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# THE NATURE OF FEE CHARGED FOR PROVISION OF PUBLIC SERVICES

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The subject. This paper is devoted to the study of the legal nature of fees charged by the public authorities for the provision of public services.
The main aim of the paper is to substantiate the answer on the question is this fee a price or a fiscal charge?
The methodology of the study includes general scientific methods (analysis, synthesis, description) as well as particular academic methods (formal-legal method, interpretation of legal acts). The decisions of Russian Constitutional Court are also analyzed.
The main results and scope of their application. The article focuses on analysis of the features and functions of the government, ratio of functions of the government and functions of the public authorities, their powers. State power is exercised by bodies of state power or specially authorized entities on behalf of the state and in the public interest. It excludes the exchange nature of the relations when these bodies and entities implement state power. The nature of the establishment and collection of the fee excludes the equivalence between the size of fee and the size of collection costs of the authorized entity. Therefore, there is no equivalence in the relations on payment of the fee, and therefore the fee has no compensatory character. In turn, the nature of the actions performed by the authorized entity on behalf of and in the interests of the public legal entity, excludes their absolute determination by actions of the payer of the fee. The results of research may become a crucial point for future research of legal regulation of fees.
Conclusions. If a public authority carries out activities related to implementation of governmental and authoritative powers, the fee is based on public law. If an activity can not be associated with implementation of governmental and authoritative powers, the fee can be subject to civil law regulation.

## 1. To the problem

One of the issues discussed in the literature on the problems of legal regulation of the provision of public services (as the activities of the Executive bodies of state power, carried out at the request of citizens and legal entities), is the question of the grounds for charging fees of a civil nature, for the execution of public authorities of their powers [1, p.76-79; 2, p. 45; 3, p. 223; 4, p. 214-215; 5, p. 87; 6, p. 358-361; 7, p. 78-85].

In particular, the scientific literature on tax law raises the question of the criteria for distinguishing the fiscal fee (fee, duty, fee) and the civil fee (price) [8, p. 183, 188, 192-194, 197; 9, p. 37-38; 10, p.29-30, 35; 11, p. 7; 12, p. 34].

Thus, some authors, sharing the approach to the recognition of the functions of the state as the main, the main directions of its activities, classify the functions of the state as the main and non-main.

With regard to any functions of the state to one of these groups the issue of funding its implementation: either at the expense of tax sources of state budget revenues, or by charging fees in the form of fees and other charges [13, p. 3].

The main functions of the state include the most important activities of the state related to the implementation of priorities and goals in the interests of the entire population, emphasizing that the main functions of the state reflect the nature and role of the state in society.

These include such activities of the state, which are aimed at the creation, operation and preservation of a certain social, economic, political, legal regime, that is, the systemic organization of society within the boundaries of a certain territory, in an appropriate economic, political, social and other state, with the help of various legal and functional institutions.

Within the framework of this approach, it is noted that the main functions are carried out by the state in the interests of the direct bearer of public power (class, nation, people, etc.), that is, their implementation directly affects each member of society. Through its main functions, the state provides

guarantees and protection of the interests of citizens, legal and economic conditions for business activities, maintains the state apparatus, the army, implements social policy and solves other problems. Financial support for the main functions of the state is carried out by paying taxes.

Non-core functions of the state are part of the core functions as an element of their internal structure are manifested in specific activities of certain state authorities and implemented, as a rule, against individuals [13, p. 2-3].

Thus, non-core functions represent the implementation of certain powers of state bodies in order to satisfy the private interest of a particular citizen.

Due to the fact that non-core functions do not affect the rights and legitimate interests of all members of society at the same time, it is concluded that the state has the right to charge each citizen individually for the implementation of non-core functions. Satisfaction of private interests of citizens should not be provided at the expense of all taxpayers who are not interested in the activities of the state apparatus in each case.

The fees provided for by the tax and other legislation of the Russian Federation, as well as other types of payments act as a fee for the implementation of non-core state functions.

According to the author, between the payer of collecting and the state there are individually-paid relations, such collecting signs of civil law, instead of public payments [13, page 3] are inherent.

This is evidenced by the fact that most of the legally significant actions committed on behalf of the state by various state bodies, by their legal nature can not be attributed to the exclusive right, sovereignty, competence of the state. Such actions are or may be carried out by private individuals. For example, the production of notarial actions in the Russian Federation committed by notaries working in the state notary's office and in private practice [13, p. 4]. The view that for the provision of municipal services must pay to the provider to recoup their costs and make a minimum profit, expressed in the academic literature on municipal law (see, e.g., [14, p. 90]).

Also in the literature, one can find the opinion that the content of normative legal acts implies that the concept of public services covers the so-called "certification activities of public authorities", consisting in the issuance of various documents, the possession of which allows citizens and legal entities to perform certain actions for the implementation of their rights. "Within the framework of the arising relations, the norms of civil law should regulate the issues of providing citizens and legal entities with the necessary information for their full and accurate indication in the issued document, the amount and timing of payment for the necessary registration actions by state bodies, the timing of the actions, compensation for damage caused by the discrepancy of the issued documents to the requirements of the law, including the liability for the unjustified refusal of state authorities in providing deadlines relying of documents under condition of performance by the contractor of all requirements of normative acts" [15, p. 15].

This view is not shared by all researchers.

In particular, it is emphasized that the state organs implement the functions of the state in the framework of public relations, with the nature of which the legal regulation by the norms of peremptory character on the basis of the power-public methods [2, p. 45; 3, p. 223].

In order to distinguish between public services, including public services, and services that are subject to civil rights, also distinguish the functions that are carried out by the state:

or by virtue of their exclusive belonging to the state. We are talking about the so-called pure public goods, characterized by signs of non-exclusivity and non-competitiveness in consumption, that is, the benefits that are guaranteed to consume all citizens regardless of solvency, namely: public administration, maintenance of internal law and order, national defense [5, p. 86-87; 7, p. 42; 16, p. 96];

or arising from the Constitution of the Russian Federation, or are socially significant benefits, the composition of which is determined by society [7, p. 30; 17, p. 74-75];

either because of economic feasibility, "state" method [7, p. 30].

However, the number and composition of functions that can be performed by the state are not clearly defined in the scientific literature.

In this regard, the issues of the features and functions of the state, the correlation between the functions of the state and the functions of public authorities, their powers need to be considered.

2. The ratio of the functions of the state and the functions of public authorities, the powers of public authorities

In the science of the theory of state and law, the idea of the state as a "developed form of politically organized society" [18, p. 359], "political organization" [19, p. 13], "political-territorial organization of society" [20, p. 24; 21, p. 13], which manages the "common Affairs of society" in the changing conditions of the external and internal environment within the boundaries of a certain territory [18, p. 366; 19, p. 13; 20, p. 24; 22, p. 6, 17-18], is widespread. regulates the behavior of citizens through law [18, p. 376; 19, p. 13] in order to "ensure the integrity and safety of the social organism" [20, p. 47] or "ensuring and maintaining the natural conditions of society" [23, p. 86]," maintaining the normal functioning of society "[21, p.10-11]," ensuring the survival of society as a single social organism in the conditions of the existence of classes and other social strata with conflicting interests " [22, p. 17].

The functions of the state as a whole are understood as objectively established subject areas of state activity in the most important spheres of public life, which are::

I Express its essence (class essence) and social purpose [14, p. 33; 24, p. 190-191],

they are designed to solve problems and achieve the goals of the state [21, p. 11-12; 23, p. 83],

are carried out in certain forms and with the help of special methods [14, p. 33; 18, p. 377; 24, pp. 226-230].

The category of "state functions" is used to identify the role of the state in relation to the needs of society [21, p. 4; 22, p. 3; 24, p. 190].

The functions of the state or public authority are determined by the source of their origin.

A government organization has replaced the tribal organization because of radical changes that have occurred in the economic conditions of tribal society and in the society, in connection with the emergence of social inequality based on private property [20, p. 19-20; 25, p. 34-50].

The state (public authority) arises from the objective need to solve "common Affairs" arising from the nature of any society, that is, to manage production, economy, etc., to protect from external enemies, as well as to regulate relations between socially heterogeneous groups in society, to restrain class contradictions within society [22, p. 17].

These historical prerequisites for the emergence of the state are considered as prerequisites for the existence of the state itself: the ability of public authorities to ensure, satisfy the interests of society is the reason for the preservation and action of the public authorities [20, p.19-20; 25, p. 200-202].

The state recognizes, provides, and protects public interests, i.e. interests, which are based on the need of the society in ensuring the integrity, stability and normal development of a society [19, p. 6; 25, p. 183].

Public interest is understood as an interest, the satisfaction of which is a condition and guarantee of the existence and development of society [19, p.6].

Ensuring the integrity and safety of the social organism is called the main function of the state [20, p.47], a function arising from the nature of any society [22, p. 18], and the fundamental public interest is the very possibility of public life [25, p. 183].

While in respect of the categories of "common cause", the "public interest" indicates that their content remains unchanged. The contents of the "General Affairs" specifies the nature of the historically determined society [20, p. 40]; the content of the public interest depends on the era, people and their socio political assessments [25, p. 185].

However, by solving common Affairs for the whole society, regulating public relations within the society as a whole, realizing and protecting public interests, the state, public authorities, act on behalf and in the interests of the whole society in internal and external relations.

Public power arises and acts as power and as a force standing over society: the need to solve the "common Affairs" of society, to satisfy and protect public interests elevates public power in society, is the cause of inequality in relations with it. Match the state with the population or with any social group would eliminate the possibility for him to solve the "common cause" to implement and defend the public interest [20, p. 19; 25, p. 208].

When characterizing the state (public) power in the science of the theory of state and law, the following distinctive features are distinguished: non-productivity (original), supremacy, independence, universality, monopoly on coercion, hardware character.

It is important to note that this characteristic involves the prerogative of state power to abolish the manifestation of all other authorities [20, p. 21].

A sign of the universality means that state power extends to all of society and can intervene in any social relationships [20, p. 21; 22, p. 17].

The rule (sovereignty) of the state authorities is characterized by the fact that no limit state is impossible without his will and only his will anything is possible restriction [25, p. 206-207].

Thus, the state:

- arises from the needs of society in an organized life;
- performs an organizing role in relation to society;
- solving "common Affairs", managing, implementing and protecting public interests, acting on behalf and in the interests of the whole society as a whole, not on behalf of individuals;
- managing and protecting society as a whole, acts in relation to each and every one.

Taking into account the role played by the state in relation to the needs of society, in the science of the theory of state and law, the functions of the state are characterized by the fact that they:

- due to the social purpose, the historical mission of the state, the need to solve " common Affairs»;
- have a complex, synthesizing character and as the main directions of its activity are not limited to the activity itself or separate aspects of activity [23, p. 82; 24, p. 198-199]/

It should be noted that the classification of the functions of the state into basic and non-basic is carried out not only by the criterion of their priority, importance at a particular historical stage, but also by the volume of their content. Under the main functions of the state understand the most important areas of its activities, covering a number of separate homogeneous areas, and under non-core-narrower areas of activity that are part of the main functions as an element of their internal structure [24, p. 207-210];

- implemented by all state apparatus, not identical to the functions of individual bodies of state power and organizations [23, p. 82];
- depend on the type and form of the state, change and develop depending on the goals and objectives of the state at a particular historical stage of its development [18, p.373; 21, p. 8-12; 23, p. 89].

Thus, the number and status of the functions of the state do not remain unchanged; the functions of the state are not limited to the activities of a separate public authority or organization, especially in relation to an individual citizen; taking into account that the functions of the state are carried out by him on behalf and in the interests of society, the allocation of their non-core functions on the basis of the interest of an individual is incorrect.

In the theory of state and law, to distinguish between the following basic forms of implementation of state functions: legislation, management, judiciary and public Prosecutor's supervision [24, p. 226].

Thus, management or management is one of the forms of implementation of the functions of the state. Under management understand administrative or Executive-administrative activity, which is a based on the laws operational, daily and concrete implementation of public administration functions of the state [24, p. 226].

In the theory of administrative law to the functions of management or component parts, stages of a single management process is taken to include: decision-making, forecasting, organization, regulation, management, coordination, planning, stimulation, control, accounting [14, p.33-34; 26, p. 11-71].

The management system in the company includes, as a rule, a control device, a controlled object and a purposeful impact of the first on the second to stabilize the situation or transfer the object to a new state. As a control device acts as a public administration [19, p. 42; 26, p. 26-33].

The above-mentioned management functions are implemented in the functions of public authorities.

In the literature on administrative law there is a connection between the functions of public authorities and the functions of the state, the functions of management: the first are derived from the second, since the state assigns the functions of management to the public authority in relation to a specific object of management - a certain sphere of society [14, p.33-34; 19, p. 42-45; 26, p. 26-33].

In view of the above, the functions of public authorities differ depending on the object of management; their content is the control effect on the object of management in order to achieve a socially significant result; carried out on behalf of the state.

Management functions are implemented through forms of management (management act, administrative agreement, performance of legally significant actions, implementation of organizational measures, material and technical operations not aimed at creating a legal result) and management methods (persuasion, coercion, economic, administrative methods, etc.).

The state gives the public authorities the right and at the same time the obligation to apply a particular form of government, i.e. gives them powers.

The power is considered as both a right and an obligation of a public authority to act in a certain situation in the manner prescribed by law or legal act.

A power is a legal obligation that is associated with the need for a public authority to continuously function in a given direction, on the one hand, and to act when there are legal facts, on the other hand. Pravoobladanie not implement in the public interest [19, pp. 53, 63; 26, p. 26-33].

Powers, along with the established order of activity of bodies of state power, legally defined the impact of objects, responsibility for the failure of the authority are recognised elements of competence of a public authority [19, p. 55-56].

Thus, public authorities are given competence, and therefore authority not of their own free will and not in their own interest. A public authority exercises its powers in the public interest on behalf of the state.

Taking into account the above conclusions of the science of the theory of state and law and the science of administrative law, the following results can be summed up in relation to the issue under consideration:

1. Based on the needs of society, the state recognizes a particular interest as public, implements and protects it through the performance of state functions, while determining their priority, status, number, volume and methods of their implementation, as well as the subjects of their implementation. These may be public authorities or entities specially authorized by the state. In the literature on administrative law bodies and organisations providing public services are included in the system of Executive power in a broad sense (see, e.g., [17, p. 80-81]).

2. The state, in carrying out its functions (basic or non-basic), acts on behalf and in the interests of society.

3. In order to carry out its functions, the state shall confer state authorities or specially authorized entities with state authority.

4. State power is exercised by bodies of state power or specially authorized entities on behalf of the state and in the public interest, which excludes the exchange nature of the relations in which these bodies and entities enter in the implementation of state power.

5. Unlike subjects of civil law, which acquire their civil rights by their will and in their interest, public authorities or specially authorized state entities cannot exercise their powers in civil law relations, and, consequently, for a fee of a civil nature.

In this regard, it seems erroneous to argue that there are some legally significant actions that, by their legal nature, are carried out or can be carried out on behalf of the state by individuals along with public authorities, and that in view of the implementation of such actions by individuals, for their Commission, it is possible to charge civil law fees [13, p.3, 4].

## 3. Regulatory and legal regulation

As an example, the above mentioned notarial acts performed by notaries engaged in private practice.

According to part 1 of article 1 of Bases of the legislation of the Russian Federation on the notary of 11.02.1993 No. 4462-1 (further - Bases) the notary in the Russian Federation is urged to provide according to the Constitution of the Russian Federation, constitutions (charters) of subjects of the Russian Federation, these Bases protection of the rights and legitimate interests of citizens and legal entities by Commission by notaries of the notarial actions provided by acts on behalf of the Russian Federation.

On the basis of part 2 of this article notarial acts are performed by notaries working in the state notarial office or engaged in private practice.

According to the paragraph 2 of article 15 of Bases notaries make the notarial actions provided by these Bases in interests of the individuals and legal entities addressed to them.

Owing to part 6 of article 1 of Bases notarial activity is not business and does not pursue the purpose of profit extraction.

Taking into account the above provisions, notaries working in the state notary office, and notaries engaged in private practice, perform a public function.

The constitutional Court of the Russian Federation has repeatedly emphasized that notarial activity is of a public-legal nature; notarial acts performed by both public and private notaries on behalf of the Russian Federation are public-significant actions; notaries have a public-legal status .

In accordance with articles 61.1 and 61.2 of the criminal code, money collected by notaries working in state notary offices is transferred to the budget of municipal districts and city districts in the form of fees.

On the basis of part 2 of article 23 of the Fundamentals of the funds received by the notary, engaged in private practice, after taxes, other mandatory payments come into the ownership of the notary.

In this case, the notary engaged in private practice, acting as the recipient's fiscal collection [8, p. 193, 197, 204, 208].

The above example demonstrates that a notary engaged in private practice is an entity authorized by the state to perform a public function on its behalf.

It is not the actor who carries out the activity that is important to characterize the activity, and therefore the payment for its implementation, but whether it retains the value of the activity carried out on behalf of the state or other public legal entity, and whether it is aimed at the realization of public interests.

We illustrate this conclusion with other examples.

Thus, article 57 of the civil code Of the Russian Federation and the decree of the Government of the Russian Federation of 09.06.2006 No. 363 "on information support of urban development" (hereinafter - the decree of the Government of the Russian Federation No. 363) provides for the powers of local governments to maintain the information system for urban development (hereinafter - ISOGD) and issue of information contained therein.

The information contained in the ISOGD is provided by the physical

and legal entities for a fee. Paragraph 2 of the RF Government decree No. 363 provides for the maximum amount of the fee.

According to point 3 of the order of the Government of the Russian Federation No. 363 the size of the payment for providing the data containing in ISOGD is established by local governments on the basis of the technique of determination of the size of the payment approved by the Ministry of economic development and trade of the Russian Federation and shall not exceed the maximum size of the payment established by point 2 of this resolution.

On the basis of point 15 of the Regulations on information support of town-planning activity approved by the order of the Government of the Russian Federation No. 363, the payment for providing the data containing in ISOGD is enlisted in the budget income of the relevant municipality.

Taking into account features of implementation of town-planning activity in the subject of the Russian Federation - the city of Federal value of St. Petersburg established by article 63 of the town-Planning code of the Russian Federation, the Federal law of 06.10.2003 No. 131-FZ "About the General principles of the organization of local government in the Russian Federation" and the Law of St. Petersburg of 23.09.2009 No. 420-79 "about the organization of local government in St. Petersburg", in the subject of the Russian Federation - the local self-government bodies of the inner-city municipalities of St. Petersburg are not vested with powers in the field of urban development.

In accordance with paragraph 8 of article 1, paragraphs 5 and 17-3 of article 3, article 8 Of the law of St. Petersburg of 24.11.2009 № 508-100 "on urban development in St. Petersburg" Government of St. Petersburg:

ISCAS conducts in St. Petersburg;

provides information contained in the ISOGD;

determines the amount of the fee for providing information to ISOGD in St. Petersburg.

In turn, the Government of St. Petersburg has empowered the ISCAS in St. Petersburg and the provision of information contained in it, the Committee on Urban Planning and Architecture (paragraphs 3.4-6 and 3.4-6-1 of the Regulations on the Urban Planning and Architecture Committee, approved Decree of the Government of St. Petersburg dated 10.19.2004 № 1679 [9] ).

In order to provide technical support for the activities of the Committee for Urban Planning and Architecture, the Government of St. Petersburg has established a state institution, the Center for Information Support for Urban Planning (hereinafter referred to as the institution ) .

In accordance with clause 2.2 of the Decree of the Government of St. Petersburg dated December 19, 2006 No. 1594 “On the establishment of the state institution“ Center for Information Support of Urban Planning ” [10] the object of the institution is the technical support of the implementation of the powers of the Committee for Urban Planning and Architecture for the conduct of ISCAS in St. Petersburg, including the provision of information to individuals and legal entities contained in it.

Thus, the maintenance of the ISCAS in St. Petersburg and the provision of information contained therein are the powers of the Committee for Urban Planning and Architecture - the executive body of state power in St. Petersburg.

The activities of the institution, aimed at ensuring the implementation by the Committee on Urban Planning and Architecture of powers on behalf of St. Petersburg, is of a technical, auxiliary character.

Another example. On the basis of Article 62 of the Federal Law dated July 13, 2015 No. 218-FZ “On State Registration of Real Estate” (hereinafter - the Federal Law № 218-FZ) organ registration rights at the request of any person providing the information contained in the Uniform State Register of real estate tee .

According to part 2 of article 63 of Federal Law No. 218- FZ, the information contained in the Unified State Register of Real Estate is provided for a fee. The amount of such a fee, the procedure for its collection and return shall be established by the regulatory body .

In accordance with Part 1 of Article 51 B to the RF board for providing federal government agencies of information, documents contained in state registers (registers) maintained by the data of state bodies, it refers to non-tax revenues of the federal budget.

Subject to the provisions of parts 3 and 4 of Article 3 of the Federal Law № 218-FZ, the Federal State Institution " Federal Cadastral Chamber of the Federal Service for State Registration, Cadastre and Cartography" (hereinafter - State Organization "FKP Rosreestra") allotment but certain powers authority registration rights management The Unified State Register of Real Estate and the provision of information contained in it.

Under paragraph 2 of the order of Federal Service for State Registration of 10/18/2016 number P / 0515 "On Granting £ ederalnogo state budget organization" Federal Cadastral Chamber of Federal Service for State Registration, Cadastre and Cartography "separate powers authority registration rights" financial support for the implementation of the Federal State Budgetary Institution “Rosreestr” in accordance with the approved state assignment of certain powers of the registration authority, for which no fee is charged, is provided through a subsidy for the financial support of the state assignment for the provision of public services ( performance of work ) within the budget appropriations provided in the federal budget for these purposes.

Financial support for the implementation of the FGBU Rosreestra individual powers of the registration authority for the provision of which fees are charged, is due to revenues from the provision of paid services, in addition to the approved state task.

Thus, the activity of the Federal State Budgetary Institution “Rosreestra Federal State Budgetary Enterprise” in maintaining the Unified State Register of Real Estate and in issuing the information contained in it maintains the status of state authority.

Since in the given examples there is a realization of state authority, payment for their implementation is not civil law.

With the loss of any activity of the nature of state power, it becomes possible to charge a fee, bearing a civil nature , for its implementation . We illustrate this with the following example.

Article 17 of the Federal Law of December 10, 1995 No. 196-FZ “On Road Safety” stipulated that vehicles operating in the territory of the Russian Federation and registered in accordance with the established procedure are subject to mandatory state technical inspection.

Regulations on the State Traffic Safety Inspectorate of the Ministry of the Interior of the Russian Federation, approved by Decree of the President of the Russian Federation of June 6, 1998 No. 711 “On Additional Measures to Ensure Road Safety”, the organization and conduct in accordance with the procedure and deadlines set by the legislation of the Russian Federation, the state technical inspection of motor vehicles and trailers to them were assigned to the authority of the State Traffic Inspectorate.

In accordance with clause 3 of the Resolution of the Government of the Russian Federation dated July 31, 1998 No. 880 “On the Procedure for a State Technical Inspection of Vehicles Registered at the State Highway Traffic Safety Inspection of the Ministry of Internal Affairs of the Russian Federation” (hereinafter -

Decree of the Government of the Russian Federation № 880 ) Traffic police can engage in the prescribed manner on a competitive basis of legal entities and individual entrepreneurs to participate in the verification of the technical condition of vehicles with the use of technical diagn about stirovaniya at the state technical inspection.

Taking into account the assignment contained in clause 5 of the Resolution No. 880 of the Government of the Russian Federation , the Ministry of Internal Affairs of the Russian Federation, together with the Ministry of Transport of the Russian Federation, determined the requirements for the production and technical base, on the basis of which the technical condition of vehicles was inspected under state technical inspection and personnel who participated in such an inspection, as well as the requirements for the technology of work on the inspection of vehicles during the state technical inspection using technical diagnostic tools.

According to paragraph 7 of the conducting state of the -ethnic inspection avtomototrans tailors vehicles and trailers to them of the State Traffic Safety Inspectorate of the Ministry of Internal Affairs of the Russian Federation, (hereinafter - Regulations), check the technical condition of vehicles at the state technical inspection was carried out with the use of technical diagnostics, available in the State Traffic Inspectorate.

At the same time, on the basis of clause 9, the Regulations of the State Traffic Inspectorate Division monitored the quality of work on checking the technical condition of vehicles during state technical inspection conducted by legal entities and individual entrepreneurs.

For a vehicle that has passed a state technical inspection, the State Traffic Inspectorate issued a pass for passing a state technical inspection, the form of which was approved by the Ministry of Internal Affairs of the Russian Federation.

The coupon was issued after the owner (representative of the owner) presented the payment document on the payment of state duty for issuing a coupon for passing a state technical inspection (clause 10 of the Regulation).

The state technical inspection of vehicles was carried out on a paid basis.

In accordance with paragraph 8 Postan copulating Government of the Russian Federation № 880 Ministry of Internal Affairs of the Russian Federation together with the Ministry of Finance of the Russian Federation, the Ministry of Transport of the Russian Federation and the executive authorities of the Russian Federation was instructed to set the size of the board for the conduct of state technical inspection of vehicles, including a the use of technical diagnostics; develop a procedure for collecting and distributing funds received in the form of fees for conducting state technical inspection of vehicles.

The procedure for establishing the size of fees for the state technical inspection of vehicles and the procedure for collecting and distributing funds received in the form of fees for carrying out a state technical inspection of vehicles are approved by order of the Ministry of Internal Affairs of Russia, the Ministry of Finance of Russia, the Ministry of Transport of Russia of 03.08.2001 No 708 / 61n / 126.

According to clause 4 of the Procedure for Establishing the Amount of Charges for Conducting a State Technical Inspection of Vehicles, the amount of fees for conducting a state technical inspection, including using technical diagnostic tools , was set by the executive authorities of the constituent entities of the Russian Federation, taking into account this Procedure.

As a general rule, the funds for the inspection were transferred by authorized banking institutions attracted on a competitive basis to the relevant budget accounts of the constituent entities of the Russian Federation (paragraph 3 of the procedure for collecting and distributing funds received as a fee for conducting a state technical inspection of vehicles).

With the adoption of the Federal Law of 01.07.2011 No. 170-FZ "On the technical inspection of vehicles and on amendments to certain legislative acts of the Russian Federation" (hereinafter - Federal Law No. 170-FZ), the situation has changed.

In accordance with paragraph 12 of Article 1 of Federal Law No. 170-FZ, a technical inspection is an inspection of the technical condition of vehicles (including their parts, items of their additional equipment) for compliance with the mandatory vehicle safety requirements in order to allow transport vehicles to participate in road traffic on the territory of the Russian Federation and in cases provided for by international treaties of the Russian Federation, also outside its borders.

Based on article 5 Federal Law № 170-FL technical inspection carried checkup operators (entities or individual entrepreneurs (including dealers), accredited according to Federal law professional association insurers established in accordance with Federal Law 25.04. 2002 № 40-FZ “On compulsory insurance of civil liability of vehicle owners”, that is, the Russian Union of Motor Insurers.

The technical inspection is carried out in accordance with the Rules for the Technical Inspection of Vehicles, approved by the Decree of the Government of the Russian Federation dated 05.12.2011 No. 1008 “On Technical Inspection of Vehicles” (hereinafter - the Rules).

Taking into account paragraph 4 of Article 5, parts 5 and 6 of Article 17 of the Federal Law № 170-FZ, and paragraph 6 of the Rules of technical inspection is carried out on a paid basis in accordance with the agreement on the technical inspection concluded the vehicle owner or his representative and the operator ma Cesky inspection of the standard form of the contract, approved by the Ministry of Economic Development of the Russian Federation.

The form of the standard contract on technical inspection is approved by the order of the Ministry of Economic Development of the Russian Federation of October 14, 2011 No. 573.

According to part 3 of article 16 of Federal Law No. 170-FZ, the maximum amount of payment for conducting a technical inspection is established by the highest executive body of a state of a subject of the Russian Federation in accordance with a methodology approved by an executive body authorized to exercise legal regulation in the field of state regulation of prices (tariffs) on goods (services).

Paragraph 2.1 of the Methodology for calculating the maximum amount of payment for conducting a technical inspection, approved by Order No. 642-a of the Federal Tariff Service of October 18, 2011 ( hereinafter referred to as the Methodology) , it is determined that the maximum amount of payment for conducting a technical inspection should provide for the reimbursement of economically justified and documented expenses for conducting a technical inspection and receiving the profit necessary to develop and finance the costs of conducting a technical inspection.

By virtue of clause 7 of the Rules, the amount of payment for conducting a technical inspection is determined by the volume of work performed, set by the technical inspection operator and cannot exceed the size limit established by the highest executive body of the state of a subject of the Russian Federation in accordance with the Methodology.

At the same time, the presence of violations related to the excess of the maximum amount of fees for conducting a technical inspection, in accordance with Part 5 of Article 11 of Federal Law No. 170-FZ, is one of the grounds for canceling the accreditation certificate.

On the basis of clause 3.4 of the Standard Contract Form, payment for the cost of technical inspection services is made in the currency of the Russian Federation by cashless transfer of money to the checking account of the technical inspection operator or in cash by depositing money to the cash desk of the technical inspection operator.

Upon completion of the procedure of technical diagnostics checkup operator carries out registration and issuance of the owner of the vehicle diagnostic cards containing conclusion about the possibility of sludge , and the impossibility of use of the vehicle (item 15 of the Rules, Part 7 of Article 17 of the Federal Law № 170-FZ).

In accordance with Article 14.4.1 of the Code of the Russian Federation on Administrative Offenses of December 30, 2001 No. 195-ФZ operator of technical inspection bears administrative responsibility, including for issuing a diagnostic card confirming admission to participation in road traffic of a vehicle in respect of which a technical inspection has not been carried out or when carrying out a technical inspection of which a vehicle does not comply with the mandatory vehicle safety requirements in .

Thus, the technical inspection was removed from the competence of the State Traffic Inspectorate, lost the value of the state function , but is carried out under the control of the state .

In this regard, it became possible to adjust the carrying out of maintenance on the show as the civil service.

4. About individual compensation of collecting.

The issue of individual fee reimbursement needs to be considered separately.

In the financial and legal literature, the sign of an individual retribution often characterized as a sign, allowing to distinguish the collection of tax [8, p. 191, 194; 11, p. 7; 27, p. 32-33].

Thus retribution is understood as one of conditions of Commission by the state bodies, local governments, other authorized bodies, officials or specially authorized subjects (for the purposes of consideration of this question we will call them all together the authorized subjects) of the actions directed on performance of the public duties provided by regulatory legal acts and connected with functioning of the state power or local government [8, p.185, 190-191; 11, p. 13-14; 28, p. 48; 29, p. 22; 31, p. 60].

At the same time, it is recognized that in the relations arising in connection with the payment of the fee, there is no occurrence of the actions of the authorized body or official, on the one hand, and the payer of the fee, on the other, since the payment of the fee does not entail the unconditional execution of the relevant actions by the authorized subject; charges perform fiscal (have the purpose of financing of expenses of the public power, expenses of other subjects connected with performance of public-legal functions of the state, local government) and regulatory (establishment of collecting encourages the payer of collecting to Commission of certain actions or abstention from their Commission, stimulates the payer of collecting to the responsible address to authorized subjects) functions.

There is another point of view, according to which individual compensation is not a sign of collection, and, consequently, the criterion that separates the collection and tax, since in the relations arising in connection with the payment of the fee, there is no counter-action of the parties to the relationship. As the functions performed by the collection, also indicate the fiscal and regulatory functions [32, pp. 37–39; 33, p. 46].

Thus, within the framework of these approaches, regardless of whether their supporters recognize the sign of individual retribution as a criterion for distinguishing between the fee and the tax, the equivalence in the relations related to the payment of the fee, as well as the performance of the compensation function by the latter, is denied.

However, there is a point of view that combines two statements:

- the fee is paid in connection with the service, that is, it is one of the conditions for the Commission of the relevant actions by the authorized entity;

- collection performs a compensation function, that is intended

to cover the costs of the Commissioner of the subject [3, p. 222-224; 5, p. 88; 10, p. 27-28].

In definitions and resolutions of the constitutional Court of the Russian Federation it is noted that:

the fee - required public payment;

collection, along with the features characteristic of the tax, has a distinctive feature-individual compensation;

payment of the fee is one of the conditions for the authorized entity to perform legally significant actions against the payer of the fee;

the fee performs fiscal, regulatory and compensation functions .

The compensation function of the fee is seen in the fact that it is proportional or should be proportional to the costs of the authorized entity providing state or municipal service, that is, exercising its powers.

Thus, the position that only the compensatory nature of the fee could justify its retention in case of refusal of the authorized body to issue a license, and the state, without offering the payer of the fee "economically significant acquisitions", that is, refusing to issue a license and withholding a fee, unreasonably enriches itself, is expressed in the special opinion of the judge of the constitutional court of the Russian Federation K. V. Aranovsky to the decision of the constitutional Court of the Russian Federation of may 23, 2013. No. 11-P" on the case of check of constitutionality of point 1 of Article 333.40 of the Tax code of the Russian Federation in connection with the complaint of limited liability company "Meeting".

In this position, you can highlight the idea of a ratio of the amount of the fee or costs of a public authority in connection with the exercise of his powers under the licence, or economic benefits of the licensee.

As can be seen, the question of the compensatory nature of the fee is closely related to the question of equivalence in the relations between the authorized entity and the payer of the fee, as well as to the issue of the reimbursement of the fee in the sense of the conditionality of the actions of the authorized entity by the actions of the payer of the fee for its payment, that is about the counter.

It should be noted that in the financial and legal literature as a basis, General sales tax, and to collect, allocate their publicly-legal character [11, p. 7; 33, p. 46].

This sign means that the establishment and collection of tax and collection is the exclusive prerogative of public legal entities.

Taxes and fees are considered as attributes of public authority.

Public authority is sovereign in setting and levying taxes and fees.

In this regard, it seems reasonable position of those authors who do not recognize the implementation of the collection compensation function.

The nature of the establishment and collection of the fee excludes the proportionality of the collection costs of the authorized entity or the result of the actions of the authorized entity in relation to the payer of the fee.

Therefore, there is no equivalence in the relations on payment of the fee, and therefore the fee has no compensatory character.

In turn, the nature of the actions performed by the authorized entity on behalf of and in the interests of the public legal entity, excludes their absolute conditionality actions of the payer to pay the fee.

5. Conclusions.

Summing up, the following should be noted.

When deciding on the nature of payment for the exercise of state powers, the status of the functions of the state, that is, their division into basic and non-basic, does not matter, since the functions of the state are carried out in the public interest, in the interests of the whole society.

The functions of the state are carried out through the implementation of state authorities or specially authorized subjects of state power delegated to them by the state.

A public authority or a specially authorized entity, exercising public authority, acts on behalf of the state in the General public interest.

Therefore, when deciding on the nature of the fee, it also does not matter who acts as the subject of the implementation of state power: a public authority or a specially authorized entity.

The main thing is the nature of the actions committed by a public authority or a specially authorized entity, that is, whether they are public authorities.

State powers are exercised in public law relations, and the fees charged in connection with their execution are of a public law nature.

Thus, if a state body or a specially authorized entity performs actions, carries out activities in connection with the performance of state powers, the payment for their Commission is of a public legal nature.

With the loss of activity of public-legal nature, the value of state power, it becomes possible to civil-legal regulation of it.

With regard to the activities of local self-government bodies, it can be said that if these activities are aimed at the implementation of public-legal tasks related to the functioning of public authorities, such activities and fees for their implementation are of a public-legal nature.

In view of the nature of the establishment and collection of the specified payment, there is no equivalence in the relations connected with its introduction.

In view of the nature of the actions performed by the authorized entity on behalf and in the interests of the public legal entity, in the relations arising between it and the payer of the fee, there is no absolute interdependence of their actions, and, consequently, retribution.

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