Abstract

Background/Objectives: The objective of the article is to analyze the adopted legal norms in the field of land legal relationships and assess their effectiveness in terms of practical application. Methods/Statistical Analysis: The general scientific dialectical method enabled to consider the problem of the RF land legislation reforming at the modern stage, substantiate advantages and disadvantages of different approaches to the study of this issue, to demonstrate amendments in the RF land legislation depending on a combination of internal and external factors affecting it. Methods of formal logic have allowed characterizing the changes in the land sector at the modern stage. Findings: The obtained results prove that the amendment in the RF land legislation will adversely affect the social, investment and productive climate of the RF in the absence of the practice of applying the introduced changes. Based on the study the authors conclude that the adopted innovations in the field of land legal relationships require additional interpretation. The conducted analysis of judicial practice helps to identify the most problematic legislative norms and determine the spheres of land legal relationships, in which there is a stable law enforcement practice established. The identified problems affect the state of the land reform legislation, and also exert negative impact on its practical application, including the judiciary practice.

Applications/Improvements: In the absence practice of the applying the introduced amendments the conceptual amendment of the land laws of the RF negatively affects the social, investment and productive climate of our country. It can be stated that amendments in land legislation of the RF, occurring with regular constancy, do not clarify the situation in the judicial practice, thus no clear and unified mechanism for law enforcement of land and legal norms is formed. Through our analysis of judicial practice, it is possible to identify the most problematic legislative norms and determine the spheres of land legal relationships, in which there is a stable law enforcement practice established.

Keywords: Land Reform, Law Enforcement Practice, RF Land Code

1. Introduction

Land reform, taking place in the RF, has lasted for several years. It is hard enough to judge when it receives its legal completion. One gets the feeling that the Russians are living in the period of ‘legislative fever’ domination in one of the main branches of power. As rightly noted by1, “the law must take into account not only the realities of the ‘real life’, but also the tendencies of its development, because it is designed not to the momentary success, but to a long-term constructive action, and it is not the law at all which can be amended endlessly and at any time even though at the legislative level”.

It is worth stating the fact that the land reform in Russia, which got its start in the early two thousands, has never been completed. Our country has always been an agrarian state, it is necessary to maintain this status in the future as well. According to leader of the “Civic Platform” in2, “the state is an inefficient owner and a bad manager <...> over a half of public lands are not differentiated between the levels of government, and a significant part of them has not been entered into the State Real Estate Cadaster”.

In our opinion, the land reform in Russia should help to address such pressing issues as:

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• Itemizing the citizens’ constitutional right to land ownership.
• Overcoming the embargo introduced against Russia in 2014 by means of the development and support of own agriculture.
• Carrying out a radical restructuring of the economy based on the agricultural sector development.

The purpose of this article is to analyze the legal provisions adopted in the field of land legal relationships and assess their effectiveness in terms of practical application. The problem of land legal relationships is important not only for Russia. In some Western countries, the issues of land use, free land circulation, its assignment for free and appropriate use have not been finally settled. Modern foreign legislation, unlike the Russian one, abandoned the erroneous view that land ownership is the only form of economically efficient productive labor of peasants’. This caused the turn to the new agrarian policy of foreign countries, aimed at being able to use all the economic mechanisms for distribution of land ownership and modern, tested by the international practice, forms of cooperation of the land owner and the tenant farmer wishing to carry out an effective agricultural production. The agrarian legislation of the USA, Germany, Spain, England, France, Canada, Australia, provides for the right of farmers to use the land for a long period subject to regular performance of their duties and the preferential right to extend the lease agreements upon the expiry of their validity; Italy and the Netherlands set the maximum size of the land rent; number of countries (Austria, the UK, the Netherlands, France) introduced strict professional requirements for applicants for agricultural land lease. The Agrarian Law of the United States of America (USA) went beyond the civil rights and is essentially a federal public law, focused in different sections of the US Code, governing the use of public lands, forests, water and the development of agricultural infrastructure.

In Russia till now the land issue referring to the transition from the division of lands into categories to the territorial zoning remains open as well. However, in many countries of Western Europe and the United States an institution of territorial zoning has long been established. Thus, for example, in the US the land purchase and sale and lease is regulated depending on the zone of land belonging. In Canada, the so-called land management zones are distinguished, in the territory of which a special regime of use, control and protection of land is introduced in order to maintain an ecological balance and qualitative state of lands (Territorial Lands Act of 1985). In Australia, Land Use and Management (ALUM) Classification system (1994) is applied for land-use regulation. In the European systems of legal regulation the possibility to use land in these or other purposes is established by the results of the territory development plan approval. At the same time a substantial amendment of the type of the permitted land use cannot be done privately – only in accordance with this plan.

Thus, one can say that in Russia the land reform is carried out by considering and generalizing the positive foreign experience of legal regulation of the land issue, but taking into account the specifics of the Russian legislation and the mentality of our country as an agrarian power.

The genesis of land legal relationships is rather complicated.

Many scientific works are devoted to the research of land relations, the issues land reform management, legal regulation of transformations in the land sector. Not only representatives of the civil law, but also economists, political scientists, sociologists and specialists in other branches of scientific knowledge are interested in the problems of the land sector.

General issues of the land reform implementation in the Russian Federation are studied in

The issues of government administration and legal regulation of land relationships are analyzed in

and others. However, these studies involve the historical aspects of land legislation development and identify problems of the Russian land system of the 1990es.

The problem of transformation of land legal relationships is relevant not only in Russia, but also abroad. The works of foreign scholars on the subject made a theoretical foundation of the research. These include works

and others.

In this article, we want to assess the effectiveness of the implemented land and legal norms in practice on the basis of administrative acts adopted by our enforcer.

2. Methodology

The general scientific, private and special methods of cognition constitute the methodological basis of the research. General scientific dialectical method enabled to consider the problem of the RF land legislation reforming at the modern stage, to substantiate advantages and disadvantages of different approaches to the study of this issue, to demonstrate amendments in the RF land
legislation depending on a combination of internal and external factors affecting it. Methods of formal logic allowed characterizing the transformations in the land sector at the modern stage and identifying statutory regulation defects. In addition, methods of scientific cognition helped to carry out a study of existing legislation for compliance with this issue. In order to correlate different legal norms the comparative legal and formal judicial methods were used in the article. The applied combination of different methods allowed solving the tasks and achieving the designated goal.

Empirical methods

Analysis and generalization of Russian experience in the field of the national land legislation improvement laid the basis for the harmonization of existing legislative acts in order to improve consistency in the actions of public authorities and local self-government.

Content analysis method ensured the completeness, reliability and consistency of the resulting data generalization.

Comparative analysis of judicial practice in certain categories of cases related to legislative amendments in the land sector was implemented to study the results of law enforcement practices and draw conclusions aimed at improving the legal regulation of this area of legal relationships in the RF.

Using predictive methods the trends in the development of the studied object were determined and the vision of the possible positive or negative consequences of the implementation of the RF land legislation was provided.

Some sociological (simulation, extrapolation) and statistical (classification, correlation) methods of cognition were involved for the purpose of establishing certain regularities and tendencies of development of the studied object and identifying the main contradictions and ways to overcome them.

Using qualitative research methods (analysis and synthesis, comparison, simulation, etc.) was determined by the need to formulate hypotheses and productive ideas, as well as the necessity to understand and explain the existing data.

3. Debate

Countless collisions, gaps, contradictions have emerged in the Russian land legislation by 2014. Their elimination resulted in amendments introduced into the Land Code of the RF (hereinafter – the RF LC) through the adoption of the Federal Law of 06.23.2014 No. 171-FZ,\(^{34}\) known as a ‘new land reform’. The current version of the RF LC entered into force on March 1, 2015 and followed by enforcement of the new principles of formation and the provision of land plots publicly and municipally owned. Land plot formation on the basis of the boundary-setting plan, the exchange of land plots instead of withdrawal thereof for public and municipal needs, etc. – this is an incomplete list of these legislative innovations.

Russian lawmakers believe that legitimate innovations will create the necessary conditions for effective work of public authorities and local self-government, eliminate unnecessary administrative barriers in the interaction with stakeholders, contribute to the implementation of investment projects, including in housing and other types of civil engineering\(^{35}\).

One of the key amendments of land legislation is to exclude a corruption component in the procedure for granting land plots, and the main objective of innovations is, above all, to improve the legal regulation of urban development and the business climate in the construction sector.

To implement the above objectives the legislator has set the following tasks:

- Increasing the circulation of land plots.
- Simplifying the procedure for granting thereof to the maximum and making it transparent.
- Reducing the time for granting land plots.

Let us analyze the legislative innovations.

We shall start with the detailed determination of land plot stipulating the mandatory presence of identifying characteristics. In particular, now the land plot as an object of right is a real thing, a part of the earth’s surface, which has characteristics that allow identifying it as an individual-specific thing.

In addition, the law provides for an exhaustive list of cases in which the formation of land plots is carried out exclusively in accordance with the approved boundary-setting plan. In particular, such cases include the formation of land plots: From the land plot allocated for the integrated development of the territory within the boundaries of the planning structure element built-up with apartment buildings; for placement of linear objects of federal, regional or local importance.

The Law of June 23, 2014 No. 171-FZ\(^{34}\) establishes that the sale of public or municipal land plots, where
provision is made for construction of buildings and facilities according to the main type of permitted use, is not allowed. Granting of such land plots for construction should be carried out mainly by means of leasing thereof to future developers. A closed list of cases expressly stipulated by the RF LC (in particular, granting of land plots to citizens for individual housing construction) is an exception. The new law has prescribed in detail the procedure for direct action with specific and fairly short deadlines for their implementation – they should not exceed three months.

The struggle with the objects of unfinished construction is one of the issues addressed by the adopted federal law. Until recently there have been no effective methods, the application of which would solve the problem of long-delayed construction. Step-by-step measures were taken that would dramatically influence the owners of unfinished construction facilities. The amendments to the Law No. 171-FZ of the Russian Civil Code will most likely not please developers who build real estate units on the land leased from the state or municipality.

Article 3 of the Law No. 171-FZ complements the list of grounds for termination of ownership with a new clause – the alienation of object of unfinished capital construction due to the termination of lease agreement for the land publicly or municipally owned. The procedure for such alienation is settled by a new article 239.1 of the RCC. Alienation is possible if:

- A capital construction facility has not been completed by the time of the termination of lease agreement for the land where this facility is erected.
- A land plot was granted to the developer following the results of the auction, or without a tender in order to complete the facility under construction and the construction of this facility has not been completed, as well.
- Violation of the facility construction term is not associated with the act (omission) of state authorities, local self-government authorities or persons carrying out commissioning of engineering support networks, to which this facility shall be connected (technologically attached).
- Alienation is not prohibited by law (note that this clause was absent in the original version of the draft law).

The owner of unfinished capital construction facility shall be entitled to purchase the land plot on which the facility is located on lease for a period of three years once to complete its construction without tendering pursuant to the manner prescribed by Art. 39.14-39.17 of the RF LC. This rule operates in cases when the ownership of the capital construction facility or the right to the land plot lease were appropriately registered or granted before March 1, 2015 and, if this land plot had not been granted previously to any of the previous owners of long-delayed construction facility on these grounds.

According to the provisions the law, the owners of kiosks, stalls and shops ‘on wheels’ will be exempt from the obligation to enter into lease agreements on the occupied land, this also applies to the owners of advertising structures.

The law amends the provisions of the RF LC about the redistribution of land plots and introduces a new chapter into the RF LC, governing such redistribution. It is established that it is possible not only to redistribute several adjacent land plots, but also the publicly or municipally owned land (i.e., the part of the earth’s surface that is not documented and not registered as an object of right – a land plot). At the same time, within the meaning of innovations under consideration, the lands may be involved in the redistribution unless at least one registered plot participates therein.

Despite the declared many years ago ‘dacha amnesty’, a lot of garden plots and allotment gardens have still remained not privatized. Some gardeners simply cannot do this, because their cases – and there are many of such – do not fall under the ‘amnesty’. Land plots on the right of permanent (perpetual) use have not been allocated to gardeners since 2001. That is why only those members of the garden associations, who joined and got their land plots before 2001, could re-register their land under the ownership free of charge under dacha amnesty. According to the amendments to the Land Code gardeners will be able to register their land plots under the ownership regardless of when they became members of the garden partnership or cooperative.

The amendments introduced also affect socially important problems such as urbanization, lack of qualified specialists in the regions and localities with a small number of inhabitants. There is quite a number of places in Russia, where land can be sold up neither at auction nor without bidding – there simply nobody to buy. So it was decided to distribute it free of charge – to those who would agree to work in such places (this refers, in particular, to the Russian intelligentsia, doctors, teachers, etc.) or run a
farm. The law does not provide the list of such areas and required occupations. It will be decided by the regions.

4. Results

In the light of the innovations we will obtain the following results:

- The establishment of a new procedure for granting publicly and municipally owned land plots to individuals and legal entities.
- Determination of the acquisition peculiarities of the land plots by the said persons at the auction and without bidding, as well as for a charge and free of charge.
- Regulation of relationships in the field of easement creation, land redistribution, transfer of federally owned land plots to the ownership of municipalities or the territorial entities the RF.
- The possibility to use publicly and municipally owned land plots by individuals and legal entities without granting land plots.
- Clarification of legal rules that define the concept of ‘land plot’, establishing the procedure for the land plot formation, content of rights in things and other rights to land plots, the types and conditions of transactions with land.
- The introduction of a new article in the Civil Code of the RF, providing for the alienation of the facility under construction in connection with the termination of lease agreement for the land publicly or municipally owned.

5. Discussion

Since the entry into force of these innovations a little more than six months have passed away so far. Let us try to evaluate the effectiveness of the adopted amendments based on the analysis of the law enforcer's activities. The adopted innovations are not currently assessed by our Russian enforcer. This is alarming and means inexpediency of their adoption.

According to the statistical data available to the Rospravosudie website, we have analyzed the dynamics of the decisions made throughout the entire territory of the Russian Federation over the period from January 1, 2000 to February 28, 2015 according to the categories of cases related to legislative amendments, in particular:

- Land plot redistribution.
- Granting land plots for construction.
- Alienation of a facility under construction.

A category of cases involving ‘dacha amnesty’ issues is an exception to the above list because this innovation has been applied only since 2006.

For the most effective reflection of the law-enforcement situation existing in the field of land legal relationships, we systematized the obtained data. The categories of cases have been classified from the maximum degree of demand to the minimum one (see Table 1).

The above data clearly show caseload at the courts with regard to their jurisdiction and cognizance. Over fifteen years the courts the RF examined 222,689 cases, which makes about one and a half thousand cases a year. The greatest caseload was incurred by the courts of general jurisdiction (70.2%), accounting for ¾ of the whole array of cases relating to land legal relationships. Arbitration courts take the second place of the golden mean, and their working capacity in this area of 28%. The Justices of the Peace, who considered only 1.8% of all cases, are outsiders to our judicial system. Thus, the arbitration courts, together with the magistrates make up the remaining ¼ of the array of cases relating to land legal relationships.

<table>
<thead>
<tr>
<th>Categories of cases</th>
<th>Courts of general jurisdiction</th>
<th>Justice courts</th>
<th>Arbitration</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land plot redistribution</td>
<td>82,133</td>
<td>588</td>
<td>17,279</td>
<td>100,000</td>
</tr>
<tr>
<td>Granting land plots for construction</td>
<td>58,621</td>
<td>3295</td>
<td>38,084</td>
<td>58,621</td>
</tr>
<tr>
<td>Alienation of a facility under construction</td>
<td>36,678</td>
<td>514</td>
<td>18,648</td>
<td>55,840</td>
</tr>
<tr>
<td>‘Dacha amnesty’ issues</td>
<td>7,892</td>
<td>280</td>
<td>56</td>
<td>8,228</td>
</tr>
</tbody>
</table>
It should be noted that categories of cases related to granting land plots for construction and redistribution of land plots are the most problematic.

Every citizen of the RF has the right to land plot. As spelled out in article 30 the RF LC, the land can be obtained for construction or for other purposes.

Redistribution of land plots is one of the ways of land plot formation set out in Clause 1, Article 11.2 of the RF LC. As a result of the land plot redistribution, several adjacent land plots serve to form several other land plots and the existence of the source plots is terminated.

It is quite natural that these elements of a complicated system of land legal relationships are the most in-demand and, consequently, problematic. Over fifteen years two hundred thousand cases were considered on these types of categories. It is about 30 thousand cases a year.

Such real estate units as incomplete construction generate interest. It is neither created and nor built, its construction is not completed. It can be used neither for living nor for use as an infrastructure facility; it may be used for completion only. In this regard, the categories of cases related to the alienation of facilities under construction account for 55,840 cases over the period under review.

In the territory of Russia 8,229 people managed to make use of ‘dacha amnesty’, the essence of which is to provide a preferential procedure to commit certain actions related to land plot legitimation.

6. Summary

Thus, having analyzed the above material, taking into account the data of law enforcement practice, the following conclusions can be drawn.

In the absence practice of the applying the introduced amendments the conceptual amendment of the land laws of the RF negatively affects the social, investment and productive climate of our country. It can be stated that amendments in land legislation of the RF, occurring with regular constancy, do not clarify the situation in the judicial practice, thus no clear and unified mechanism for law enforcement of land and legal norms is formed. Through our analysis of judicial practice, it is possible to identify the most problematic legislative norms and determine the spheres of land legal relationships, in which there is a stable law enforcement practice established.

Currently, land legislation needs further harmonization. This is explained by the fact that a number of problems relating to land relationships in the Russian Federation remained unresolved. Thus, now we continue to discuss the issues of further reforming within the ‘package of land reform’, associated with the transition from the land division into categories to the territorial zoning. The problem of forming civilized land management mechanisms is directly related to the manner how quickly and competently modern approaches to defining the legal regime of lands will be introduced in the Russian Federation.

7. Conclusions

In general there are positive trends in the amendments, but to achieve the formulated objectives, it is necessary to spell out a clear mechanism for the implementation of these rules, which is easily understandable and eliminates the abuses of state authorities and municipalities.

The following problems that arise in the implementation of the norms of the new laws can be distinguished at the modern stage: redemption price pegging to the cadastral value can lead rather to increase in the price of the land than to its reduction, as often the cadastral value exceeds the market one; termination of the ‘dacha amnesty’ suspends the issue of legalizing unauthorized structures; exemption from obligatory conclusion of lease agreements for the land plots under the advertising structures can result in vulnerability of the owners of these structures; the amount of lease payments for the use of publicly or municipally owned land plots is an order of magnitude less than the amount of tax on land plots owned by individuals. The identified problems affect the state of the land reform legislation, and also exert negative impact on its practical application, including the judiciary practice.

Despite the indicated difficulties that arise during implementation of the norms of the new laws, it should be borne in mind that the problems of land relationships cannot be solved in one day or even in one year. The reform is not the final point, but only the start of a long path, which must inevitably lead to a significant change in the economic situation of Russia for the better.

8. References

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