

Urban Regulation of the Development of the Federal Territory

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ABSTRACT

The article formulated an idea of the possibilities of urban planning regulation in order to develop a new territorial and legal education in the Russian Federation — the federal territory. The concentration of all public powers at the federal level implies the need to strike a different balance of regulation in the exercise of local government powers in relation to urban planning regulation.

Keywords: federal territory, powers of public administration, urban planning

Chapter 3 of the Constitution of the Russian Federation is supplemented in Part 1 of Article 67 with provisions on the possibility of creating federal territories on the territory of the Russian Federation in accordance with federal law and on establishing by federal law of the organization of public power in such territories. In paragraph 3.1. of the Conclusion No. 1-3 of 16.03.2020, the Constitutional Court of the Russian Federation expressed the opinion about this norm in the part that the provision on the possibility of creating federal territories in its literal meaning does not imply the possibility of forming federal territories with giving them a status equal to that of the subjects of the Russian Federation¹. It is obvious that the public legal uncertainty of the status of the federal territory will continue until the adoption of the federal law on the relevant federal territory. It seems that the status of each federal territory as it is created will be determined by an independent federal law on it, due to the lack of a stable definition of the concept of “territory” in the public law of Russia. This concept is used as a characteristic of the object of regulation in environmental legal relations (Federal Law of March 14, 1995 No. 33-FZ “On specially protected natural territories”) as inherent properties of one of the special legal regimes of entrepreneurial and other economic activities (for example: the Federal law dated 03.12.2011 No. 392-FZ “About zones of territorial development in the Russian Federation and on amendments to certain legislative acts of the Russian Federation”, Federal law of 29.12.2014 No. 473-FZ “About territories of advancing socio-economic development in the Russian Federation”, Federal law of 28.09.2010 № 244-FZ “About the innovative centre “SKOLKOVO”, Federal Law No. 193-FZ of 13.07.2020 “On State Support for Entrepreneurial Activities in the Arctic Zone of the Russian Federation”, etc.), as an element of the legal regime in land relations (Article 3 of the Civil Code of the Russian Federation) and in the legal relations of urban development. The term does not have a single normative meaning, and in relation to the public-legal organization of management, its understanding in the legislation is extremely diverse: federal districts, military districts, judicial districts, electoral districts (referendum districts), border territories, etc.² We can’t disagree with the opinion of N. N. Popova that, being a multi-faceted concept, the territory is differentiated according to the existing legal regime on it³.

That is, it is expected that the legal category “federal territory” will be another opportunity to create a special, different from the ordinary, legal regime, which will apply not only to special subjects (for example, often referred to as “residents”), but also to all people living in this territory.

In this connection, the doctrinal understanding of the implementation by the population of the rights to local self-government in the federal territory, as part of this article — in the part concerning the regulation of urban development activities, is noteworthy.

In general, the statement that the federal territory is a part of the territory of a subject of the Russian Federation, in which the powers of a subject of the Russian Federation and a municipal entity are

¹ The conclusion of the constitutional Court of the Russian Federation of 16.03.2020 No. 1-3 “On compliance with the provisions of chapters 1, 2 and 9 of the Constitution of the Russian Federation of provisions of the Law of the Russian Federation pending its entry into force on the amendment to the Constitution of the Russian Federation “On improving of the regulation of certain issues of organization and functioning of public authorities”, and also about compliance of the procedure for the entry into force of article 1 of this Law to the Constitution of the Russian Federation in connection with the request of the President of the Russian Federation” // Bulletin of the Constitutional Court of the Russian Federation. 2020. № 2.

² Territory in Public Law [Territoriya v publichnom prave] / I. A. Alabastrov, I. A. Isaev, S. V. Naruto et al. Moscow : Norma, Infra-M, 2013. p. 158–160. (in rus)

³ Popova N. N. Territory as the Object of Administrative-Legal Regulation [Territoriya kak ob’ekt administrativno-pravovogo regulirovaniya] // Administrative Law and Procedure [Administrativnoe pravo i protsess]. 2014. No. 1. p. 9. (in rus)

excluded or so significantly limited that they are insignificant, due to the provision of the Constitution of Russia that its territory consists of the territories of its subjects, is relatively clear. That is, the entire set of state and municipal management should belong to the federal government body, which, according to this combination, should not be called a state or municipal government body, but a public authority body. In essence, the federal territories of today, although without direct naming in this capacity, are the territories of internal waters, the territorial sea of Russia⁴. In these territories, there is no jurisdiction of the subjects of Russia and municipalities, and management decisions in relation to these territories are made exclusively by the federal authorities. But these territories lack the property of sustainable development, since their participation in the political, business and economic turnover is limited for an obvious reason — the lack of population.

Urban planning documents that ensure the sustainable development of the territory are the documents of territorial planning differentiated in Article 9 of the Urban Planning Code of Russia as the documents of territorial planning of the Russian Federation, documents of territorial planning of subjects and documents of territorial planning of municipalities. The latter are the general layout, which determines the functional zoning and planning of the placement of objects of federal, regional and local importance, and the consolidation of territorial zones with types of use (main, auxiliary and conditionally permitted) in the rules of land use and development in urban planning regulations. Thus, the exclusion of the level of territorial planning documents from the functions of the federal territory management body actually means that it is impossible to develop it, since the authority to approve this documentation is the authority of local self-government bodies.

Comparative analysis allows us to conclude that the foreign experience of the creation of federal territories, if it is even possible to adopt it, can only be of assistance in part of the general idea, which can be considered as a kind of allegory. In modern legal systems, federal territories exist in a number of states with a federal structure (the United States, Brazil, Venezuela, Australia, Canada, etc.) as a special administrative-territorial unit that is part of the federation without the right of (legislative) autonomy and, as a rule, without the right of representation in federal bodies. There are currently nine federal territories in Australia, six in India, three in Brazil, and two in Venezuela⁵. In the latter case, the federal territories include islands formed or created in the territorial sea or in the sea above the continental shelf⁶.

However, these examples do not have the European tradition of local self-government, the quintessence of which is the European Charter of Local Self-Government (Strasbourg, 15.10.1985), ratified by Russia by Federal Law No. 55-FZ of 11.04.1998.

Guarantees of the exercise of the rights to local self-government by the population are enshrined in Chapter 8 of the Constitution of the Russian Federation, which is in semantic unity with the provisions of the above charter. According to one of the norms of this regulation, it is possible to change the borders of the territories within which local self-government is carried out. In the event of such change, acceptable in the perspective of the peoples concerned, the loss of the need for the implementation of territorial planning documents at the level of local government is possible, and the determination of the development strategy of the Federal territory will be made directly by one of the documents of territorial planning of the Russian Federation. Today such documents are the roadmaps of territorial planning of the Russian Federation in the spheres of federal transport, national defense and state security, energy, higher education and health. Territorial planning roadmaps of the Russian Federation contain provisions on territorial planning, maps of the planned location of objects of federal importance.

We see no legally significant barriers to integration of another roadmap of territorial planning of the Russian Federation into urban development regulation — roadmap of development of the federal territory, which is similarly to those in effect will contain provisions on territorial planning and maps of planned placing of objects of federal importance. Directly in the regulations on territorial planning it will be necessary to provide information about the kinds, designations and names of objects of federal importance planned for placing, their basic characteristics, their location, as well as characteristics of zones with special conditions of use in the manner regulated by Chapter XIX of the Land code of the Russian Federation.

We emphasize that the possibility of change of borders of self-governed territories is permitted by article 5 of the European Charter of local self-government and part 2 of article 131 of the Constitution

⁴ *Mayboroda V. A.* Formation of Legal Regulation Objects in the Water Area Planning [Formirovanie ob"ektov pravovogo regulirovaniya v sfere akvatorial'nogo planirovaniya] // *Lawyer [Yurist]*. 2016. No. 8. p. 39. (in rus)

⁵ *Kurakov L. P., Kurakov V. L., Kurakov A. L.* Economics and Law: Dictionary-Reference [Ehkonomika i pravo: slovar'-spravochnik]. Moscow : [Vuz i shkola]. 2004. p. 348. (in rus)

⁶ *Avakyan S. A.* Constitutional Law. Encyclopedic Dictionary [Konstitutsionnoe pravo. Ehntsikopedicheski slovar'] Moscow : Norma. 2001. p. 320. (in rus)

of the Russian Federation, and in this sense, the establishment of borders of the non-self-governed federal territory is legitimate.

This idea of the federal territory management concept means that full powers shall be entrusted to the appropriate body (bodies) of the public authorities at the federal level, consolidating the realization of authority of the Russian Federation subject and municipal formation in the territory in this body. Thus, the function of ensuring the sustainable development of the territory will be consolidated, and the balance of interests provided by it will be lost, shifted to the sphere of exclusively public regulation. Meanwhile, according to the definition given in section 3 of article 1 of the town planning code of the Russian Federation, sustainable development of territories is the provision of such development with the implementation of urban planning, which ensures the safety and favorable conditions of human life in the interests of present and future generations.

In our opinion, at the stage of forming of ideas about the regulation of the creation and development of the federal territory, it is necessary to highlight the principles on which normative regulation of the complex of sustainable development of the Federal territory (hereinafter — documentation) should be based.

First, the implementation of the set of documentation should proceed from the unification of the powers of the Russian Federation, the subject of Russia and the municipality in a public authority with competence to manage the federal territory.

Secondly, the implementation of the set of documentation should take into account the lack of differentiation of sectoral management (i. e. division into departmental issues) of managerial competencies. The unity of the tasks of the federal territory determines the consolidation of competencies in the territorial management body.

Third, in relation to the specifics of urban planning and the tasks of the federal territory itself, the set of documentation should have a cross-cutting penetration of the functionality of strategic planning for the development of the federal territory and tactical management of already built-up areas.

Fourth, the land ownership relations are to be unified, and the property can be settled only in one form — federal, since the roadmap can only plan the placement of federal objects. Other objects will fall out of circulation with the natural course of time, but the land-legal presumption of federal property is necessary at the initial stage of development of the federal territory.

In this connection, taking into account the possibility of changing the boundaries of the territories in which local self-government is carried out, it is possible to propose a set of documentation of the federal territory that ensures its sustainable development from the following documents.

1. The federal territory planning roadmap is a document of strategic planning for the development of the federal territory. This document is intended to establish the boundaries of the Federal territory, to settle planning of Federal facilities placement, development of the territory in the future, it needs to define a strategy for the long-term development of the territory.

In addition to the ordinary parts of the general layout (Part 3 of Article 23 of the Civil Code of the Russian Federation: regulations on territorial planning; map of the planned location of objects; map of borders; map of functional zones), it is necessary to supplement the roadmap with a spatial model of the territory development.

At the same time, the federal territory planning roadmap must be approved by the federal public authority (the President of Russia, or the government of Russia) for at least 20 years, with no possibility of changing it if the tasks set in it are not achieved for less than 40%⁷.

2. Rules for the development and improvement of a federal territory — a document of a tactical development and territory use parameters study, based on the fundamental priority of the unity of architectural appearance of the federal territory and identifying the possible limits of economic activity and legal guarantees of the right holders of real estate. In this connection, it seems necessary to have an actual institution for achieving a public consensus on preserving the unity of the architectural and urban appearance. The institution of public hearings and public discussions in such circumstances will not make up for the attribution of the aggregate public opinion, since it is not legally binding by law, and in terms of the possibilities provided, it is extended to officials of local self-government bodies⁸.

⁷ *Mayboroda V. A.* Execution of Territorial Planning Documents as an Inherent Attribute of Certainty in Justification of Their Amendment [Isполнение dokumentov territorial'nogo planirovaniya kak immanentnoe svoistvo opredelenosti v obosnovanie ikh izmeneniya] // Town-planning law [Gradostroitel'noe pravo]. 2020. No. 1. p. 18. (in rus)

⁸ *Khludnev E. I.* Public Debates and Public Hearings as Forms of Participation of the Population in Exercising of Local Self-Government and Public Control Forms [Obshchestvennye obsuzhdeniya i publichnye slushaniya kak formy uchastiya naseleniya v osushchestvlenii mestnogo samoupravleniya i formy obshchestvennogo kontrolya] // State Power and Local Self-government [Gosudarstvennaya vlast' i mestnoe samoupravlenie]. 2019. No. 3. p. 37. (in rus)

For example, it is possible to institutionalize an architectural advisory body that has the right to veto decisions that contradict, in the opinion of the body, the unity of the architectural and construction appearance of the federal territory. It seems that urban planning regulations in the federal territory should be of a nature that is combined with the requirements for the architectural and urban planning appearance of objects. In that way the formation of the appearance of buildings, the choice of a site for their placement, their purpose and spatial parameters are regulated. Since investment activity in the federal territory, in the sense of its creation, presumes the only financial source of development — the federal budget, then the function of justifying investment attractiveness for private capital may not be attached to such rules.

Landscaping as a function of municipal management is redistributed in the conditions of the federal territory to the authority of the federal territory management body. Therefore, the usual rules of improvement should be replaced by a document of a different regulation. The cities of federal significance — Moscow and St. Petersburg — have experience in implementing the improvement program in the state competence. The actual consequence of this redistribution is the formation of a separate type of permit document in the field of landscaping — a permit for earthworks (an order for earthworks). The rigidity of the administrative regulation of these legal relations, supported by high administrative sanctions, is due to the density of development. In the case of a federal territory, such experience should not be borrowed. On the contrary, the regulation of landscaping can be done through integration into a single document on construction, which, among other things, will have to regulate the definition of a work plan for complex engineering preparation of the territory before construction and the definition of a list of compensatory measures for the restoration of green spaces and landscape elements after construction.

Measures for the engineering preparation of the territory include a detailed comprehensive analysis of the territory based on engineering surveys, proposals for the organization of the terrain, shore protection, strengthening of slopes, organization of surface runoff, drainage of the territory, that is, the complex of works that are called “earthworks” in Moscow and St. Petersburg. A unified approach to the organization of works on the engineering preparation of the territory will provide an integrated approach to the organization of space with maximum consideration for the features of the terrain.

In conclusion, it should be pointed out that the proposed set of documents that are in the system unity of the statutory regulation of the subject — sustainable development of the federal territory, corresponds to modern requirements of town planning legislation designed to ensure the sustainable development of the territory, but at the same time forms a new direction in the legal relations considered, which ensures planning of the federal territory, and such development of this territory that will allow to achieve the objectives of sustainable development before gaining a new balance in the implementation of public law powers already in relation to the federal territory, which excludes the possibility of exercising local self-government.

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