 15]. On the one hand we can agree that insolvency practitioner does not get the status of public law subject. On the other hand it does not signify that he does not receive authority responsibilities. If we talk about public authority responsibilities then we can agree with M. A. Egorova position. But it is different about delegation authoritative powers based on private right.

Insolvency practitioner exercises power in relation to the debtor's property [20, pp. 12–13], because he has legal powers that "testifies about imperious temper of appropriate subject activity" [2, p. 79]. In this case relations between debtor and insolvency practitioner are pecuniary and pecunia does not come in to insolvency practitioner property. Insolvency practitioner does not get possibility to perform acts in law on behalf of debtor. In this case the question how it happens is not reasonable, the fact of legal powers delegation that derived from subjective rights of property owner is important. We specially accent on that legal powers are derived not on requirement of laws, not from insolvency practitioner's functions declared at legal laws but on subjective debtor's right that has proprietary nature. According to this the form of civil law connection between debtor and insolvency practitioner we can name secondary law. The fact that legal powers delegation is performed under judicial act that has public law nature has no effect on qualification of formed civil-law relations.

The legal standards analysis of insolvency and bankruptcy and of limited proprietary law of operational management like of higher level system in relation on the contracts system of operational management highlighted common legal nature of grantor legal powers. But it is not enough for highlighting machine peculiarities of legal powers delegation to practitioner under civil law contract. Whereas relating to the particular legal institutions reasons for legal powers delegation were decision of the meetings plus judicial act in one instance and owner's solution (government).

For a clarification a mechanism of legal powers delegation and realization on contractual basis we should determine: subjects participated in legal powers delegation; method and delegation object, structure of contractual links and mechanism stages.

Subjects participated in legal powers delegation are the face that delegated (principal) and operational subject (purchaser). Different legal subjects can be a face that delegate legal powers; it depends on supposed object of operational management. If we are talking about legal powers delegation of executive agency juridical person that acts as principal. If legal powers delegate for affection management then creditors delegate them on provided by affection obligation. Property owner delegates legal powers to a custodian. Legal powers delegation for copyright management is administrated by author. To the transport operator legal powers are delegated by persons which activity is controlled. Shippers, transport infrastructure owners, operators of rolling stock, terminal owners holding cargo and etc can be those persons relating to the different schemes of operational management.

Under delegation object acts authority that has legal form of secondary right. Under method of authority delegation acts civil law contract of legal powers delegation.

Before description of contractual links structure we should make important conclusion that *contract of legal powers delegation and contract of operational management are different contracts* that have different items and subject matters. Appeared from these contracts legal structure is also

different. As an example the contract of operational management by combined cargo transportation is concluded between shipper and transport operator that can be forwarding agent. The item of that contract is services of operational transportation management. But for acquittal responsibilities on that contract operator is needed to delegate legal powers for effectuation of management activity. Accomplish this operator concludes contracts of legal powers delegation with subjects that he draws to their duties (shippers, transport infrastructure owners and etc). The item of the contract is legal powers delegation. In sum structure of contractual links structure is two-level: first level – contracts of legal powers delegation, second level – contracts of operational management.

But it is quite possible to conclude combined contract included the parts of contract of operational management and legal powers delegation. As an example can be shippers' contracts with route of communication operators. In the context of combined contracts legal powers delegate to the transport operator under them he conducts services of operational transportation management.

Unfortunately there is no definition for the contract of legal powers delegation in civil legislation but it is not a problem to conclude such agreements on practice. Also we consider that it is necessary to simulate special universal contract construction of legal powers delegation that will reflect its substance. We should presume that on one hand delegated authority creates new possibilities for a purchaser and on the other hand causes no subjective responsibility from delegated person. Though there are tries to prove presence of subjective responsibility from represented person in literature and to announce authority as subjective responsibility and under that reason, they are baseless. Firstly legal powers delegation is not restricting by cases of representation and for other cases given argumentation is unworkable. Secondly subjective responsibilities of represented person (as an example adoption executed under the deals) correspond by not legal powers but legal rights appeared as a result of realization of these legal powers. And if we recognize given case correct then we need to agree that represented person get not legal power but legal right. But for this is necessary to represented person has such right at the delegation moment but it is not.

We are accenting that we talk about absence of the principal's responsibilities when contract has executed and legal power has delegated. The debtor has a responsibility to delegate authority to this moment. If such legal power delegates on free then ***contract of legal power delegation*** will be one-side i.e. *first part (purchaser) have a right to demand of legal power delegation in coordinated size and second part (principal) must delegate legal power.*

To sum up of thought on focus of contracts system of operational management to the juridical result we want to remind that in cases of operational property management principal can delegate legal rights but not legal power. So we need to note that secondary rights are different from not only legal rights included in legal capacity body but also from legal rights acted as elements of subjective civil law. In the consideration of the foregoing we can make further conclusion: ***effectuation delegated legal powers to the operator represents juridical result on which is directed contracts of operational activity management.***

Conclusion

The community of legal powers and legal rights appears in those juridical possibilities which civil law gives to the possessors. From there and considering economic and juridical results we can make a conclusion that contracts system of operational management has goal focus *on regulation of social relations in providing services to timely effectuation by operator's authoritative powers (legal powers) delegated to him principal/s in order to provide object's given attributes value during for certain time moment.*

Here is our main research structure goal. The main contracts system goal of operational management (denote as no. 1) is reflected by special contractual construction of operational management.

The main goal can be decomposed in depending on object management. On this basis we can mark

3 lowerlevel goals: 1.1 – regulation relations on rendering services timely effectuation by operator legal powers delegated to him principal's in relation to the items in order to provide given attributes size of earned revenue, property quantity, quality; 1.2 – regulation relations on rendering services timely effectuation by operator legal powers delegated to him principal/s in relation to the intellectual rights in order to provide given attributes size of earned revenue; 1.3 – regulation relations on rendering services timely effectuation by operator legal powers delegated to him principal/s in relation to the activity in order to denial its departure from agreed attributes.

Under decomposing the first two of named subgoals there is only one dependent goals level and under third subgoal there are two steps of goal classification. So in goal subgroup directed on regulation relations for rendering services of operational management (1.1) there are goals directed on regulation relations for rendering next services: trust management of property (1.1.1); pledge management (1.1.2). In a goal subgroup directed on regulation relations for rendering services of operational intellectual rights management (1.2) there are juridical contracts constructions of intellectual right delegation to the management (1.2.1).

In goal subgroup directed on regulation relations for rendering services of operational activity management (1.3) there are two subgroups: 1.3.1 – goals directed on regulation relations for rendering services of operational items delegation management, execution of the work and rendering services; 1.3.2 – goals directed on regulation relations for rendering services of operational corporations activity management. The goal subgroup is divided to the next subgoals directed on regulation relations for rendering services of operational management of: 1.3.1.1 – items delegation; 1.3.1.2 – execution of the work; 1.3.1.3 – rendering services. The goals subgroup (1.3.2) do not decompose and directed on regulation relations for rendering services of operational activity management of legal powers delegation of sole executive body.

In conclusion it should be mentioned that contracts directed on operational management at present time relates to the different legal institutions and even to the different sub industry of civil law. At least given conclusion appears from structure analysis of civil code of the Russian Federation. But how we can see it does not mean that such contracts unstructured.

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