Features of Regulation of Urban Planning Activities in the Federal Territory "Sirius"

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ABSTRACT
The article deals with the legislatively fixed features of the regulation of urban development in the new public-law formation in the Russian Federation — the federal territory "Sirius". The method used in fixing these features does not meet the goals of creating the federal territory "Sirius" and will not allow to realize the powers of the public authorities of the federal territory, since it violates causality in the system of regulatory regulation and does not imply a legal shift in the balance of interests.
Keywords: federal territory, powers of public governing bodies, town-planning activity

Federal Law No.271-FZ of July 1, 2021 "On Amendments to the Federal Law 'On the Federal Territory Sirius'" adjusted the law about the first federal territory in the Russian Federation, which was created in accordance with the constitutional novel in Article 67 of the Constitution of the Russian Federation.

Part 1 Article 67 of the Constitution of Russia, adjusted by the Federal Constitutional Law No.1-FKZ on Amendment to the Constitution of the Russian Federation, dated March 14, 2020 and named "On Improving Regulation of Certain Issues of Organization and Functioning of Public Authorities", states that in accordance with federal laws it is allowed to create federal territories in the Russian Federation.

In accordance with Federal Law No.437-FZ of December 22, 2020 "On the Federal Territory Sirius" a federal territory was created, and the aforementioned Law No.271-FZ of July 1, 2021 specified characteristics of urban planning in the Federal Territory Sirius. Necessity of listing such characteristics was previously discussed in the academic publications that proved a propitious moment of establishing a federal territory as an independent subject of urban planning regulation in the Russian system of urban planning legislation[1]. However, the legislator reduced regulation only to assigning the right of establishing such characteristics in by-laws, adopted within the competence (in terms of the general plan of the federal territory) of the Government of the Russian Federation or public authorities of the federal territory, that correlate their acts with the Government of the Russian Federation in terms of technological connection of the facilities to the utility networks; reconstruction of electrical and engineering grids; identification of public services in urban planning activities, provided exclusively in electronic form; creation and maintenance of information models of capital construction facilities; identification of characteristics of capital construction facilities; conducting of state construction supervision; auditing of design documentation for capital construction projects and results of engineering surveys; holding public hearings and discussions when exercising urban planning; construction, operation of underground facilities not related to minerals extraction; identification of procedure for changing permitted use of land.

The legal method used in this case should be thoroughly considered, since it is quite innovative, just like the idea of the federal territory in the Russian Federation. Of course, novelty does not necessarily mean making possible mistakes, because foreign legal systems have accumulated broad experience in regulating urban relations, demonstrating successful result.

For instance, Islamabad, the federal capital territory of Pakistan, built under the planning policy, distinct zoning of the territory and direct federal regulation, demonstrates a fundamental difference from other territories of Pakistan. It seems that one of the reasons for this is the status of the federal capital territory and its administration body (the Council of Common Interests) prescribed directly in the constitutional act (Part V, Chapter 3 of the Constitution of Pakistan)[2].

Malaysia presents an opposite experience, which led to equally effective results. Public powers, including in those urban planning, are delegated in the federal territory of Putrajaya to the so-called. Putrajaya Enterprise (Corporation). Functions of this enterprise, which is similar to a unitary enterprise (agency) created by the state and subordinate to the Ministry of Federal Territories, include: public health and sanitation, waste disposal and management, urban planning, environmental protection and building control, social and economic development, general functions of urban infrastructure maintenance[3]. The Federal Territory of Labuan, which consists of several islands, has been an international offshore financial center and free trade zone since 1990. Tax haven and banking services are managed through the Labuan IBFC[4]. Like the Federal Territory of

[1] Mayboroda V. A. Urban Regulation in the Development of the Federal Territory. Theoretical and Applied Jurisprudence. 2020. No.4. P.55-59.
[2] Constitution of Pakistan [Electronic resource] URL: http://pakistani.org/pakistan/constitution/part5.ch3.html#f368 (date of access 12.08.2021).
[3] Vision of the Putrajaya Corporation [Electronic resource] Official website of Perbadanan Putrajaya URL: https://www.ppj.gov.my/second-page/visi-perbadanan-putrajaya (date of access 12.08.2021).
[4] Labuan Financial Services Authority [Electronic resource]. Official website of Labuan FSA. URL: https://www.labuanfsa.gov.my/default.aspx (date of access 08/12/2021).

Putrajaya, municipal economy is managed by the Labuan Corporation, headed by a chairman[5]. Such experience in Russia can be used in special economic zones that exercise public powers without republican and democratic institutions.

However, in the case concerned we are talking about exercise of powers by public authorities, and the national experience in other legislative innovations related to the legal regime of the federal territory, pursues a traditional way — by introducing changes and additions directly to the branch law, without a step-by-step delegation of powers to other bodies. Thus, the Federal Law No.199-FZ of June 11, 2021 directly includes in the Tax Code of the Russian Federation rules of experimental special tax regime "Tax on Professional Income" established by the Law No.437- FZ of December 22, 2020. Federal Law No.195-FZ of June 11, 2021, directly includes in the Budget Code of the Russian Federation norms governing budgetary legal relations with the federal territory as a party thereto.

Legislation of the Russian Federation is based on a traditional branch approach to regulation of a certain area of legal relations. In the legal doctrine, a branch of law means a set of legal norms united under the same regulated social relations and method of regulation. Codification of the branch is optional, which does not serve as a criterion for making a judgment about an available independent branch of law. Pursuing goals of complete, comprehensive and objective analysis, it should be mentioned that the doctrine of branch division in science and education is replaced by the doctrine of direction of regulation. In this new doctrine differentiation does not rely upon an object or method of regulation, but rather on the subject composition, which puts participants in the legal relationship either in an equal or subordinate position to each other; accordingly, the participants use methods of imperative prescription or dispositive discretion within the agreed limits[6]. The concept of dividing law into private, public and international as a subject of research and an area of professional knowledge is worthy of attention; access to law for an unlimited number of law enforcers encourages the legislator to make systemic codification and incorporation of norms into consolidated legislative acts that develop a general idea of regulation in a particular area without the need to get legal education as a cognitive tool.

Urban planning law is a well-established, independent branch of legislation, whose subject of regulation is urban planning, and the method combines imperative prescriptions with infrequent options for dispositive behavior of the parties[7]. Urban planning regulation refers to public law, since main participants in relations are public authorities, on the one hand, and persons engaged in construction activities, on the other. Perhaps, in the majority of cases, it should be pointed out that main goal of the persons is to make a profit, and the goal of public authorities is to ensure sustainable development of the territory under urban planning, which will ensure human rights and freedoms and, above all, the right to a favorable environment and life. Comprehensive development equally implies protection of the right to housing, the right to work, the right to freedom of movement, the right to freedom of conscience and other human rights. Therefore, urban planning law is an integrate component of other branches of legislation and creates a unique subject of regulation. Its relations to other branches are quite easy — these are objects of capital construction where certain activities are directly performed in some areas of legal regulation. Thus, urban planning legislation literally regulates relations, providing a spatial background for other branches of law: location and accessibility of housing, places of employment, places of entertainment and recreation, number and quality of such facilities — all these relations are part of the subject of regulation performed by urban planning legislation.

Therefore, urban planning legislation has developed an institution to ensure different level of public powers among federal and self-government bodies. Powers of federal authorities of the Russian Federation are exercised through placement and operation of federal facilities. Powers of regional constituent entities of the Russian Federation are exercised through placement and operation of regionally important facilities, while powers of local governments are exercised through placement and operation of locally important facilities. The legal meaning and clearness of each type of objects are disclosed in the conceptual apparatus of urban planning legislation, enshrined in Article 1 of the Town Planning Code of the Russian Federation, respectively, in clauses 18, 19 and 20.

Public law nature of a federal territory is a combination or mixture of powers at the federal, regional and local levels, distinguished by a legal regime in the Constitution of Russia, Federal Law of October 6, 1999 No.184-FZ "On general principles of Organizing Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation", Federal Law No.131-FZ of October 6, 2003 "On General Principles of Organization of Local Self-Government in the Russian Federation". Those powers are combined in unified public authorities of a federal territory, which, according to the above mentioned law on the federal territory, are supposed to be several in number, including representative, executive-administrative, control and supervisory bodies. These public authorities should exercise powers of Russia, Krasnodar Territory and the urban district of Sochi, exercised by these public legal entities through classification of facilities into various levels of subordinance (federal, regional and local) in territorial planning and zoning documentation[8].

Spatial placement of a facility must be made through selection and proper design of elements in the planning structure. Let us remark that in terms of elements in the planning structure, there are two authorized federal executive bodies: the Ministry of Construction and the Ministry of Finance, which exercised their competence independently and determined

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5 Perbadanan Labuan [Electronic resource]. Official site of Labuan Corporation. URL: https://www.pl.gov.my/ (date of access: 12.08.2021).

6 Tsechoev V.K., Shvanderova A.R. Theory of State and Law: Textbook. Moscow: Prometheus, 2017. P.84.

7 Ryzhenkov A. Ya. Principles of Town Planning Law. 2019. P.176.

8 Mayboroda V.A. Notarial District of the Federal Territory. Notary. 2021. No.1. P.12-16.

two different lists of elements in the planning structure, clearly demonstrating features of by-law regulation assigned by the legislator to the executive body in paragraph 35 Article 1 of the Town Planning Code of the Russian Federation[9].

It is quite clear that there is a need to revise the categorical apparatus of urban planning legislation, based on the constitutional doctrine of division of powers between federal and regional authorities and on the constitutional guarantee of independence to local self-government, which implies that there must be real estate objects (capital construction facilities) to which the powers are applied. After all, Russia does not practice air fortune-telling to solve issues of state administration, war and peace, or justice[10]. The problems are solved in buildings, using methods of public administration and procedural rules, not in the open air auspices. Or there is an opposite need — application of a relevant concept to the object of the public authority in the federal territory. However, public authorities of the federal territory, their mixed competencies of three levels of government-public powers poorly characterize the federal territory and the goals of its creation. Considering Article 2 of the Law No.437-FZ of December 22, 2020, we can understand that the federal territory was created in order to ensure integrated sustainable social-economic and innovative development of the territory, increase its investment attractiveness, preserve the Olympic sports, cultural and natural heritage, create favorable conditions for identification, self-fulfillment and development of talents, pursue priorities of scientific and technological development of the Russian Federation. This is the reason why characteristics of the public authority of the federal territory must be identified. Thus, the objects promoting goals of creation of the federal territory are not only public authorities, meaning and alloy of powers on three levels, but also Olympic heritage facilities and other objects through which the goals of the federal territory can be achieved. Those objects do not belong to federal, regional or local level in accordance with the definition given in the Town Planning Code of the Russian Federation. These are new legal phenomena that need to find a place both in the legal system of the Russian Federation and in the system of urban planning. Returning to the beginning of this paper, we must point out that so far the new phenomena and their characteristics have found their place only in by-laws.

This approach of the legislator is wrong. Let us assume that the legislator agrees with this opinion, since it acted in a different way in regulation of tax and budget legal relations. The approach is deeply erroneous for the following reasons.

Firstly, the legal nature of the federal territory in the Russian Federation is defined as a public law entity (Part 1, Article 2 of the Law No.437-FZ of December 22, 2020). Moreover, its status is constitutionally determined (Part 1, Article 67 of the Constitution of Russia) and, based on this norm, is considered as nationally strategically important one.

Secondly, the federal territory has facilities listed in the Law of December 22, 2020 No.437-FZ, creation, preservation and operation of which is one of the goals for the federal territory. These are facilities of Olympic sports, cultural and natural heritage; facilities for identification, self-fulfillment and development of talents. Therefore, cause-and-effect relations between the goals of a federal territory and characteristics of public authorities are obvious. That is why, if cause and effect are specified in normative acts of different legal force, formal-logical connections between them will be broken.

Thirdly, characteristics of public authorities are a constitutionally based provision, implemented by the norms of the Law No.437-FZ of December 22, 2020.

The facts above mean that the federal territory as a public legal entity of national strategic importance should have completely equal opportunities with other subjects of the Russian Federation. The opposite shall mean discrimination. In terms of characteristics of urban planning in the Russian Federation, such opportunities must be covered by the legally defined concept of "facilities of the federal territory". Otherwise, failing to provide that opportunity, or assignment of the power to a subordinate level of regulation, creates, firstly, inequality in the status of ordinary facilities and facilities of the federal territory, secondly, derogates the status of facilities of the federal territory in the system of urban planning regulation and, thirdly, contrary to the "nationwide character", ensures regulation only by one executive authority — the Government of Russia.

We believe that a facility of the federal territory can be defined as a facility intended both for exercising of public powers, and achieving the goals of the federal territory. Hereunder, we shall formulate definition of a facility of the federal territory, as follows: capital construction facilities, territories, water areas and their parts, other facilities necessary to achieve goals of the federal territory "Sirius" by public authorities of the federal territory and other parties concerned.

This definition relies upon the approach to facilities of the federal territory, based on achievement of goals of the federal territory by public authorities. This approach is promoted by the legal definition of public authority in Article 2 Federal Law No.394-FZ of December 8, 2020 "On the State Council of the Russian Federation", which defines it as a combination of federal state authorities, state authorities of constituent entities of the Russian Federation, other state bodies, and local governments. In a special law No.437-FZ dated December 22, 2020, powers of public authorities of the federal territory are listed in Article 8 with an expected option of distribution and redistribution. That is, public authorities have discretionary opportunities in terms of their powers and assigning them back to the initial public level in the ordinary legal order. Therefore, giving facilities a status of a facility of the federal territory is the power derived from acceptance (return) of the power to an ordinary public legal entity.

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[9] Order No.738/pr of the Ministry of Construction of Russia dated April 25, 2017 "On Approval of Elements of Planning Structure"; Order of the Ministry of Finance of Russia dated 05.11.2015 No.171n "On Approval of List of Elements of Planning Structure, Elements of Road Network, Elements of Addressing Facilities, Types of Buildings (Constructions), Premises Used as Address Details, and Rules for Abbreviated Names of Address-Forming Elements".

[10] Razuvaev N.V., Tregubov M.V. The System of Roman Law as a Historical Type of Legal Order. Law and Legality: Questions of Theory and Practice. 2020. P.5-11.

The definition also assumes a possibility of using facilities of the federal territory by other related parties. This characteristic is also based on a goal of a federal territory — increasing investment attractiveness, suggesting involvement of private interest and participation. Apart from ordinary characteristics of a facility, comparable with facilities of federal, regional and local importance, the definition also indicates that water areas and their parts can also be treated as a facility.

The legal doctrine has long been discussing possibility of involving water areas and their parts in urban regulation through their zoning and establishment of regulations. A water resource differs from a land resource by the fact that is can belong exclusively to a public entity, which is a cognitive obstacle to its zoning principles, but not an obstacle to include a water recourse in civil circulation as a thing on account of no means of individualization[11]. However, lands formed from alluvial soil can be included in civil circulation, which directly prescribed by the Law No.437-FZ of December 22, 2020 (part 2 Article 7). In his research papers the author, in has considered both doctrinal and legislative possibility of including part of the Black Sea water area in the federal territory "Sirius". This conclusion is motivated by an example of legal regulation of seaports[12]. Based on the foregoing we can make a conclusion that under this approach, the legislative definition of facilities of the federal territory will allow developing regulating relations in urban planning within the limits of the federal territory.

Fourthly, the mechanism that the public authorities apply to adopt normative legal acts in regulation of urban development legal relations in correlation with the Government of the Russian Federation is clearly unfair, non-judicial and therefore unlawful. Thus, representative body of public authority on the federal territory — the Council of the Federal Territory — is established in accordance with Article 12 of the Law No.437-FZ of December 22, 2020. This body consists of seventeen members, nine of whom are elected, three are appointed by the President of the Russian Federation, three by the Government of the Russian Federation, and one is appointed by the highest official (head of the supreme executive body) of Krasnodar Territory. One (head of administration) enters ex officio.

Under these circumstances, aimed at a balance between municipal (elected members of the Council), federal and regional powers representatives of federal powers some reason gain advantage over other public levels. After all, necessity for correlations and subsequent direct "acceptance" through delegated members of the Council of the Federal Territory puts the Government of the Russian Federation in a privileged position against regional and local levels of power. Such an innovation can be only evaluated as an unfair and uncompensated shift in the balance between focus on local issues and national interests of the Russian Federation. Without denying the very possibility of imbalance, we should point out that there is no counter proposal how to resolves issues of local importance. Meanwhile, the advantage in terms of both correlation and acceptance, formed in the structure of the actor (the Council of the Federal Territory), must have a counterweight. Absence of a counterbalance means actual loss of any special features of public authorities of the federal territory and mobilization of regional powers to resolve issues of local importance by the federal government.

Summarizing the above, we can make the following conclusions.

1. Characteristics of urban planning regulation within the federal territory should be legally equivalent to the ordinary law and order that is directly prescribed in the Town Planning Code of the Russian Federation, just as it prescribes characteristics of town planning regulation of cities of federal governance. The tax and budget legislation should follow.

2. Institutions in charge of urban planning regulation within the federal territory have an option of being involved in the territorial zoning of parts of the Black Sea water area.

3. The key institutions of urban planning regulation do not imply exceptions, and the concept of facilities of the federal territory, promoting achievement of the federal territory goals, should be enshrined in law, not in by-law regulation.

4. The unique nature of public authorities of the federal territory implies a fair balance between all levels of the public powers Russia, and a normative prescription of advantages to one of them is non-judicial (non-legal).

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