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Grant as a Special Type of Budget Subsidies

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ABSTRACT

The article provides the study of the Russian legislation on grants funded through the budget. **The relevance** of the research is due to the importance of grants in the development of human potential, stimulating innovative and other activities, as well as the lack of an overall estimate of budget legislation on grants by the scientific community. **The aim** of the article is to answer the following questions. First, whether state grant support in the Russian Federation is a special type of financing, or it is regulated by the general rules of budget or civil law. Second, whether the financial legislation on grants contributes to the economic and social development of Russia and to achieving grant objectives. Third, what proposals could increase the legal regulation of grant activities in the Russian Federation. The authors used the scientific **methods** of formal legal and comparative legal methods, generalization and modeling. They applied the method of comparative law to the legal regulation of grants in the European Union and to the attempt to transfer this positive experience to the Russian legal system. The modeling method helped the authors build a mocking mechanism for the legal regulation of grant activities in the Russian Federation. The formal logical method allowed for evaluating the current conceptual framework of grant support and making suggestions for improvement. Studying the regulatory legal acts and applying grant legislation by the authors resulted in the **conclusion** that the quality of legal support for grants in Russia is unsatisfactory. To improve the efficiency of legal regulation of grants, the authors propose to separate the concepts of "grants" and "budget subsidies"; to provide a separate chapter "Budget grants" in the Budget Code of the Russian Federation with the concept, procedure and grants funded through the budget. According to the authors, these proposals will be able to increase the effectiveness of state grant support in the Russian Federation.

Keywords: grants; budget; Budget Code of the Russian Federation; European Union; funding; subsidy; donation; public finance

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INTRODUCTION

According to D. I. Provalinskii, it was not until fairly recently that grants appeared in Russian law (approximately in the mid-90s of the 20th century). Major political, economic and social transformations initiated in the state at that time were showing the early results: a new basic legislative framework was outlined, free integration with foreign countries appeared in almost all spheres of life (science, culture, education, art, sports, etc.) [1].

Currently, grant activities are regulated by civil, financial and administrative law, depending on the source of funds. The authors aim to evaluate modern grant regulation and make suggestions for its improvement.

LEGAL NATURE OF GRANTS

The legal nature of grants was discussed by a number of researchers, however, their conclusions are ambiguous. A. A. Kumaritova concluded that grant agreements are donation agreements and, therefore, are civil by nature [2].

Belyavskii [3] notes that the role of the grant funding scheme for the development of fundamental science is ambiguously evaluated by foreign researchers [4–7].

Russian legislation that does not provide full-fledged legal regulation of grant activities encourages disputes about the place of grant standards in the Russian law system. The Civil Code of the Russian Federation does not use the word “grants”. There is no universal concept of grants in Russian law. There are only a few different interpretations, adapted for specific purposes. For example, one of them is enshrined in Article 2 of the Federal Act of 08.23.1996 No. 127-FZ “On Science and State Scientific and Technical Policy”. This document refers to grants as private money and other funds transferred free of charge and irrevocably by citizens and legal entities for the implementation of specific scientific and technical programs and projects, innovative projects, specific research (Article 2). At the

same time, Article 16.2 of the aforementioned document states that grants are also acceptable as the state support for innovation.

Federal Act dated 11.08.1995 No. 135-FZ “On Charity and Volunteering (Volunteering)” refers to charitable grants as purpose-oriented donations provided by citizens and legal entities (Article 15). Currently in Russia, quite a number of grants are provided by private charitable foundations. The most famous foundations are Elena and Gennady Timchenko foundation and the Vladimir Potanin foundation¹. Many grants are awarded by international organizations.

State support of various activities using this form of financing is actively provided in Russia. For example, total public funds allocated to research projects in the form of grants through the Federal Budget Institution “Russian Foundation for Basic Research” were 9.9 billion roubles in 2016, 10.0 billion roubles in 2017 and 19.1 billion roubles in 2018². The total grants in various areas in the federal budget amounted to 18.0 billion roubles in 2016, 23.6 billion roubles in 2017, 38.6 billion roubles in 2018 and 30.6 billion roubles in 2019³. Therefore, it is reasonable to suppose that grants should be recognized as a full-fledged category of financial law.

In Russia, grants can be funded through the budget (“budget grants”) or through private (non-public) funds (“private grants”). The authors studied the rules, procedures and tar-

¹ Grants from Elena and Gennady Timchenko Foundation. URL: <http://timchenkofoundation.org> (accessed on 30.03.2020). Grants from the Vladimir Potanin Foundation. URL: <https://www.fondpotanin.ru> (accessed on 30.03.2020).

² Federal Budget Institution “Russian Foundation for Basic Research”. RFBR reports on the results and use of the assigned federal property for 2016, 2017, 2018. URL: https://www.rfbr.ru/rffi/ru/news_events/o_2095203 (accessed on 12.08.2019).

³ The authors summarize the analysis of federal budget for 2016–2020. Federal Laws of December 14, 2015 No. 359-FZ “On the federal budget for 2016”; dated December 19, 2016 No. 415-FZ “On the federal budget for 2017 and for the planning period of 2018 and 2019”; dated December 5, 2017 No. 362-FZ “On the federal budget for 2018 and for the planning period of 2019 and 2020”; dated November 29, 2018 No. 459-FZ “On the federal budget for 2019 and the planning period 2020–2021”. The official website of legal information. URL: <http://www.pravo.gov.ru> (accessed on 30.01.2020).

gets for grants and concluded that private and budget grants are of different legal nature and should be regulated by different branches of law. If it comes to grants from private funds, their legal regime should be determined by civil law. If grants are funded through the budget of the Russian Federation, they should be regulated by financial law. However, both areas of law have significant gaps, if not a legal vacuum, in the regulation of grant relations.

BUDGET GRANTS. CONCEPT AND TARGETS

As part of this scientific study, we will look at the financial and legal component of grants. We will consider the Russian budget legislation on grants and try to answer the question whether the current situation contributes to the economic and social development of Russia and to human development.

The first problem that we faced was that there is no single normative act outlining the targets of state grant support. In contrast, the European Union Financial Regulation (Article 180) clearly states that grants may be awarded to finance an action intended to help achieve a Union policy objective or the functioning of a body which has an objective forming part of, and supporting, a Union policy. Establishing priorities in the use of public finance avoids the waste of budgetary resources and makes their use more efficient. Thus, we believe that the targets of budget support should be determined in the budget legislation of Russia. These are the priorities of socio-economic development of the Russian Federation, enshrined in the goal-setting documents in Article 11 of the Federal Regulation of June 28, 2014 No. 172-FZ "On Strategic Planning in the Russian Federation". These include the Annual Address to the Federal Assembly of the Russian Federation and the Concept for Long-term Socio-economic Development of the Russian Federation. Moreover, we consider regulatory restrictions are important limiting the state grant

support to the spheres of culture, art, science and education. This conclusion follows from the Federal Act of 29.11.2018 No. 459-FZ "On federal budget for 2019 and for 2020 and 2021 planning period", which provides grants specifically for these purposes⁴.

The Budget Code of the Russian Federation mentions the word "grants" five times; however, there is no definition of grants or basic legal regulation of the procedure for their provision and expenditure. In addition to the named source, grants are devoted to Act of the Government of the Russian Federation of March 27, 2019 No. 322 on general requirements to regulatory legal acts and municipal legal acts establishing the procedure for grants in the form of subsidies, including those provided on a competitive basis (hereinafter — Government's Act No. 322), as well as Order of the Ministry of Finance of the Russian Federation No. 280n of December 21, 2018 on the endorsement of the typical forms of agreements (contracts) on the grants in the form of subsidies provided from the federal budget in compliance with paragraph 7 of Article 78 and paragraph 4 of Article 78.1 of the Budget Code of the Russian Federation" (applied since 2019).

We will analyze the content of these legal acts and try to define the concept of grants in the budget law of Russia. It follows from Articles 78 and 78.1 of the Budget Code of the Russian Federation that **grants are a form of subsidy**. In these rather voluminous articles, grants are mentioned only in paragraph 7 of Article 78 and paragraph 4 of Article 78.1. According to these paragraphs, "a budgetary provision (grant expenses ... *in the form of subsidies*) can be included in the federal budget). Therefore, grants are budget allocations in the form of subsidies.

The Budget Code of the Russian Federation provides for two types of subsidies, completely different by nature and regulation:

⁴ However, it also provides grants to mass media, but such grants will contradict the principle of mass media independence.

- subsidies, which are a form of intergovernment transfers and allocated to budgets of a different level (“intergovernment subsidies” — *author’s note*);

- subsidies provided to individuals and legal entities (“budget subsidies” — *author’s note*).

This fact often confuses the application of the provisions of the Budget Code of the Russian Federation. This study shows that grants should be distinguished from budget subsidies. In fact, there are many more types of budget subsidies. Almost every paragraph of Articles 78 and 78.1 of the Budget Code refers to various types of budget subsidies and has special (rather than general) rules. For example, paragraphs 1–3 of Article 78 determine the legal regulation of subsidies to producers of goods, works, and services in order to reimburse lost income; paragraph 4.1 determines the legal regulation of subsidies to individuals for reimbursement of customs payments; paragraph 7 determines the legal regulation of subsidies in the form of grants; paragraphs 8–8.4 determine the legal regulation of subsidies for capital investments, etc.

Based on the above said, we suggest defining the concept of “budget grants” in the budget legislation as follows: “budget grants are free-of-charge, non-refundable, earmarked funds provided from the budgets of the budgetary system of the Russian Federation to individuals and legal entities to implement non-commercial projects corresponding to the goals of socio-economic development of Russia, enshrined in the strategic planning documents”.

FEATURES OF BUDGET GRANTS

The analysis of the above regulatory documents indicates a few features of budget grants. They are as follows:

- **grant recipients** can be legal entities, individual entrepreneurs and individuals (except public institutions);
- legal regulation of grants provided to non-profit legal entities and other entities

is concentrated in different Articles of the Budget Code of the Russian Federation and has some differences;

- the procedure for providing individual grants is determined by decisions of the President of the Russian Federation, the Government of the Russian Federation, the highest official of the constituent entity of the Russian Federation, the highest executive body of state power of the constituent entity of the Russian Federation, local administration;

- if such decisions do not provide for such an order, it shall be established accordingly by regulatory legal acts of the constituent entities specified in the previous paragraph. Moreover, these acts must comply with the general requirements established by the Government of the Russian Federation;

- grants can be provided both on a competitive basis and not.

Article 21 of the Budget Code of the Russian Federation defines a special subgroup of budget expenditures of classification code of the Russian Federation “Prizes and Grants”, included in the group “Social Security and Other Payments to the *Population*”. It can be seen that grants to legal entities do not have their own subgroup of expenditures and it is not clear what they relate to.

A systematic interpretation of the items of the Budget Code of the Russian Federation on budget subsidies allows us to add to the above the following essential elements of budget grants:

- grants to **non-commercial** legal entities are included in the budget allocation for the provision of state (municipal) services (work performance), while grants to other entities are included in the budget allocation for the provision of subsidies to legal entities [except subsidies to state (municipal) institutions], individual entrepreneurs, to individuals (Articles 69, 69.1 of the Budget Code of the Russian Federation), which, in our opinion, is illogical;

- grant recipients should not have overdue (unsettled) debts on monetary obligations to

the corresponding public legal entity (p. 17 of Article 241 of the Budget Code of the Russian Federation);

- applicants for grants cannot be foreign legal entities or Russian legal entities with the total share of offshore companies in their authorized (joint-stock) capital exceeding 50% (p.15 of Article 241 of the Budget Code of the Russian Federation);

- grant recipients must conclude an agreement, form of agreement is established by the relevant financial authority (for example, the standard form for grants provided from the federal budget is established by order of the Ministry of Finance of the Russian Federation);

- a precondition of this agreement is that the grant recipient should agree to financial control measures regarding compliance with the objectives and use conditions of the grant (Articles 78, 78.1 of the Budget Code of the Russian Federation);

- for grant recipients, an obligation to return funds used in violation of the order should be provided (for some reason, this obligation is not mentioned in relation to non-profit organizations — grant recipients). Moreover, the last rule is not mentioned anywhere, though it should be included in the procedure for the provision of individual grants.

If we evaluate the Articles of the Budget Code of the Russian Federation on grants from the point of view of technology of legal wringing, we will see that the provisions of Articles 78 and 78.1 on grants partially coincide (duplicate).

Government's Act No. 322, which establishes the requirements for normative legal acts for providing grants, supplements the characteristics of grants given in the Budget Code of the Russian Federation to a small extent. It leaves a lot of decisions to the discretion of certain provisions for specific grants. For example, this concerns such important issues as the procedure for calculating the size of grants, the deadlines for submitting and considering applications, the procedure

for selecting grant recipients, the method of financing the grant recipient (advance payment or payments upon completion), the procedure and reporting forms, etc. Besides, Order No. 322 establishes only the “general requirements” to the normative legal acts on the provision of grants, and not to the grant activity or to budget funding procedure. The significance of this document is also mitigated by the fact that these general requirements do not apply to the procedure for grants in the form of subsidies from the federal budget, budgets of the constituent entities of the Russian Federation, local budgets, as determined by the decisions mentioned in sub-paragraph 1, paragraph 7 of Article 78 and sub-paragraph 1, paragraph 4 of Article 78.1 of the Budget Code of the Russian Federation. That is, if

We consider it is important to limit the state grant support within the spheres of culture, art, science and education.

the rules for the provision of certain types of grants are established in specific decisions on the provision of these grants, these rules take precedence over the general requirements enshrined in Government's Order No. 322. Therefore, this Order is applied residually. This suggests that “local” legal regulation focuses on each grant, while there are no general requirements for grant funding.

Nevertheless, Government's Act No. 322 contains several important amendments about grants. In particular, it bans double funding of the same activity. According to paragraph 4, “in the current financial year or on a different date determined by the legal act, the applicant must not receive funds from the budget of the budgetary system of the Russian Federation planned for the grant provision, in accordance with other legal acts

for the purposes established by the legal act”. The general requirements also indicate that the applicant, a legal entity, as of the date determined by the legal act should not be in the process of liquidation or bankruptcy, and the applicant, an individual entrepreneur, should not stop acting as an individual entrepreneur. Paragraph 5 of Government’s Act No. 322 formulates the controversial provision that an additional requirement for an applicant — a budgetary or autonomous institution — is to provide consent from its founder to participate in the selection.

EVALUATION OF FINANCIAL AND LEGAL REGULATION OF GRANT ACTIVITY IN RUSSIA

The analysis shows that financial legislation pays little attention to grants. Meanwhile, even this superficial legal regulation of grant activities leads to the conclusion that grants as a form of budget funding (state support) for legal entities and individuals have a number of distinguishing features from budget subsidies, as well as from private grants.

First, subsidies involve **co-financing** of expenditures, while grants can cover the costs of their recipients all.

Second, most of the budget subsidies provided for in Articles 78 and 78.1 of the Budget Code of the Russian Federation, aimed at reimbursing the expenditures already incurred by the recipients, while grants are provided to finance any future activities.

Third, classifying budget grants into a separate category would help isolate them in the budgetary classification and eliminate confusion in the legislation on the type of budget allocation they relate to. Now, they belong to two types of budget allocations at the same time. Another difference between budget grants and private grants might be in limiting the targets for budget grants and in pursuing the state (public) interest in providing them. We emphasize the non-profit nature of grants. Frequent grants differ from budget ones by

the fact that they are based on the principles of freedom of agreement and equality of parties to legal relations, which is not applicable to budget grants.

However, if the legislator learns about our view on the special nature of the “budget” grants, and if the grants remain a form of budget subsidies, the Russian grant regulation should be substantially modernized.

This view can be proved by the European Union’s extensive practice. Grants should be considered an important component of the development of the European economy. They aim to stimulate the development and implementation of radically new ideas and solutions in priority industries for the European Union. Currently, there are about 20 programs in the European Union, which provide funding from the EU budget in the form of grants⁵. The analysis of EU legislation on grants testifies its high sophistication. The European legislator strives to regulate the smallest details of grant funding. There are no legal acts of the European Union devoted specifically to the procedure of budget funding through grants.

The legislation of the European Union, like the Russian one, is based on the general-to-specific principle and, therefore, establishes:

- general rules for spending the EU budget;
- forms of financing any activity from the EU budget (procurement, bonuses, contributions to trust funds, grants, loans, budget guarantees, etc.);
- features of the provision of grants;
- features of grant allocation for innovation and research, ecology, education, culture, etc.⁶

⁵ Single Electronic Data Interchange Area (SEDIA). Funding & tender opportunities. URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home> (accessed on 30.03.2020).

⁶ Procurement and Grants for European Union external actions. A Practical Guide to financial and contractual procedures (Version 2018.0–2 August 2018). European Commission. URL: <https://www.info-cooperazione.it/wp-content/uploads/2018/09/ePrag-en-2018.0-1.pdf> (accessed on 30.03.2020).

Following the described procedure, the basic document governing grant activities in the EU is the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (hereinafter referred to as the EU Regulation)⁷. This document can be referred to as the Budget Code of the European Union. It regulates the whole range of activities regarding adoption, execution and control over the implementation of the EU budget. What is especially important and has the edge over the Budget Code of Russia is that the EU Regulation has quite a few provisions devoted to grants. Besides the regulation of grant support, section VIII of the EU Regulation that consists of 4 chapters and 25 articles (Articles 180–205) is devoted to grants.

Article 2 of the EU Regulation provides a rather concise definition of the *grant* as a financial contribution by way of donation. Previous EU Regulation provided a more detailed definition, which established that grants are direct financial contributions by way of donations from the budget to finance actions aimed at achieving the EU policy objectives; functioning of bodies that pursue the EU common interest objective or have an objective that is part of or supports the policy of the European Union (Article 121). It is important to emphasize that the EU Regulation establishes special principles for grant support, namely:

- equal treatment;
- transparency;
- co-financing;
- non-cumulative award and no double financing;
- non-retroactivity (grants shall not be awarded retroactively for actions already completed);
- no-profit (grants shall not apply to actions the objective of which is the reinforce-

ment of the financial capacity of a beneficiary).

A distinctive feature of the EU legislation is a large number of general regulations on grants of higher legal force (adopted by the Parliament of the European Union), as well as detailed regulation of grant activities. For example, in the European Union, grants are awarded by a general rule, only by calls for proposals (projects). Moreover, Article 195 of the EU Regulation provides an exhaustive list of exceptions to calls for proposals. For exam-

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ple, in the case of research and technological development, where the basic act expressly provides for the condition that the project does not fall under the scope of a call for proposals, and to bodies (not legal entities — *author's note*) for activities with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialization or its administrative powers.

As already noted, the Russian budget legislation has no rule to hold a compulsory competitive selection of grant recipients. Meanwhile, the competitive selection of grant recipients is aimed at choosing the most interesting projects (works), helps increase competition and achieve the best results with the least costs. Thus, we propose to clearly

⁷ EU, Euratom 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union. Official Journal of the European Union L 193/1. 30.07.2018.

define the list of cases that do not require a competition or another selection for grants in the Russian Federation.

Another shortfall of grant regulation in Russia is notification to potential applicants about the possibility of obtaining grants. Due to the lack of universal legal regulation, there are no general requirements for notifying interested parties. Here, the experience of the European Union also seems useful. According to the EU Regulation, information on any grant should be posted on a common official website dedicated only to grant support. This Single Electronic Data Interchange Area contains all information about all grants from the EU budget, the procedure for receiving them and immediately provides an option to apply for a grant⁸.

CONCLUSIONS

The identified shortfalls of the grant legislation of the Russian Federation, the cited experience of the European Union on grant regulation, and the assessment of the impact of budget legislation on grants for achieving the objectives of Russia's socio-economic development led to the conclusion that it is possible and necessary to improve the le-

gal component of grant support in Russia. Therefore, we propose to include a separate chapter "Budget grants" in the Budget Code of the Russian Federation. It should provide: the concept of budget grants, the distinguishing features of grants (non-profit basis, gratuitous, non-refundable nature), principles of grant support, targets of grants (science, culture, art, education), outline the range of grant recipients (individuals and non-profit organizations), define general rules for the provision and expenditure of grants, responsibility for their misconduct or inefficient use, other violations. The chapter should pay particular attention to notification to potential participants about the grants proposed for award, as well as the regulation of cases of competitive (non-competitive) receipt of budget grants.

This proposal solves several important problems at one time. Besides regulating grant relations, it will move the current rules on grants from the sub-legislative to legislative level. Moreover, detailed regulation of grant relations based on the Budget Code of the Russian Federation may also provide methodological assistance to regional and local authorities in awarding regional and local grants. Federal legislation should guide them and be an example for creating normative acts of the constituent entities of the Russian Federation and local communities.

⁸ Single Electronic Data Interchange Area (SEDIA). Funding & tender opportunities. URL: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home> (accessed on 12.01.2020).

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