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**To the question of legal regulation of the turnover of land plots**

**of the national parks**

*In this article the attention to a collision of the standards of the Land code of the Russian Federation, on the one hand, establishing the total ban on transactions with the land plots withdrawn from circulation (including with the land plots of national parks), on the other hand, these land plots allowing (in exceptional cases) transfer to rent is paid. The author emphasized that the question of in what zones of national park transfer of the land plots to rent is admissible, has to be solved only within the federal law, but not in the departmental regulatory legal act. In the article the offer on establishment in the law of differentiated regime of the land plots of national park is formulated (from the point of view of restriction of their civil circulation).*

**К вопросу о правовом регулировании оборота земельных участков национальных парков**

*В статье обращается внимание на коллизию норм Земельного кодекса РФ, с одной стороны, устанавливающих полный запрет на совершение сделок с земельными участками, изъятыми из оборота (в том числе и с участками национальных парков), с другой стороны, разрешающих (в исключительных случаях) передачу в аренду этих земельных участков. Автором подчёркивается, что вопрос о том, в каких зонах национального парка допустима передача земельных участков в аренду, должен быть решён исключительно в рамках федерального закона, а не в ведомственном нормативном правовом акте. В статье сформулировано предложение об установлении в законе дифференцированного режима земельных участков национального парка (с точки зрения ограничения их гражданского оборота).*

***Keywords:*** *land plot, national park, turnover of the land plots, rent of the land plots.*

***Ключевые слова:*** *земельный участок, национальный парк, оборот земельных участков, аренда земельных участков.*

The land plots, being an environment element, in the property relations act as special things: their natural origin and practical indispensability, and also the value in sense of providing environment, favorable for the person, cause special legal regulation of their civil circulation. In the domestic legislation specifics of such turnover are determined, mainly, by the Article 27 of the Land code of the Russian Federation of October 25, 2001 No. 136-FL (in edition of the federal law from 12/30/2015 No. 460-FL) (further – LC RF) [1].

Ecological value and the special purpose of the ecosystems of especially protected territories including the national parks have induced the legislator to fix withdrawal from the turnover of the land plots occupied with the national parks (p.p. 1 of p. 4 of the Art. 27 of LC RF). Exceptions make the "separate cases" provided by the Article 95 of LC RF. The law, in particular, allows existence within the national parks of the land plots of others, besides the institution (national park), users, and also the owners. At the same time, specified persons, certainly, are obliged to observe the mode consisting in the corresponding restrictions of the economic and other activity set in this especially protected natural territory.

The legislator's position concerning the question of rent of the land plots withdrawn from the circulation and "occupied" with the national parks isn't clear. Withdrawal of such land plots from the civil circulation, according to p. 2 of the Art. 27 of LC RF, means the unconditional ban of commission with them any civil transactions, including rent. However, apparently from p. 11 of the Article 22 of the same regulatory legal act will lock this not so absolute: these land plots as exceptions which can be established by the federal laws can be leased.

Transfer to rent of the land plots withdrawn from circulation belonging on the right of continuous (unlimited) use to the federal public budgetary (nature protection) institutions is allowed by the Article 17 of the Federal law "About especially protected natural territories" from 3/14/1995 No. 33-FL (in edition of the federal law from 13.07.20115 No. 233-FL) (further – FL EPNT) [2]. It is necessary to notice that here it "is" not about the all land plots which are in the limits of national park and withdrawn from circulation, and only about the land plots which are in federal property that "… are located in the borders of the corresponding functional zones of national parks" (p. 1 of the Art. 17 of FL EPNT). At the same time, the fact that the question of in what "corresponding" zones there are the land plots allowed for transfer to rent to the natural and legal entities is concretized not by the federal law, but The Order of preparation and conclusion of the lease contract of the land plot located in the borders of functional zones of national parks, the approved Order of the Ministry of Economic Development of the Russian Federation from 7/12/2010 No. 293 (in edition of the order of the Ministry of Economic Development of the Russian Federation from 6/22/2015 No. 381) (further – the Order) [3]. We believe that, owing to p. 3 of the Art. 129 of the Civil code of the Russian Federation from 11/30/1994 No. 51-FL (in edition of the federal law from 1/31/2016 No. 7-FL) (further – the CC RF) [4] and p. 11 of the Article 22 of LC RF, the question of in what functional zones of national park the land plots which are in federal property can be leased, it has to be solved by the legislator only in the federal law, but not in the departmental regulatory legal act adopted on its basis as the standard solution of the specified question is the legal regulation of turnover of the called land plots (in our opinion, it has to be fixed by the Art. 17 of FL EPNT).

We consider also that the changes made to the Art. 17 of FL EPNT by the Federal law from 7/13/2015 No. 221-FL (in edition of the federal law from 12/29/2015 No. 404-FL) [5], is worth assessing positively. The legislator has provided in p. 2 of the specified article preliminary (before transfer of the land plot to "target" rent) refusal of the federal state budgetary institution (national park) of the right of continuous (unlimited) use of this land plot. It eliminates a situation inadmissible with the land legislation of the competition of two titles (continuous use and rent), and also clears up construction of the rent relations: lessor is the owner – the Russian Federation; institution can't act in this role as, being "regular user" of the land plot, it isn't allocated with a competence of the command of the land plot by its transfer to rent.

In the land and legal researches it was pointed out discrepancy of provisions of p. 11 of the Art. 22 of LC RF more than once (assuming an exception of the rule about a ban of transfer to rent of the land plots withdrawn from circulation) to the contents of p. 2 of the Article 27 and p. 2 of the Article 22 of LC RF (which have fixed unconditional inadmissibility of transfer to rent of the land plots withdrawn from circulation) [6].

Touching this question, M.Yu. Tikhomirov notes that "… it is hardly possible to determine true "plan" of the legislator by interpretation of the norms in this case" [7, p. 83].

Besides, according to the fair remark of some scientists, the rule of p. 11 of the Article 22 of LC RF "… contradicts not only p. 2 of the Article of LC RF, but also the theory of the civil and land law which axiom is the impossibility of commission of any transactions with the things withdrawn from circulation" [8].

E.V. Luneva, evaluating the considered contradiction, have formulated, in our opinion, quite exact and lapidary conclusion: "… in spite of the fact that the federal land plots … national park are legislatively recognized withdrawn from circulation, actually they are only limited in it. It is clear, that in this case the prime purpose is a protection of unique natural sights, however, realization of the noble public purpose in such look involves violation of the legal systemacity" [9].

In the specified scientific works the need of entering by the legislator of corresponding changes into the text of the Land code of the Russian Federation is noted, however, it isn't specified what. The contradiction designated above (in general, in relation to the land plots withdrawn from circulation) demands establishment within p. 11 of the Article 22 of LC RF of the unconditional, not having any exceptions (determined by the federal law) rules about a ban of rent of the land plots withdrawn from circulation.

At the same time, special legal status of the land plots of national parks, their appointment demand, in our opinion, special approach to the regulation of turnover of such land plots. We consider that the tasks which are carried out by the relevant nature protection institutions (on the one hand, environmental protection, with another, – recreational activity and ensuring safety of the objects of cultural heritage), and the differentiated mode of lands of the national parks caused by these tasks set by the legislator and which is expressed in zoning (Art. 15 of FL EPNT) demand differentiated approach to the solution of a question of turnover of the land plots which are in the limits of different zones of national park.

In our opinion, withdrawals from a turnover demand only the land plots located in a reserved zone which is intended for preservation of environment in natural state and in which the borders implementation of any economic activity, and also in the especially protected zone intended for preservation of the environment in natural state assuming the ban on implementation of any economic activity is forbidden.

Owing to the special function and realization of the bans on the majority of types of anthropogenic activity determined by these zones (excluding, certainly, nature protection) it is worth keeping concerning the corresponding land plots the rule about full withdrawal them from civil circulation.

As for the all other functional zones (recreational, protection of the objects of cultural heritage, economic appointment, traditional extensive environmental management), the corresponding land plots can hardly be withdrawn from the civil circulation completely, forbidding at the same time any transactions as the property rights attracting transition which aren't directed to it (including rent). We believe that to their appointment there will correspond more the special mode of restriction of civil circulation, at which these land plots: 1) can be only in the federal property (on all other land plots of the Art. 27 of LC RF limited in the turnover establishes public property); 2) can't be the objects of transactions attracting a change of the owner (certainly, without any exceptions provided by the federal law). At the same time, such mode doesn't exclude a possibility of commission with the land plots which are in the limits of the specified functional zones, other transactions which aren't attracting a change of the owner (transition of the right of federal property). We consider that transfer of these land plots to "target" rent, at preservation of the special order of conclusion of these contracts and special "nature protection" duties of the tenants, won't do harm to ecological interests of the society and property rights of the state. Besides, establishment of such civil regime is capable to provide in the best way rational use of the specified land plots at observance of the special regime caused by their purpose.

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