



THE NEW SYSTEM OF LAND LEGISLATION IN RUSSIA

Igor B. Kalinin ♦

Introduction

The question of the legal regulation of land in Russia has always been one of priority. Despite this, no major laws in this sphere were adopted for many years due to disputes on the political front as to which direction law reform in this area should take. But starting in 2001 land laws have started to come into force allowing one to speak of Russian land legislation as a, more or less, defined system of regulation. The main point of contention regulating land relations had to do with land ownership. The 1993 Constitution of the Russian Federation states that land and other natural resources may be considered private, municipal, state or other types of property. Yet the Constitution only mentions the possibility of these various types of property. It does not state exactly what kind of property land, subsoil, water and other natural resources represent. These questions are addressed in other federal laws. The key laws regulating land relations in Russia are: The Land Code of the Russian Federation (25.10.2001) and federal laws *On Bringing into Force the Land Code of the Russian Federation* (26.10.2001), *On Turnover of Lands with Agricultural Purpose* (24.07.2002), and *On Delineation of State Land Property* (17.07.2001). Questions of state management of land use are also addressed in the laws *On Land Organization* (18.06.2001), *On the State Land Survey* (02.01.2000), *On Payments for Land* (11.10.91) and a few others.

Provisions of General Application

All land in Russia is divided into seven categories. They are:

- lands for an agricultural purpose,
- land for human settlements,
- lands for industry, the energy sector, transportation, communications, radio broadcasting, television, information technology, as well as lands set aside for outer space operations, defence, security, and other special purpose lands,
- lands for specially protected territories and sites,
- lands for forestry reserves,
- lands for water reserves, and
- reserve lands.

A separate legal regime and specific rights and responsibilities of land owners, land users, landholders and tenants are set out for each land category. The legal regime for land with an agricultural purpose is established in the law *On the Turnover of Lands with Agricultural Purpose*. Procedures for use and conservation of lands in other categories are regulated by the Land Code. It should be borne in mind that the former law provides for the peculiarities and specific details of utilization of agricultural lands. The latter contains general rules for the use of various lands. Thus, the



RÉSUMÉ

La réglementation juridique des terres est depuis longtemps une priorité en Russie. Toutefois, aucune nouvelle législation d'importance dans ce domaine n'a été adoptée depuis plusieurs années. La raison en est que la question foncière soulevait un conflit politique. Mais en 2001 et 2002, des lois foncières sont entrées en vigueur, ce qui permet de parler de législation foncière russe comme d'un système réglementaire plus ou moins bien défini.

Dans cet article, l'auteur offre un aperçu de la législation foncière actuellement en vigueur dans la Fédération russe. La discussion porte sur les questions de droits de propriété, ainsi que sur les autres droits des russes aussi bien que des étrangers. L'auteur décrit la réglementation ainsi que les conditions d'octroi et de refus d'octroi de droits à des parcelles de terrains. L'article n'examine pas les aspects politiques de la question foncière ou les problèmes géopolitiques y afférent. Il ne traite pas non plus des tendances possibles dans le développement de la législation foncière en Russie. L'auteur se concentre sur l'analyse de la législation actuellement en vigueur, ce qui devrait intéresser aussi bien les avocats traitant des questions foncières en Russie que les hommes d'affaires qui envisagent d'investir dans l'économie russe.

utilization of agricultural lands is regulated by the Land Code taking into account, also, the specifics established in the law *On Turnover of Lands with Agricultural Purpose*.

The territory of Russia spreads over 1,709.8 million hectares, the majority of which – 1,100 million hectares – is situated in the permafrost zone. 666.7 million hectares, or less than 40% of all land in the Russian Federation, are suitable for agricultural use. At the present time, of this number, about 222 million hectares are actually in use, of which arable lands constitute approximately 132 million hectares.

Land may be held as state property (that is, it may be the property of the Russian Federation, either as federal property or property of one of the subjects of the federation¹), as municipal property or as the private property of either natural or legal persons, i.e., corporations. Lands not within the private property of natural or legal persons or municipal structures, constitute state property. Delineation of state property into federal property, property of the subjects of the

federation and municipal property is established in the law *On Delineation of State Land Property*.

Federal property includes parcels of land recognized as such by legislation and those to which the property right of Russia arose at the time when state land was divided between the federal and subject levels.

The property of the subjects of the federation includes parcels of land recognized as such by federal law and those to which the property right of the subjects of the federation arose at the time of delineation of state property. Moreover, the property of the subjects of the federation may include land which is not already granted into private property and which:

- is occupied by real estate owned by the subjects of the federation,
- is granted to the bodies of state authority of the subjects of the federation, to state enterprises and organizations founded by the bodies of state authority of the subjects of the federation, or



- belongs to the lands within specially protected natural areas of regional significance, forestry reserves owned by the subjects of the federation, water reserve lands occupied by facilities in possession of the subjects of the federation under the property right.

Municipal property includes parcels of land which are recognized as such by federal laws, and laws of the subjects of the federation adopted in accordance with those federal laws, and the municipal property right which arose at the point when state property in land was divided amongst the various levels of government.

Private property in land is provided for in Russian legislation for both natural and legal persons, which have equal access to the acquisition of property rights to land. Land in either state or municipal property may be granted into private property, excluding those parcels of land that, according to legislation, cannot become the subject of private ownership. Citizens of foreign countries, persons without citizenship, and foreign corporations cannot acquire property rights to land situated in the border zone and in other areas of Russia, which are specially defined by federal law. The list of border zones is determined by the President of Russia. Other special areas which cannot be owned by persons without citizenship, or by foreign citizens, include, in particular, agricultural lands. With regard to these, the law *On the Turnover of Lands with Agricultural Purpose* contains an additional stipulation. Foreign citizens and corporations, persons without citizenship, as well as corporations, over 50% of the authorized capital of which is owned by foreign citizens, foreign corporations or persons without citizenship, can hold land only under lease. Foreign citizens and corporations and persons without citizenship who own buildings and other facilities may acquire the lands needed for the utilization of them and they have a priority right to purchase or lease the lands in question.

The Land Code makes provision for several kinds of right to land. Land may be held not only

under a full property right,² but may also be granted on the following terms:

- 1 permanent (indefinite) use,
- 2 lease,
- 3 term use free of charge, and
- 4 limited use of land (servitude).

Prior to the recently passed Land Code, the Russian Federation law on land previously in force provided for a life heritable ownership of land. The current legislation preserves this right as well, but with significant limitations. Such a right, if obtained by a natural person before the latest Land Code was brought into force, remains valid. However, the granting of land to citizens with the right to life heritable ownership after introduction of the new Land Code is no longer permitted.

1) **For permanent (indefinite) use**, land is conveyed only to state and municipal organizations, federal state enterprises,³ as well as to agencies of state authority and local government.

Natural persons cannot receive land for such use. Previously, the right to permanent (indefinite) use of land was granted also to corporations. At present, corporations are obliged to re-register their rights to permanent (indefinite) use of land: they must exchange this right lots for a leasehold interest or acquire such lands as property (according to their wish) before January 1, 2004.

2) Parcels of land are available for **lease**, with the exception of lands that have been withdrawn from civil circulation⁴ pursuant to the Land Code of the Russian Federation. The procedures for offering land for lease are regulated by the civil and land legislation of Russia. The maximum term for lease of agricultural lands is 49 years. For prospecting work, land may be given for lease for a term that does not exceed one-year. In such cases, the lessee is obliged to compensate for the losses caused during the prospecting work, and to implement all necessary





measures for re-cultivating the land. After the term of the lease contract has expired, the lessee has a priority right to conclude a subsequent lease agreement. The amount of lease payment is determined by the lease agreement. The lessee of land has the right, on informing the land owner, to transfer his rights and responsibilities as defined in the agreement to a third party. This includes mortgaging the lease rights and investing them as part of the authorized capital of a corporation, without the landowner's consent. The lessee of land has the right, on informing the landowner, to sublet the leased land without the landowner's consent. If the land belongs to state or municipal property, and the lease term does not exceed five years, the lessee has the right, on informing the land owner, to transfer his rights and responsibilities as defined in the agreement to a third party without the landowner's consent. Changes in the terms of the lease agreement without the consent of the landowner are not permitted. Early dissolution, on the lessor's demand, of a lease agreement signed for a term exceeding five years, is possible only by court order, and only on the grounds of a significant⁶ violation of the agreement by the lessee.

3) **For term use, free of charge**, land under state or municipal ownership may be made available to state and municipal institutions and to federal state enterprises for a term not exceeding one year. If lands are the property of a natural or legal person, they may be given for term use, free of charge, to any other citizen or corporation on the basis of an agreement. Under the same conditions, land may be given by certain types of organizations to natural persons as business allotments. The types of organizations contemplated are those involved in various branches of industry – in particular, transportation, forestry or timber or hunting – as well as state natural sanctuaries and national parks. Business allotments may be given to employees of these organizations for the period of their employment with the organization.

4) Russian land legislation makes provision for **public and private land servitudes**. Private

servitude is established in accordance with civil law. Public servitude is established either by regulatory documents of the Russian Federation or of the subject of the federation or of a local government authority. In the establishment of a public servitude, the results of a public hearing are taken into account. Public servitudes are established for the purpose of:

- passage on foot or by vehicle over land,
- use of the land for repairs of public utilities, engineering, electric or other lines and grids, as well as transportation infrastructure sites,
- installation of boundary and geophysical marks and access roads to them,
- conducting drainage work,
- operations related to water supply,
- cattle paths across the land in question,
- haying or grazing of cattle for periods of time which correspond to local conditions and customs,⁶
- utilization of land for hunting, fishing in a closed water reservoir located on the land and wild plant collection,
- temporary use of the land for prospecting, research, or other types of work, or
- free access to a coast line.

Servitude may be term-based or permanent. The owner of land in private servitude has the right to demand a reasonable payment from those parties in whose interest the servitude is established.

The rights to land discussed above arise on the basis of an agreement, if the land belongs to a physical or legal person under a property or lease right. These include buying and selling, barter, lease, sub-lease, inheritance and other agreements. If a parcel of land belongs to state or municipal property, the rights of physical or juridical persons to it arise from a document adopted by an executive body of state power (if the land belongs to state property⁷) or a local government body (for municipal lands). Land is, according to Russian legislation, "real estate".

Thus transactions in land are subject to obligatory registration according to the federal



law *On State Registration of the Rights to and Transactions in Real Estate*. However, if the agreement on lease or sub-lease of land, or on term use of land, free of charge, is concluded for a period not exceeding one year, no such registration is required.

The **granting of land**, which is in state or municipal ownership, into the ownership of natural persons or corporations is carried out for a fee. In certain cases defined by law, granting a property right may be accomplished free of charge. However, foreign citizens, persons without citizenship and foreign corporations can acquire land only for a fee. The decision on granting a property right is to be made within a two-week period from the date of the submission of the application in writing to an appropriate executive agency of state power [that is, at either the federal or subject level of state power] or a local government agency. A grant of land to either natural or legal persons for construction work may not be refused, except where the land in question has been withdrawn from circulation, where there is a ban instituted by a federal law on privatization of land or where the land has been reserved for state or municipal needs.

The property right of natural and legal persons to land, as well as other rights to land, may be terminated or limited. A property right to land is terminated if the owner alienates the lot to other persons, cedes the property right, or the property right is forcibly withdrawn. Land legislation and civil law provide a comprehensive list, which is not open to broad interpretation, of grounds for forced withdrawal of a land lot. They include:

- 1 confiscation,
- 2 requisition, as well as,
- 3 withdrawal, including by means of redemption, of land for state or municipal needs.

1) **Confiscation of land** is effected by court decision and is a withdrawal from the owner without compensation, as a sanction for committing a crime. In accordance with the Civil

Code of the Russian Federation, recovery of debts of a landowner through confiscation of land is also allowed only on the basis of a court decision.

2) **Requisition of a land lot** is temporary withdrawal in cases of natural disasters, accidents, epidemics, and other circumstances of an emergency nature. Withdrawal is carried out by authorized bodies of state power in order to protect vital interests of individuals, society or the state from the threats arising from such emergencies. The landowner receives compensation for losses incurred and, when return of the requisitioned land is not possible, the owner is compensated for the market price of the lot. The owner, if he or she so wishes, may receive an equivalent parcel of land instead. The amount of compensation received by the owner for either the requisitioned land or the losses incurred may be appealed through judicial processes.

3) **Withdrawal of land, including by means of redemption, for state and municipal needs** is exercised in exceptional circumstances related to:

- the fulfillment of Russia's international responsibilities, or
- the location of sites with state or municipal significance, in the absence of alternative locations for the placement of these sites.

Rights to land may be limited according to the grounds established by legislation. At present, some of the provisions limiting rights to land include:

- special conditions for the use of land in certain restricted and "sanitary protection" areas, and
- special conditions for environmental protection, including protection of animals and plants, natural monuments, historical and cultural monuments, archaeological sites and conservation of the fertile layers of soil, natural habitats and the migration paths of wild animals.





Restrictions in the right to land are established either permanently or for a fixed term. Such restrictions remain in force when a property right to land is transferred and may be appealed through judicial procedures by the person whose rights have been so restricted.

Use of land in Russia requires payment. The types of payment for use of land are a land tax, until such time as a real estate tax is introduced, and rent. The procedures for calculation and payment of the land tax are established by the legislation on taxes and duties. Rent is collected for lands given for lease. The procedures for calculating rent, the procedures, terms and time-frames for depositing rent for the lands under ownership of the Russian Federation, of the subjects of the federation or under municipal ownership, are established, respectively, by the government of Russia, by the bodies of state power of the subjects of the federation, or by local government agencies.

Special Provisions Regarding Lands Needed for Mineral Exploration or Development^a

The procedures for granting lands for extraction of mineral resources depend on the category of land, that is, whether they are forestry reserves or industrial or agricultural lands. These procedures are regulated not only by land legislation, but also by mining and forestry legislation.

Prospecting, surveying and extraction of mineral resources are conducted on the basis of a license issued by the Ministry of Natural Resources of Russia (MNR). The granting of such licenses is carried out following the preliminary consent by a land management authority or the landowner. Allocation of a parcel of land and registration of those land rights by a subsoil user takes place after the plan of work for the subsoil has been approved. In accordance with the federal law *On the Subsoil*, the parcels of land required for conducting work related to

geological exploration and development may be withdrawn from their owners. Those land owners receive reimbursement for the cost of the land which has been taken from them. A decision regarding such alienations of land is made by a federal body of executive power or by a body of the executive power of one of the subjects of the federation, according to the delineation of their authorities regarding land.

Regarding forestry lands, it is worth noting that the total area of forestry reserve lands is about 12 million km², including 7.6 million km², which are occupied by forests. Forestry reserves represent approximately 70% of Russian land. In order to extract mineral resources on forestry reserves, it is necessary to convert the forestry lands into non-forestry lands. The Forestry Code of Russia, contains provisions for classification of all forests into three groups and the exact procedures for this conversion depend on the category of forest.

Agricultural lands, the cadastre price of which exceeds the average level for the region, may be granted for development of mineral reserves, excluding widely spread mineral resources, such as sand or gravel, or for major pipelines, only in the absence of other possibilities for their placement. During work on extraction of mineral resources, the fertile layer of soil must be removed and subsequently used for the amelioration of low productivity lands in other locations. Organizations in the mining and oil and gas industries receive land for extraction of mineral resources after the mining allotment has been registered and a plan on land re-cultivation and restoration has been approved.

Disputes between a landowner and a subsoil user over the grant of land for the exploration and development of natural resources are handled by the arbitration courts.



Conclusion

From this brief overview of current Russian land legislation, a number of conclusions can be drawn. At present, the key laws regulating relations in the use and conservation of lands have been adopted in Russia. Primary attention has been given to legal regulation of the use of agricultural lands.

Russian citizens have the right to hold both agricultural lands and lands from other categories as private property. The rights of foreign citizens, persons without citizenship and foreign corporations to land in Russia, in comparison with those of Russian citizens and corporations, are, to a certain degree, limited. Foreign citizens and corporations have the right to hold as property the land necessary to ensure full enjoyment of the buildings and structures situated on them, if these buildings and structures belong to them as property. Lands of other categories, including lands with agricultural purpose, may be conveyed to foreign citizens or corporations only for lease. For the purposes of land legislation, a corporation is considered foreign, if the share of its authorized capital held by foreign physical and legal persons or by persons without a citizenship exceeds 50%.

Notes

1. The subjects of the Russian Federation are the subordinate political divisions of Russia. There is a variety of types of subjects: there are republics, *krais*, *oblasts*, *okrugs*, and two cities (Moscow and St. Petersburg), which have been given the right to regional self-management. In total, there are 89 subjects of the Russian Federation.
2. In civil law, to say that land is held as "property" is to say that the holder of that right has the "full-bundle" (to use the common law term) of property rights to that land. Any less extensive interest is not considered "property".
3. A federal state enterprise, according to civil legislation, is an enterprise founded by decision of the Government of the Russian Federation on the basis of property under federal ownership.
4. Withdrawn from circulation are parcels of land which are in federal ownership, and which are occupied by the following sites:
 - state natural sanctuaries and national parks,
 - buildings, structures and installations housing the Armed Forces, Border Guard Service troops of the Russian Federation and other troops, military units and agencies,
 - buildings, structures and installations accommodating military tribunals,
 - sites belonging to the organization of the federal security service and federal organs of state protection,
 - nuclear energy facilities, nuclear materials and radioactive substances storage sites,
 - sites accommodating the types of activities that warranted the creation of secret administrative and territorial units,
 - correctional and forced labour facilities,
 - military and civil cemeteries,
 - engineering and technical structures, communication lines and facilities intended for safeguarding the state borders of Russia.
5. A significant violation of an agreement is considered by civil legislation to be the violation of an agreement by either party when it results in such losses for the other party that a significant measure of what the party aggrieved had the right to expect on signing the agreement has been lost.
6. The establishment of both public and private servitudes on forest reserve lands is regulated by the Forest Code of the Russian Federation.
7. If land belongs to federal property, an executive body of state power on the federal level will constitute such an authority. In the case of land being the property of a subject of the federation, the right to grant the parcel of land is given to a body of executive power of the subject of the federation.
8. See also the discussion above of rights to lease land.





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