Legal regulation of land granting for construction in cities with federal status

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Abstract. The article considers special aspects of the provision of land parcels for construction, which are determined by constitutional and legal status of the cities of Moscow, St. Petersburg and Sevastopol. A number of objective circumstances determine the uniqueness of the legal status of cities of federal status. The land and urban planning legislation comprises the basis for the legal regulation of the provision of land for construction. The authors have educed the need to update the general plans of the city of Moscow, St. Petersburg, Sevastopol, which is caused by the expansion of borders by means of the surrounding areas. In the cities with federal status, there are legal problems associated with the lack of land use and development of recommendations or rules. The lack of coherence in planning and implementation of urban development in the cities and the adjoining subjects of the Russian Federation - the Moscow and Leningrad regions – is an urgent problem in the development of cities with federal status.

1 Introduction

The Russian Federation currently consists of 85 equal-right subjects. Three of them - Moscow, St. Petersburg and Sevastopol, being the cities with federal status - have a unique legal nature. These cities are the centers of urban agglomerations forming unitary and almost completely urbanized territories. The conditions noted above imply the formation of the specifics of the legal regulation of land and urban relations.

Along with the general specifics of the legal regulation of providing land parcels for construction in the cities of Moscow, St. Petersburg and Sevastopol, which is determined by their unique constitutional and legal status, there are particular inherent features for each of these cities in this range of public relations. It results from the fact that all these cities with federal status are the largest political, economic, historical, cultural and transport centers of the country.

The area of Moscow is 255 thousand hectares so far taking into account the annexed territories. The area of land suitable for transfer to the ownership or lease for commercial purposes including construction is a little more than 28 thousand hectares; on the right of

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permanent (perpetual) use for social institutions is more than 10 thousand hectares. To date, the total area of St. Petersburg is 143.6 thousand hectares. The land, referred to housing development (already built-up land or land suitable for construction) is 36.6%. The total area of Sevastopol is 107.96 thousand hectares, whereof the area of the urban zone is 37.2 thousand hectares, the rural area is 19.1 thousand hectares, and the area of mountain and forest tracts is 30.1 thousand hectares.

The investigations aimed at studying the legal regulation of providing land parcels for construction in cities of federal status were executed by such leading scientists belonging to this field of legal regulation as Voronin A.O. [1], Gordienko I.I. [2], Grechko V.V. [3], Andreev S.V. [4], Tkacheva I.V. [5], Voskresenskaya E. [6, 7, 8].

2 Materials and Methods

Special aspects of the provision of land parcels for construction, which are determined by constitutional and legal status of the cities of Moscow, St. Petersburg and Sevastopol, consist in the circumstances that cause the uniqueness of the legal nature of the subjects of the Russian Federation under consideration. The significance of these circumstances for urban development and land matters in cities of federal status is studied, the influence of the constitutional and legal status of the cities of Moscow, St. Petersburg and Sevastopol on legal regulation of providing land for construction within their borders is revealed.

A number of objective circumstances determine the uniqueness of the legal status of cities of federal status. The city of Moscow is the capital of the Russian Federation. For this reason, the highest federal State government bodies, representative offices of the subjects of the Russian Federation, as well as diplomatic representations of foreign states are located on its territory. The city of St. Petersburg was the capital of the imperial Russia for a long period; therefore, today the city continues to perform the functions of national importance in accordance with historically formed tradition. The number of highest federal bodies are located in the territory of this city: the Constitutional Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation, other federal authorities, 24 representative offices of the subjects of the Russian Federation and 56 diplomatic embassies of foreign states. The city of Sevastopol has been the main naval base of the Black Sea Fleet since it was founded.

3 Results

The land and urban planning legislation comprises the basis for the legal regulation of the provision of land for construction. Land legislation refers to the subject of joint competence of the Russian Federation and the constituent entities of the Russian Federation by virtue of direct indication of the Constitution of the Russian Federation (subparagraph "k" of paragraph 1 of Article 72).

The main array of legal norms governing relations for the provision of land for construction is concentrated in federal legal acts. However, constituent units of the Russian Federation have normative powers in this sphere only in two cases: when the right or obligation to adopt a regional normative act is directly provided by federal legislation; when a regional normative act is adopted in order to detail the legal regulation on issues that are not directly regulated by federal legislation.

The authors have educed the need to update the general plans of the city of Moscow, St. Petersburg, Sevastopol, which is caused by the expansion of borders by means of the surrounding areas. In the cities with federal status, there are legal problems associated with the lack of land use and development of recommendations or rules.

4 Discussion

Prohibiting the provision of land without auctions is one of the most important prospects in this area except for cases of providing land for the construction of objects of state significance, industrial enterprises, as well as other cases established by law. However, it is emphasized that the following issues remain unresolved: the rational order of provision of land for the construction of objects of national importance, the reasons of exclusion of objects of municipal status from this list, the reasons for the allocation of industrial enterprises to a separate group of objects.

The deficiency of a combined chart for the territorial planning of the city of Moscow and the Moscow region, as well as the cities of St. Petersburg and the Leningrad Region, Sevastopol and the Republic of Crimea seems to be an urgent problem. Adoption of such town planning documents will allow considering the territorial planning in the subjects of the Russian Federation under consideration in a comprehensive concurrence with each other, primarily in terms of the location of federal property.

The authors distinguish three groups of subjects of legal relations in the field of granting land for construction: persons acquiring rights to a land parcel; state or municipal authorities entrusted to administer land parcels; other entities taking part in the procedures for granting land parcels.

The first group is proposed to involve private individuals and legal bodies who is granted with land parcels in accordance with Article 29 of the Land Code of the Russian Federation, foreign citizens, legal entities and stateless persons, state and municipal authorities of the Russian Federation, as well as diplomatic missions of foreign countries. The second group of entities consists of federal authorities, municipal authorities of federal status, municipal authorities entrusted to provide land for construction purposes - the Federal Agency for Federal Property Management, the authorities of cities of federal status and municipal bodies in the field of provision of land parcels located within the cities of Moscow, St. Petersburg and Sevastopol.

The third group is proposed to include public authorities that take part in the procedures of providing land for construction. They form land parcels, carry out preliminary approval of the location of construction sites, organize and conduct tenders, and perform other powers.

In cities of federal status, municipal ownership of land parcels appears and remains, which occurs due to the reservation of property including land parcels by municipal units on a territory of cities.

The introduced cases of providing land parcels for construction purposes are not connected to each other by any criteria, but are determined by special purposes of granting land parcels in each specific case (for example, for citizens with three or more children, separate categories of citizens for individual housing or country houses, residents of economic zones). The absence of the system indicates that these cases of granting land parcels do not form an independent order, but represent only a list of exceptions to the general rule. The auction procedure for the provision of land for construction should become a general rule, since it mediates the systemic development of the territories on the basis of town planning documentation.

For cities of federal status, there is a specific legal regulation of selecting a land parcel for construction: in such a city, the specified action is carried out not by the municipal authority, but by the state authorities of the subject of the Russian Federation. In the city of Moscow, this procedure is performed by the Prefecture of the administrative district of Moscow (in the case of accommodation of garage and religious objects) and the City Property Department of Moscow (in all other cases), in the city of St. Petersburg - the Committee for Construction, in Sevastopol - the Department for Territorial development and interaction with the local government of the city of Sevastopol.

However, there is a legal uncertainty, when it comes to the number of options (one or several) for the location of an object, which should be prepared by an authorized body at the time of preliminary agreement of the place of its location. The only prepared option for the location of the object can lead to the fact that the authorized body will prepare a non-alternative option for its placement within the legal framework without taking into account the impact of construction on the environment and the interests of the population. Table 1 presents statistical data on the activity of construction organizations by ownership forms in 2016 [9]. Data show that the private property market predominates on the construction market.

Table 1. Number of construction organizations by ownership forms in 2016

	Total amount	state	private	mixed
The Russian Federation	271604	778	269548	242
Central Federal District	78430	171	7794	46
Moscow	26580	33	26397	13
North-West Federal District	25505	47	25319	39
St. Petersburg	12162	10	12085	16
Southern Federal District	19554	116	19316	32
Sevastopol	1033	1	1027	5

Table 2 shows the amount of construction works in subjects of Russian Federation and cities with federal status for 2015-2016 [9]. The data show an increase in the amount of construction work in Russia, the subjects of the Russian Federation and cities with federal status.

Table 2. The volume of work performed by type of economic activity "Construction", by subjects and cities with federal status for 2015-2016, million rubles

	2015	2016
The Russian Federation	7010355.7	7204234.6
Central Federal District	1780675.5	1842119.0
Moscow	806215.3	876768.5
North-West Federal District	1048125.7	1154849.1
St. Petersburg	592341.5	626076.0
Southern Federal District	598496.4	555063.2
Sevastopol	9479.3	18461.1

The authors defined the specificity of the three main elements of legal relations for the provision of land for construction in cities of federal status, taken in intrasystem communication and interaction. Specificity of land parcels as objects of legal relations consists in the complexity of their formation and developing for the purposes of construction in the current conditions and a large number of town-planning restrictions, which makes it necessary to consolidate in the legislation of the cities of Moscow, St. Petersburg and Sevastopol an adequate mechanism for accounting for public and private interests in the development and acceptance of territorial planning documents and documentation for the planning of territories. Specificity of the subject composition of legal relations lies in the redistribution of a number of powers to submit land for construction from local government to government authorities of these constituent entities of the Russian Federation, as well as to participate in relevant legal relations of federal government bodies, government authorities of other subjects of the Russian Federation and foreign states. Specificity of legal relations concerning the provision of land for construction in cities of federal status consists in the need to place on their territories state and municipal authorities, representative offices of the subjects of the Russian Federation, diplomatic embassies of foreign countries, objects of federal and regional significance, which ensure the implementation of state issues in the field of engineering, transport, social infrastructures and other public issues.

5 Conclusions

The authors have revealed the particularities of legal relations in the land parcel granting for construction in cities with federal status, which are determined by the constitutional and legal status of the cities of Moscow, St. Petersburg and Sevastopol, by combining the territories of these cities with territories of the adjacent constituent entities of the Russian Federation; by historical development of the cities of Moscow, St. Petersburg and Sevastopol, the presence of a large number of town-planning restrictions in the form of protected historical and cultural sites, specially protected natural areas, a complex and dense network of engineering and transport infrastructure, a high population and close interconnection with adjacent territories.

The lack of coherence in planning and implementation of urban development in the cities and the adjoining subjects of the Russian Federation - the Moscow and Leningrad regions – is an urgent problem in the development of cities with federal status. In terms of the objectively formed and existing close interconnection of these subjects of the Russian Federation, it is reasonable to elaborate cooperatively the unified documentation for the territorial planning of cities of federal status and adjacent territories in the Urban Development Code of the Russian Federation.

The elaboration and adoption of unified documents of territorial planning in the form of General plans will enable the most effective solution of the problems of ensuring security and creating favorable conditions for the life of the population of these subjects, choosing optimal locations for federal, regional and local facilities; the coherent determination of the demanded parameters for housing and cooperative interdependent development of cities with federal status and surrounding areas.

As a result of the study, the authors identified gaps and collisions of federal legislation and laws of cities with federal status (Moscow, St. Petersburg and Sevastopol) leading to the infringement of legal rights and interests of subjects of legal relations for the provision and use of land for planning the territory and construction in these cities.

The authors support the introduction of the legal institute of "integrated development of territories", which will enable the more flexible division of responsibilities for the territory planning, construction of utility, social and transport infrastructure between the private investor and the state, and allow faster construction of business incubator zones and technology parks.

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