

Theoretical Base of Delegation of Some State Authority of Territorial Entities of the Russian Federation to Local Self-Government Bodies

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Abstract

The article focuses on the research of the institution of investment of local governments with separate state powers as one of the forms of interaction of between bodies of state power and local authorities. The presented relationships of authorities of different levels gain a special actuality in the light of a constitutional entrenchment of the principle of the autonomy of local government bodies. Thus, the institution of investment with separate state powers demands a further theory and legal improvement.

Keywords: local government, investment with separate state powers.

1. Introduction

An improvement of the legislative regulation of interaction of bodies of state power and local government is the undoubted condition of the effective Russian statehood and democracy creation. The efficiency of state administration in territorial entities of the Russian Federation which in the light of an active development of the practice of investment of local governments with separate state powers, is strongly influenced by exercise of separate state powers by local governments gain a special actuality.

The numerous changes of the existing federal and regional legislation and judicial proceedings eloquently are evidence of the existing problems at investment of municipal authorities with separate state powers of territorial entities of the federation. Permission of a set of practical problems of the institution of investment is preceded by a need of permission of some theory and legal aspects.

First of all, it should be noted that a definition of the concept "investment of local governments with separate state powers" (further - investment with powers, investment) is not given by a legislator. It is necessary to carry out a theoretical interpretation of the specified concept through its essential signs, and also to consider its ratio with the term «delivery» from the position of linguists and leading lawyers.

2. Methods

The position of scientific linguists concerning the terms «investment», «delivery» and «delegation» is expressed in Russian explanatory dictionaries. In S. I. Ozhegov's and K.Yu. Shvedova's (Ozhegov, 2007) Dictionary of the Russian language the term «to invest with» is defined as «by distributing, to provide somebody with something, to give something». Thus S. I. Ozhegov defines «to provide smb. with smth.» as «to place in service, use». However S. I. Ozhegov thinks that by investing, there is granting of authorities at competence distribution. By transferring the studied definition to «investment» to the plane of the studied problematics, it is possible to speak about the investment as a procedure of redistribution of powers and competences of public authorities, but it is important to remember that at

redistribution the power turns into the competence of local government leaving maintenance of public authorities.

In the light of the aforesaid we will note that «investment» provided by the Federal law from 6 October 2003 № FL-131 «On general principles of the organization of local government in the Russian Federation» (further – the Federal Law № 131) providing a transition of competence from public authorities to local ones on the constant basis does not mean the change of the state value of the delegated powers to the local. Therefore, the investment is not a distribution, and an urgent or termless transfer of power for the execution. Thus, the transfer of power is considered by us as a procedure of investment with separate state powers. S. I. Ozhegov defines the term «assignment» as the investment mostly from the legal point of view, i.e. a commission to someone. The mentioned definition has a temporality of a commission, and the assignment does not assume the transition of power from competence of government body to competence of local government.

Dahl's Explanatory Dictionary (Dahl's, 1989-1991.) defines the term «to invest opens» as «to allocate someone with something; to provide, endow, present, or to give to somebody, or to all people a share, a part». A similar approach is supported by T.F. Efremova's (Efremova, 2000.) Modern explanatory dictionary of the Russian language where the term «to invest» is considered as 1) to provide somebody with something as a share, an allotment; 2) to give something as a gift; to give, present something to somebody (forces, abilities, gifts, etc.). Both the mentioned above dictionaries describe the investment as a grant of something. However it is not possible to speak about a grant as a public relation.

Dahl's Explanatory Dictionary, Efremova's dictionary of the Russian language, and also the Big explanatory dictionary also describe the term «to invest» as – «by having distributed, to provide somebody with a share» (The Big explanatory dictionary of the Russian language, 2000). However in the legislation there are no norms fixing an order of share powers implementation by territorial entities of public legal relationships.

The Big explanatory dictionary (The Big explanatory dictionary of the Russian language, 2000) contains the explanations to the following terms: to transfer - to give something to the full order, possession to another one; to delegate - to transfer a part of own rights for something to somebody; to provide - 1) to give a chance to somebody to possess, dispose, use something; 2) to charge to somebody, to assign to someone an execution of any deal; to assign - to charge something to somebody. The terms a commission and assignment are given the unsuccessful definitions because, proceeding from the sense consolidated by the Big explanatory dictionary, a commission is an assignment, and an assignment is a commission. The authors of the Big explanatory dictionary give to the term «delegation» a definition that mostly inherent in «investment», namely as the transfer of a part of own rights to somebody for something. But we describe such a position of a terminological character as a delegation of power for execution. However it is important to remember that, nevertheless, the legislator gives a preference in the Federal Law № 131 to the term «investment», but not «delegation».

There is no unified approach to a definition of the specified concept and among lawyers. The presented group of the authors' opinions is connected with various aspects of approaches to a definition of nature of the investment institution. So, according to the first opinion the investment is considered as a temporary or continuous delegation of powers. This position is presented by such authors as V. V. Lazarev, I.I. Ovchinnikov (Munitsipalnoe pravo Rossijskoi Federatsii: uchebnik, 2010), L.V. Lazarev, V. I. Borisov (The dictionary on the constitutional right of the Russian Federation; Ilyukhov, <http://opac.mpei.ru/notices/index/IdNotice:67526/index.php?url=/auteurs/view/27448/source:default> and Kazhanov, <http://opac.mpei.ru/notices/index/IdNotice:67526/index.php?url=/auteurs/view/27449/source:default>, 2003), V.D. Zorkin, I.G. Machulskaya, V. V. Pylin, I.V. Vydrin (Efremova, 2000. <<http://www.slovopedia.com/15/192-0.html>>Munitsipalnoe pravo Rossijskoi Federatsii: uchebnik / I.I. Mestnoe samoupravlenie v Rossijskoi Federatsii: ot idei k praktike), A.A. Uvarov (Uvarov, 2002), V. I. Vasilyev (Vasilev, 2005), A.E. Postnikov (Munitsipalnoe pravo Rossijskoi Federatsii. , 2007). However V. V. Lazarev in the scientific and practical comment to the Constitution of the Russian Federation the defines the concept «investment» not only as a temporary or continuous delegation of powers, but also as an incomplete transfer to their local governments (Scientific and practical comment to the Constitution of the Russian Federation), i.e. the author not only notes a synonymy of both the above terms, but also emphasizes an «incomplete» nature of a transfer of separate state powers to local governments. If we do not agree that the terms «investment» and «delivery» are equal with a «delegation» and on the course of research we will try to disprove it, but we absolutely agree with V. V. Lazarev's opinion concerning an «incomplete» delegation of power to local governments. In comments to the Constitution of the Russian Federation edited by V.D. Zorkin and L.V. Lazarev (The Comments to the Constitution of the Russian Federation, 2009) the concepts «investment» and «delivery» are specified as synonyms.

According to the second opinion, the investment is a transition of certain powers from one authority to another (S. A. Avakyan, V. I. Borisov, A.A. Ilyukhov, O. A. Kazhanov, K. A. Pivovarov). We agree with S. A. Avakyan's opinion who determines a delegation of power as «a concession by one government body to other government body of some special powers» (The Encyclopedic dictionary, 2001). At the same time, in our opinion, it is necessary also to consider the fact

that a transfer of separate state powers can be realized both between authorities of one level, and a delegation is possible of power between the authorities of different levels; besides, a possibly to transfer to the places only «separate» state powers, but not «exclusive» ones. A transfer and delegation not only are identified by the authors' group of the dictionary on a constitutional right of the Russian Federation, but also is considered as a commission (a transfer) by one body to another a consideration and permission of the issues of the competence (on the constant basis, for a certain time, on once) (The dictionary on the constitutional right of the Russian Federation, 2003). This definition, in our point of view, speaks about a possibility of a delegation of power and on the constant basis.

The third approach is presented by K.A. Pivovarov: « the investment is an unilateral strong-willed act of one subject of legal relationship concerning the second subject, at alienation, transition of powers, and a consent of the second subject to accept the power is not required... Thus, the investment with separate state powers of local governments is considered as a way of unilateral regulation of the volume of powers of local governments by a transfer of separate state powers to local governments on the basis of the compulsory act of the public authority expressed in the form of the law » (Principy mestnogo samoupravleniya: teoretiko-pravovye problemy identifikatsii, 2008). Really, it is difficult to disagree with the specified position if the matter concerns the investment of local governments with separate state powers at the level of the federation. However in many territorial entities the horizontal model of interaction of public authorities and local government develops, that, somewhat, contradicts the compulsory principle of the investment with powers. For example, in the earlier existing Law of the Republic of Buryatia from 26 January 1999 № 94-II «On the order of the investment of local governments of municipalities with separate state powers in the Republic of Buryatia» it was fixed that «a bill introduced by the Government of the Republic of Buryatia is considered by the National Hural of the Republic of Buryatia in the presence of a consent (the positive conclusion) of a representative body of local government». The current law from 19 April 1995 № 111-I «On the National Hural» in a point 3 of the Art. 40 has fixed that: «the bills introduced in the National Hural by other legal entities of a legislative initiative go to representative bodies of local government for introduction of remarks and offers». Thus, to the bills introduced to the republican parliament in the sphere of a transfer of separate state powers by other subjects of a legislative initiative except the Government of RB by representative bodies of local government the offers and remarks can be made. Therefore, a transfer of separate state powers happens in most cases on the «compulsory» basis, but in other situations a delegation of power can occur against a mutual consent of bodies of the state and municipal authority.

According to the fourth opinion, the investment is a delegation of these or those powers (E.K. Glushko, S.Yu. Danilov (Principy mestnogo samoupravleniya: teoretiko-pravovye problemy identifikatsii, 2008 and Tikhomirov, etc.). Thus the term «delegation» is considered as a settled in a scientific circle and expressing a nature of the term «delivery» applied in the legislation. However the authors did not consider that along with the term «delivery» the legislator uses also the term «delegation». So, for example, in the European Charter of local government, the Federal law from 6 October 1999 № 184-FL «On general principles of the organization of legislative (representative) and executive bodies of the government of territorial entities of the Russian Federation», the Federal law from 31 December 2005 № 199-FL «On modification of separate acts of the Russian Federation in connection with the improvement of powers differentiation») the term «delegation of powers» is designated as a transfer for the implementation to public authorities of territorial subjects of the Russian Federation (The Federal law from 6 October, 1999 №. 184-FL "On general principles of the organization of legislative (representative) and executive bodies of the government of territorial entities of the Russian Federation"//Collection of the legislation of the Russian Federation, 1999). M.Yu. Tikhomirov has the similar point of view defining a delegation as: «1) investment with powers; 2) delegation of powers is a temporary transfer of rights, powers from one public authority or the highest officials to other bodies» (The Legal encyclopedia, 2001). In this case it is possible to disagree with the author because the normative legal acts do not provide a possibility of transfer of part of the powers by the highest officials.

We consider the opinion that the terms «investment» and «delegation» are equal as the baseless because in the Constitution of the Russian Federation and the Federal Law № 131 the term «investment» for a designation of the institution of the separate state powers transfer to local governments is used. From the linguistic point of view «to delegate - to send by a delegate» (Ozhegov and Shvedova, 2007.) and, respectively, to use the term «delegation» for a designation of the institution of the separate state powers transfer on places is not absolutely correct. However the Art. 17 of the Federal law from 31 December 2005 № 199-FL «On modification of separate acts of the Russian Federation in connection with the improvement of powers differentiation» determines that powers of the Russian Federation on the state civil registration are delegated to public authorities of territorial entities of the Russian Federation with a competence of delegation to local governments (The Federal law from 31 December, 2005 № 199-FL "On modification of separate acts of the Russian Federation in connection with the improvement of the powers differentiation" (in the edition of 07 May, 2013 № 104-FL)//Collection of the legislation of the Russian Federation. 02.01.2006). In this case the legislator

establishes that federal powers «are delegated» to the territorial entities of the Russian Federation, and powers of the regional authorities «are delegated» on places. It seems a need of correction of terminology of the specified law regarding an exception of the term «delegation» in view of its contradiction as Constitutions of the Russian Federation and the Federal Law № 131 is obvious.

The fifth point of view is offered by A.S Salomatkin: «the investment of local governments with state powers is a type of the powers delegation» (Salomatkin, O nekotorykh problemakh stanovleniya i sovershenstvovaniya regionalnogo zakonodatelstva, 1999). Though, according to the Art.17 of the Federal law «On modification of separate acts of the Russian Federation in connection with the improvement of the powers differentiation » the public authority of the Russian Federation delegates the powers on the state civil registration to the territorial entities of the federation, and the entities, in turn, have the right to delegate them on places. The aforesaid information results that a delegation is a type of the investment, and not vice versa. However, as we earlier have marked out, the use of the term «delegation» is very controversial.

According to the sixth approach along with the above concepts also the term «subdelegation» as redistribution of powers and also as a way of a delegation of power of the territorial subject of the Russian Federation, delegated to them by authorities of the federation V.S. Mokry, O.A. Stukalova, V.A. Cherepanov, V. N. Shirokovsky, A.V. Malko. Respectively, the author points the possibility of a reassignment of an execution of the state powers delegated to territorial subjects of the Russian Federation to local governments on condition that such a right is granted by the federal law. Really, it is inadmissible to relegate an execution of similar powers without the instructions on possibility of a subdelegation of powers of the federation at the local level in the federal law. In a context of the studied position also the point of view of O. A. Stukalova which gives the following definition falls: «investment of local governments with separate state powers is a way of redistribution of competence between public authorities and local governments which consists in legislative transfer to municipalities for implementation under control of the state of separate state powers not on a constant basis with necessary material and financial resources». Thus the author specifies that investment with separate state powers is preceded by the moment of distribution of powers between levels of the power. Delegation, thus, is way of redistribution of already differentiated powers (Malko, 2012).

By the federal law from 27 May 2014 № 136-FL the article 26.3 of the Federal the law № 184 «On general principles of the organization of legislative (representative) and executive bodies of the government of territorial entities of the Russian Federation» was added with a point 6.1 possessing the following contents: «by laws of the territorial entity of the Russian Federation a redistribution of powers between local governments and public authorities of the entity of the Russian Federation can be carried out». Thus, the legislator provided the concept of the powers redistribution as way of a delegation of the public authorities' power of the territorial entity of the Russian Federation to local governments. However, in our opinion, it is slightly not justified to equate a redistribution to the institution of the investment in the context of the conducted research in view of the fact that the specified norm has fixed the following: «a redistribution of powers is allowed for the term not less a term of the legislative (representative) body of public authority of the entity of the Russian Federation ...». While laws on the investment of local governments with these or those separate state powers are not limited to terms of an activity of legislative authority of the territorial entity of the Russian Federation.

In this case it is important to agree with M. S. Chakalova who notes that: «at investment of local governments, the state powers do not lose a state character and only that public authority, whose competence includes the implementation of the certain state power, has rights, shots, resources, and information which are necessary for that. Employees of local governments, especially settlements, are not the experts in a certain sphere, for example, on the state civil registration or primary military account, they are not able to carry out skillfully separate state powers without an assistance of the public authorities» (Chakalova, 2009). Though the legislator does not say directly that the power of the government body remains in its competence, but proceeding from the sense of standards of the Federal law № 131 of the point 1 of the Art.19, the separate state powers are delegated «for the implementation».

V.A. Cherepanov (Cherepanov, 2003) in his works has said his own point of view that is close to the above-stated one, and V. N. Shirokovsky gave the following definition of the studied concept: «the investment of local governments with separate state powers is a procedure of a redistribution of the areas of jurisdiction and powers which is carried out on the basis of the Constitution of the Russian Federation, the federal laws or laws of entities of the Federation within which the powers of public authorities of the federal or regional level are realized at the municipal level: in city districts, municipal areas» (Shirokovskih, 2008). These authors in connection with an uncertainty of a position of the legislator and an application of the different terminology in regulations suppose that the term «the investment with powers» applied in the Constitution of the Russian Federation 1993 is not successful» (Stukalova, 2007). Thus, O. A. Stukalova suggests using the term «the delegation of powers» (Stukalova, 2007) which was widely used in practice. In our opinion, in practice this position is inapplicable in connection with the arising problem of updating of all the existing normative legal acts, in

particular the Constitution of the Russian Federation. Besides, in the Comment to the Constitution of the Russian Federation, the Institute of Legislation and Comparative Law under the Government of the Russian Federation, by the investment is understood a transfer of separate state powers to local governments which can be realized in two forms - transfer and delegation (The comment to the Constitution of the Russian Federation., 1996, //http://ex-jure.ru/law/news.php?newsid=99). Thus a transfer is considered as a way of a regulation of powers of local government at which any power of the government body is excluded from its competence and joins in competence of local governments. Comments to the Constitution of the Russian Federation of the Institute of Legislation and Comparative Law under the Government of the Russian Federation is represented as providing by the government body a right of the solution of any question belonging to it to local governments for once, for a certain term or without any term. The investment with powers can extend on all system of local governments, on bodies of one type, level or region, in borders of one is administrative and territorial unit (The comment to the Constitution of the Russian Federation, 1996, //http://ex-jure.ru/law/news.php?newsid=99). However, according the sense of the Federal Law № 131 the delegated separate state powers do not lose the state nature and remain under the government bodies authority which also have a right for the control execution of the delegated powers by local governments (the Art. 21 of the Federal Law № 131). Considering the point that the constitutional legislator and the special legislation on local government in the Federal Law № 131 use the term «investment» for a designation of a transfer of separate state powers to local authorities, from our point of view, the federal and regional legislator should apply the term «investment», and no other synonyms.

According to the seventh grouping of the opinions concerning a definition of «investment» at a ratio of the concepts «investment» and «delegation», the preference is given to the last one in view of its broader use when determining the power delegation M.Yu. Dityatkovskiy, A.N. Kubarkov, E.S. Shugrina. For example, M.Yu. Dityatkovskiy allocates the existence of such concepts as a delegation, transfer, commission and granting. Thus the investment of local governments with separate state powers is carried out in the form of a delegation. M.Yu. Dityatkovskiy considers the investment of local governments with separate state powers in broad and narrow meanings. In the broad sense, «investment» by the author is considered as the institution of the municipal right. In the narrow sense M.YU. Dityatkovskiy considers « the investment with separate state powers of local governments» as the initial stage or a preliminary condition of the implementation of separate state powers by local governments, and also as a form of the interaction of authorities of the state and local government on condition of «hierarchy and hierarchical manner between public authorities and local governments» (Dityatkovskiy, 2007). It is difficult to agree with this point of view, in particular, with the specified strict hierarchy and hierarchical manner of authorities of the state and local government, so this situation contradicts the principle of «independence» of local government from the government fixed in the Art. 130 and the Art.132 of the Constitution of the Russian Federation.

In the light of the made grouping of scientists' opinions concerning the terminology with which we only partially agree, it is important to carry out the analysis of the legislation for a detection of general regularities of the used concepts and to make our own opinion on its basis.

The legal terminology used by the legislator in such regulations as the European charter of local government ratified by the Federal law from 11 April 1998 № 55-FL (The European charter of local government from 15.10.1985, it is ratified by the Federal law from 11.04.1998. №. 55-FL//Collection of the legislation of the Russian Federation, 1998), the Federal law from 6 October 1999 № 184-FL «On general principles of the organization of legislative (representative) and executive bodies of the government of territorial entities of the Russian Federation» (The Federal law from 6 October, 1999 №. 184-FL "On general principles of the organization of legislative (representative) and executive bodies of the government of territorial entities of the Russian Federation, 1999), the Federal law from 31 December 2005 № 199-FL «On modification of separate acts of the Russian Federation in connection with the improvement of the powers differentiation» (The Federal law from 31 December, 2005 № 199-FL "On modification of separate acts of the Russian Federation in connection with the improvement of the powers differentiation" (in the edition of 07 May, 2013 № 104-FL)//Collection of the legislation of the Russian Federation. 02.01.2006. - № 1. - Art. 10.) testifies about the use of the term «delegation» along with the term «investment». In spite of the fact that in the Federal Law № 131 for a designation of a part transfer of state powers to local governments the concept «investment of local governments with separate state powers» is used, in the European charter of local government there are also other concepts for a designation of the same phenomenon. So the point 1 of the Art.4 of the European Charter establishes a possibility of «granting» to local governments according to the law of separate concrete powers, and the item 5 of the Art. 4 establishes the following: «at delegation of powers by the central or regional bodies the local self-government institutions must, as far as it is possible, perhaps, have a freedom to adapt their implementation for local conditions». The term «delegation» appears in the point 2 of the Art.8 where a possibility of the administrative control from public authorities is established «... behind the appropriate performance by local governments of powers delegated by it». Therefore, in the Charter the terms

«investment» and «delivery» are not used, the expressions «delegation» and «granting» are used for their designation.

In the Federal law «On general principles of the organization of local government in the Russian Federation» from 2003 the legislator uses only the term «investment» in the context of a temporary or termless transfer of separate state powers on places and with a preservation of their state character without impressment of the delegated powers which public authorities possess. For example, the Art.19 of the Federal Law № 131 has the requirements concerning the laws on investment where the reporting mechanism, control, conditions and an order of the implementation termination by local governments of delegated to them separate state powers have to be fixed. In our opinion, in case if government bodies would lose the right to control over execution of delegated powers and the laws would not require to fix conditions and the order of the termination and financing of execution of delegated powers, and it would be necessary to speak about the exception of these powers from the government bodies competence. However the sense of the chapter 4 «Investment of local governments with separate state powers» of the Federal Law № 131 consists in the transfer of separate state powers on places only for their implementation (the Art. 20 of the Federal Law № 131).

Perhaps, the appeal to the decisions of the Constitutional court of the Russian Federation would give an explanation to the present discussion devoting to the considered terms. In the decision of the Constitutional Court of the Russian Federation, issued in the Resolution from 24 January 1997 № 1-P on the case of constitutionality check of the Law of the Udmurtskaya Respublika from 17 April 1996. «About system of public authorities in the Udmurtskaya Respublika» (The Resolution of the Constitutional court of the Russian Federation from 24 January, 1997 № 1-P on the case of the constitutionality check of the Law of the Udmurtskaya Respublika from 17 April, 1996. "On the system of public authorities in the Udmurtskaya Respublika"//Collection of the legislation of the Russian Federation, 1997), it is established: «Separate powers can be delegated to municipal bodies by means of the law...». The Resolution of the Constitutional Court of the Russian Federation from 30 November 2000 № 15-P on the case of the constitutionality check of separate provisions of the Charter (the Basic law) of the Kursk region in an edition of the Law of the Kursk region from 22 March 1999. «On modification and additions in the Charter (the Basic law) of the Kursk region» has used the concept «investment»: «investment of local governments with separate state powers can be carried out only by the legislator...». Thus, the Resolutions of the Constitutional Court of the Russian Federation as well as in the Constitution of the Russian Federation use the terms «investment» and «delivery» which are considered as synonyms. Other concepts of the relation of the transfer of separate state powers to local governments are not used. The established «terminological collision» is considered by some authors as a norm at the institution «investment with separate state powers» formation for example, R.I. Zagidullin.

The legislation of some subjects of the Russian Federation such as the Republic of Tyva, Adygeya, Buryatiya, the Irkutsk Oblast, etc. gives definitions of the concept «investment of local governments with separate state powers». So the Art.105 of the Constitution of the Republic of Buryatia has fixed that: «local governments can be allocated with the law separate state powers with transfer of material and financial means, necessary for their implementation. Realization of delegated powers is under control to the state» (The Constitution of the Republic of Buryatiya. Buryatiya, 09.03.1994 It is accepted by the Supreme Council of the Republic of Buryatiya on 22 February, 1994 (with the change from 6 May, 2013 № 3292-IV)). Proceeding from the specified norm the legislator applies the term «investment». The Art.7 of the Law of the Republic of Buryatiya from 22 March 2005 to № 1091-III «On the organization of local government in the Republic of Buryatiya» (The law of the Republic of Buryatiya "On the organization of local government in the Republic of Buryatiya" from 07.12.2004 № 896-III (in the edition of 14.11.2013 № 60-V)//Buryatiya, № 49, 24.03.2005, the Official bulletin № 15.) has established that local governments «are allocated with separate state powers». However, the Art.1 of the Law of the Republic of Buryatiya from 26 January 1999 № 94-II «On the order of the investment of local governments of municipalities with separate state powers in the Republic of Buryatiya» (The law of the Republic of Buryatiya from 26 January, 1999 № 94-II "On the order of the investment of local governments of municipalities with separate state powers in the Republic of Buryatiya" (became invalid)//The Sheet of the National Hural of the Republic of Buryatiya, 1999) has fixed that: «investment with separate state powers - granting by government bodies the powers belonging to them to local governments» (The law of the Republic of Buryatiya from 26 January, 1999 № 94-II "On the order of the investment of local governments of municipalities with separate state powers in the Republic of Buryatiya" (became invalid)//The Sheet of the National Hural of the Republic of Buryatiya, 1999). It should be noted that the term «investment», as it was noted earlier, by linguists is considered as «granting», i.e. as synonyms. In turn «granting - to place in service, use» (Ozhegov and Shvedova, 2007). Proceeding from the stated information, the regional legislator opens the nature of the term «investment» using the synonyms often applying the inconsistent terminology.

Thus, the Constitution of the Russian Federation, the Federal Law № 131 and decisions of the Constitutional court of the Russian Federation use the terms «investment» and «broadcast» are used as equivalents, and terminology in the European charter of local government, the Federal law from 6 October 1999 № 184-FL «On general principles of the

organization of legislative (representative) and executive bodies of the government of territorial entities of the Russian Federation», the Federal law from 31 December 2005 № 199-FL «On modification of separate acts of the Russian Federation in connection with the improvement of the powers differentiation » along with the terms «investment», «delivery» the concepts «delegation», «granting» are also used. This situation shows the ambiguous use of terminology by the legislator that, undoubtedly, brings to the scientific discussions.

3. Conclusion

The mentioned above says that both linguists, and scientific lawyers do not have the unified approach to the concepts «investment» and «delivery». So, from the point of view of linguistics the investment is considered as granting, distribution, donation, commission, assignment, granting a share. Besides, linguists do not see an essential difference between the terms «investment», «delivery», «delegation», «distribution» and other synonymous concepts. This situation specifies that a nature of the terms «investment» and «delivery» from a linguistic and legal position have some semantic contradiction.

Among the leading lawyers there is no unified approach to the definition of «investment». So, different authors consider the investment with separate state powers as: 1) a temporary or continuous delegation by powers, 2) a transition of powers from one body to another, 3) an equivalent concept with a delegation, 4) a type of delegation, 5) a subdelegation and redistribution of powers, 6) a unilateral strong-willed act of coercion of one authority another. Besides there is also a position according to which the term «delegation» is more preferable in view of its more frequent application with what it is very difficult to agree. The presented distinctions in positions concerning definition of a nature of the term «investment» are connected with the terminological disparate existing in the legislation which has to be resolved by the regulations updating. Thus it is necessary to consider that the Constitution of the Russian Federation, the Federal Law 131 and decisions of the Constitutional Court of the Russian Federation use only the term «investment» which should give a priority. Thus, we offer to consider «investment» with separate state powers of local governments as an urgent or termless transfer for the powers execution on places with the preservation of their state character.

During the analysis of positions of the conducting authors concerning the nature of the investment with separate state powers of local governments, and also taking into account standards of the federal and regional legislation we offer to allocate a number of characteristic features of «investment»:

- 1) at investment «separate» state powers are delegated to local governments. In this connection, we specify need of a specification of criteria of the state powers by which they are «separate», and also it is necessary to settle the list of the state powers which are not subject to transfer on places;
- 2) the investment with separate state powers is fixed only in the form of the law in compliance with item 2 of the Art.19 of the Federal Law № 131. Let's note that it is necessary to add to requirements to the laws «about investment» also an obligation of government bodies to explain an order of execution of the delegated state powers (point 6 of the Art.19 of the Federal Law № 131);
- 3) the «investment» is possible only on the condition of full financing of their execution provided by the annual law on the budget for the next fiscal year (point 7 of the Art.19 of the Federal Law № 131);
- 4) at "investment" it is necessary to consider the personnel capacity of local governments as one of the main requirements of the implementation efficiency of the separate state powers delegated to them;
- 5) the transfer and execution of the delegated state powers have both an urgent, and termless character. Despite the possibility of the separate state powers transfer without an indication of terms, i.e. termless, the point 7 of the Art.19 has fixed that «the provisions of federal laws, laws of subjects of the Russian Federation providing investment of local governments with separate state powers become effective annually according to the federal law on the federal budget for the next fiscal year, the law of the entity of the Russian Federation on the budget of the subject of the Russian Federation for the next fiscal year provided that ... is provided subventions on the implementation of the specified powers». This norm establishes a possibility of the implementation break of delegated powers in case of the financing termination. In this case it is worth to speak not about «introduction» of the law on the investment which is already enacted, but about performance of that law by appropriate authorities. Thus, the point 7 of the Art.19 of the Federal Law № 131 should have been corrected in the above part in view of an obvious mistake;
- 6) the investment is not followed by an exception of the specified state powers of the competence of the appropriate government bodies and without loss of their state essence. This statement proceeds from standards of the Art. 21 of the Federal Law № 131 according to which public authorities from which maintaining powers were delegated to local governments, exercise the state control regarding their execution

- and target use of subventions;
- 7) the «investment» is followed by the state control, behind implementation of delegated powers in that form and in those limits which do not contradict the principle of independence of local governments and do not strike at their right. Thus forms, types, The Limits of Control have to be specified in the laws «about the investment» (point 6 of the Art. 19, point 4 of the Art. 20 and the Art. 21 of the Federal Law № 131);
 - 8) together with the investment with separate state powers financial and judicial guarantees of protection at implementation of the received separate state powers are legislatively provided to local governments. These guarantees have to be specified by the legislator. For example, it is worth entering terms for possibility of the judicial appeal of actions of government bodies by local governments and vice versa;
 - 9) the «investment» has to be carried out from the principle of the efficiency and social and economic validity (Malko, 2012) of the implementation of the delegated separate state powers. In connection with the above stated, it is necessary «to recommend to authorities of territorial subjects of the Russian Federation to approve the indicators for the assessment of activities of local governments for the implementation of the delegated state powers» (Ezhukova, 2013).

The investment with separate state powers of local governments is considered and as the complex institution of the municipal right governing the public relations in the sphere of interaction of the state and local authorities at the implementation of the execution transfer of separate state powers by local governments. Such authors as S.G. Solovov, M. Yu. Dityatkovskiy note about the institutional nature of the investment with separate state powers of local governments. So, S.G. Solovov the specified institute reveals as «the isolated set of the precepts of law regulating an order of the transfer, implementation, termination, financing, reporting and control of the execution of separate state powers by local governments» (Solovev, 2013). In spite of the fact that we like the presented definition, it is obvious that it is necessary to allocate the following subinstitutes in the studied institute of the municipal right:

the concept, types and signs of separate state powers with which it is possible to allocate local governments;

the rules, order and requirements to the investment form of local governments with separate state powers;

the order of granting financial, judicial and other guarantees to local governments for implementation of the delegated state powers of public authorities;

the implementation of separate state powers by local governments;

the state control of implementation of separate state powers by local governments;

the order of the execution termination of separate state powers by local governments;

the responsibility for the separate state powers execution by local governments.

To consider the investment with separate state powers of local governments as separate institute in the municipal right it is very justified, in view of its incontestable value in the context of interaction of public authorities and local government, and also complex character, the adjustable relations. Besides, the institute of investment is settled by «group of the uniform rules of law intended for regulation of uniform group of the public relations developing in system of the local public government» (Munitsipalnoe pravo Rossii: uchebnik, 2011).

Allocation of subinstitutes of the studied institution of the investment with us carried out attempt of emphasis of a role and value of the institution of the investment with its problems and gaps at the present stage of development of the municipal right of Russia. Besides so the detailed crushing of the institution of the investment allows presenting to a way of its improvement.

4. Conclusion

Thus, it should be noted that the current state of the public and municipal administration admits not simply far from perfect the Russian Federation, but is more characterized as being in deep system crisis (Timofeev, 2012). As N. S. Timofeev has emphasized, one of the reasons of this situation is development of centralist tendencies in the field of public administration and transformation of local government in a kind of the executive activity. Besides, imposing to local authorities of powers of the state character not peculiar to their nature contradicts the principles of federalism and the local governments assuming decentralization and democratization of the power that does not allow normal development of federation and local government (Fadееv, 2014).

Really, taking into account some absence of the transfer control of separate state powers to local governments there is a direct threat of prevalence of their permission in relation to questions of local value. Thus, in the conditions of constantly changing legislation in the field of local government especially sharply there is a perspective of investment with separate state powers of local governments owing to their insufficient legislative regulation at the level of subjects of the Russian Federation. In each separately taken subject of the Russian Federation, in view of features of practice of

investment with separate state powers of local governments, there are own problems of theoretical and practical character, there is a special experience of their permission.

The investment institution of local governments is one of the interaction forms of public authorities and local self-government, demanding the improvement owing to existence of both theoretical and legal, and practical problems. The aim of this institutions development is not only to carry out effectively the state and local managements, but also to be maximum useful to the society, state and population. The separate state powers transfer to local governments has to come from the reasons of a rationality, expediency and efficiency of their implementation on places in interests of the citizens without an infringement of the constitutional principle of local government independence. The investment institution has to be «mutually advantageous» both for public authorities, and local authorities.

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