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## PROBLEMS OF LEGAL REGULATION OF OPERATION OF HAZARDOUS PRODUCTION FACILITIES IN THE ABSENCE OF REGISTERED RIGHTS TO LAND PLOTS

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**Abstract.** This article examines the primary challenges associated with the legal regulation of placement of energy facilities on land and land plots owned by the state or municipality without providing land plots and establishing easements or public easements. This paper considers the legal institution in question as a legal regime for permitting the use of lands and land plots by persons subject to the limitation of the rights of the owner. It notes that the possibility of its use implies a mixed legal nature, since the expression of the user's will is supported by the need to issue an act by an authorized body (permit). The author of this article concludes that the issue of charging fees for the use of land and land plots should be legislatively regulated in accordance with Chapter V.6 of the Land Code of the Russian Federation. This rule would ensure uniformity in the regulation of the legal relations under consideration.

**Keywords:** energy law, legal regime of energy facilities, land plot, easement, public easement.

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## ПРОБЛЕМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ ЭКСПЛУАТАЦИИ ОПАСНЫХ ПРОИЗВОДСТВЕННЫХ ОБЪЕКТОВ В ОТСУТСТВИЕ ОФОРМЛЕННОГО ПРАВА НА ЗЕМЕЛЬНЫЕ УЧАСТКИ

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**Аннотация.** В настоящей статье исследованы основные проблемы правового регулирования размещения энергетических объектов на землях и земельных участках, находящихся в государственной или муниципальной собственности, без предоставления земельных участков и установления сервитута, публичного сервитута. В данной работе названный правовой институт рассматривается в качестве правового режима дозволения использования лицами

земель и земельных участков при условии ограничения прав собственника, при этом обращается внимание на то, что возможность его использования подразумевает смешанную правовую природу, поскольку изъявление воли пользователя подкрепляется необходимостью выдачи акта уполномоченным органом (разрешения). Автор статьи приходит к выводу о необходимости законодательного урегулирования вопроса о взимании платы за использование земель и земельных участков в соответствии с гл. V.6 Земельного кодекса Российской Федерации. Данная норма позволила бы достичь единообразия при регулировании рассматриваемых правоотношений.

**Ключевые слова:** энергетическое право, правовой режим энергетических объектов, земельный участок, сервитут, публичный сервитут.

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In general, the use of land and land plots owned by the state or municipality is associated with their provision on the right of ownership, lease, gratuitous right-of-use or by establishing easements or public easements.

On March 1, 2015, Federal Law No. 171-FZ on Amendments to the Land Code of the Russian Federation and Certain Legislative Acts of the Russian Federation dated June 23, 2014, introduced Chapter V.6, Use of State or Municipally Owned Land or Land Plots without the Provision of Land Plots and the Establishment of Easements and Public Easements, into the Land Code of the Russian Federation. This marks the formation of a legal institution of the same name in the Russian land legislation.

In accordance with Article 39.33 of the Land Code of the Russian Federation, state or municipally owned land or land plots, with the exception of land plots granted to citizens or legal entities, may be used without the provision of land plots and the establishment of easements and public easements in ten specified instances, including, but not limited to, engineering surveys, the major or current repair of a linear facility, the construction of non-permanent buildings and structures (including fences, cabins, sheds), the storage of construction and other materials and equipment to support the construction and reconstruction of linear facilities of federal, regional, or local significance. Such facilities include, in particular, oil and gas pipelines, which are classified as hazardous production facilities in accordance with Federal Law No. 116-FZ on Industrial Safety of Hazardous Production Facilities dated July 21, 1997.

In order to establish rights to land and land plots for the purpose of operating the aforementioned facilities, energy companies predominantly use the

institution of public easement established by the state executive authority. This is because organizations operating such facilities, in the course of their business activities, satisfy public interests of the population interested, among other things, in the gasification of their places of residence.

The use of public land and land plots without provision inherently constitutes a legal title-less use. While these legal relations are legal, they do not imply that the user has a statutory title.

In identifying the legal nature of the legal relations under consideration, the Constitutional Court of the Russian Federation noted that the federal legislator, in consideration of the existing diversity of types of structures and their functional and technical characteristics, provided for the possibility of placing a number of structures without granting publicly owned land plots and establishing easements, i.e. without registering the rights of owners of such structures to these land plots. The Constitutional Court of the Russian Federation has determined that this legal regulation is intended to facilitate the prompt (without the need for registration of title documents for land) placement of certain facilities, taking into account their special characteristics and purpose [1].

The types of facilities that can be placed on state or municipally owned land or land plots without the provision of land plots and the establishment of easements are outlined in the similarly-named List, which was approved by Resolution of the Government of the Russian Federation No. 1300 of December 3, 2014. This List is closed and contains thirty-four categories of facilities, including gas pipelines and other pipelines with pressure up to 1.2 MPa, which placement does not require a construction permit [2].

The legal institution under consideration is perceived by the author of the article to be highly ambiguous. This is likely the reason it is not reflected in the rules of land legislation on the limited right of use of other people's land plots, lease, and gratuitous right to use land plots (Chapter IV of the Land Code of the Russian Federation), nor in the rules on the grounds for the emergence of rights to land plots provided from state or municipally owned land (Article 39.1 of the Land Code of the Russian Federation). It is important to highlight that the matters under discussion are precisely the type of legal research that should be conducted [3].

Thus, although the right to land or land plots is acquired, it is not explicitly named as a right in the Land Code of the Russian Federation. This cannot but raise questions both among theoretical legal scholars and in law enforcement practice.

According to clause 2 of Article 39.33 of the Land Code of the Russian Federation, the ground for the use of such land or land plots is the permission of an authorized body.

Despite the Rules for Permissions to Use Land or Land Plots Owned by the State or Municipality approved by Resolution of the Government of the Russian Federation No. 1244 dated November 27, 2014, the author of this article considers it necessary to draw attention to the fact that the terms of the considered chapter of the Land Code of the Russian Federation has yet to be recognized as a comprehensive regulatory framework for the use of land and land plots without provision. This is due to the absence of essential information, including details on the compensatory nature of such use, categories of land on which facilities are placed or planned to be placed, and types of permitted use of land plots [4].

In accordance with subclause 7 of clause 1 of Article 1 of the Land Code, one of the principles on which this Code and other acts of land legislation issued in accordance with it are based is the principle of fee-based use of land. This principle states that land may be used in any way for a fee, except as established by the Federal Laws and laws of constituent entities of the Russian Federation.

In accordance with the clarifications of the Ministry for Economic Development of Russia of 2016, land or land plots that are in state or municipal ownership shall be used without the provision of land plots and the establishment of easements in all cases stipulated by Article 39.33 of the Land Code of the Russian Federation free of charge [5].

The Supreme Court of the Russian Federation opposing stance on this matter, reasonably stating that "a contract for the placement of a relevant facility on state or municipal land and a land plot lease contract have a similar legal nature, given that both are related to the use of land. Consequently, the use of land under a contract for the placement of a facility without the provision of a land plot should be subject to the same legal regulation in the matter of payment as that stipulated by Article 65 of the Land Code of the Russian Federation, which states that one of the forms of payment for the use of land is rent. Otherwise, the parties to these legal relations would be in an unequal position. Furthermore, the placement of stalls is one of the uses of land plots, and as such, is subject to a fee. This is because the federal laws or laws of constituent entities of the Russian Federation do not stipulate otherwise" [6].

In contrast to this point of view, there is court practice indicating that the use of land or land plots for the purposes in question is free of charge. The rationale is that the obligation to make payments arises when land plots are used under any right, while the use of land plots for the purpose of placing facilities listed in Article 39.33 of the Land Code of the Russian Federation does not give rise to proprietary rights subject to state registration. A permit for the use of land plots is not a document of title to a land plot. It authorizes only limited use and possession of land plots. A permit allows an individual to use a land plot without the need for a decision to provide it from state authorities or local self-government bodies or relevant contracts to be concluded with these bodies [7].

In order to partially settle the controversial issue of the compensatory nature of the use of land and land plots without provision, "other payment stipulated by the Land Code of the Russian Federation" as a form of payment for the use of land, in addition to land tax and rent, was added to clause 1 of Article 65 of the Land Code of the Russian Federation in 2021. However, the rules of the Land Code of the Russian Federation do not set forth separately the payment for the use of land in cases established by Chapter V.6 of the Land Code of the Russian Federation. Among other things, there appears to be a contradiction between the introduced rule and subclause 7 of clause 1 of Article 1 of the Land Code of the Russian Federation. This subclause states that federal laws or laws of constituent entities of the Russian Federation establish exceptions when the use of land is free of charge.

The courts have taken a controversial stance on the absence of rules in regional regulatory legal acts regarding the gratuitousness of land use and the procedure for calculating and paying fees for the use of land plots. Accordingly, the absence in a regulatory act of a constituent entity of the Russian Federation of a condition on the paid placement of facilities on land plots without their provision, according to the judicial body, does not establish free placement. This circumstance should be explicitly stated in the relevant regulatory act, which follows from the content of the general principle of paid land use [8].

In light of the above, the author of this article believes that it is necessary to introduce legislative regulation of the issue of charging fees for the use of land and land plots in accordance with Chapter V.6 of the Land Code of the Russian Federation. This rule would ensure uniformity in the regulation of the legal relations in question.

In addition to the above, we should not forget about clause 1.1 of Article 39.20 of the Land Code of the Russian Federation that establishes a prohibition on providing state or municipally owned land plots for ownership or lease to owners and other right holders of structures on such land plots, if these structures may be placed on land plots under easement, public easement, or in accordance with Article 39.36 of the Land Code of the Russian Federation.

This approach raises questions about the logic of the legislator regarding the prioritization of the use of land and land plots in accordance with Chapter V.6 of the Land Code of the Russian Federation over the provision of land plots under ownership or lease rights seems unclear. Furthermore, the Ministry for Economic Development of the Russian Federation, in its letter, noted that the use of land without provision has a lower degree of legal protection of the right to use land plots than lease and proprietary rights. It is difficult to disagree with this conclusion, given that the legal nature of the structure under review is being questioned through the lens of the principles of proprietary rights.

Furthermore, there is a discrepancy between clauses 1 and 4 of Article 39.33 of the Land Code of the Russian Federation. Clause 1 exhaustively defines the purposes for which land or land plots may be used without provision, whereas clause 4, on the contrary, establishes a prohibition for those who have obtained a permit to construct or reconstruct construction projects, which, in the opinion of the author of this

article, may be necessary for the purpose of ensuring the safe operation of gas supply system facilities.

In summary, the author of this article believes that the described structure can still be considered convenient for organizations in the energy sector, including oil and gas supply companies. One of the reasons for this conclusion is the process of registering rights to land and land plots located under linear objects, which is time-consuming [9].

At the same time, the absence of sufficient legal regulation has prompted concerns and legal disputes regarding the application of this legal institution in law enforcement. The enhancements to land legislation outlined in this article can help address these challenges.

## REFERENCES

1. Ruling of the Constitutional Court of the Russian Federation No. 722-O dated March 26, 2019, Ruling of the Constitutional Court of the Russian Federation No. 1629-O dated June 25, 2019, and Ruling of the Constitutional Court of the Russian Federation No. 1630-O dated June 25, 2019, Ruling of the Constitutional Court of the Russian Federation No. 138-O dated January 28, 2021. URL: <https://ksrf.ru/ru/Decision/Pages/default.aspx>
2. Resolution of the Government of the Russian Federation No. 1300 on Approval of the List of Types of Facilities Which Can be Located on State or Municipally Owned Land or Land Plots Without the Provision of Land Plots and the Establishment of Easements dated December 3, 2014 // Official Internet Portal of Legal Information. URL: <http://pravo.gov.ru> (date of access: 09.12.2014).
3. Korneyev A.L. Features of the Operation of Rules on the Use of Land (Land Plots) Without Provision // Moscow University Bulletin. Series 11: Law. 2022. No. 2; Ignatyeva I.A. The Use of Land and Land Plots with Electric Power Facilities: Law and Practice. Moscow: Prospect, 2019; Korablin A.F., Kosarukov Z.S., Miklashevskaya O.V., Sizov A.P., Chuprin M.S. Features of Documentary Support for the Procedure of Providing Land Plots from Land or Land Plots that are in State or Municipal Ownership (Taking into Account the Provisions of the Land Code of the Russian Federation, effective as of March 1, 2015) // Land Sciences. 2015. No. 1; Lipski S.A. Changes in the Rules Governing Land Plot Provision — A New Step in the Development of Land Legislation // Agrarian and Land Law. 2014. No. 7; Kuzmin R.R. Land Use Without Provision and Establishing Easements as a Fictitious Category. The Impact on Property Rights // Business and Law. 2022. No. 6. P. 53–61.
4. Resolution of the Government of the Russian Federation No. 1244 on Approval of the Rules for Granting Permission to Use State or Municipally Owned Land or Land Plots dated October 27, 2014 // Official Internet Portal of

- Legal Information. URL: <http://www.pravo.gov.ru> (date of access: 01.12.2014).
5. Letter of the Ministry for Economic Development of Russia No. D23i-4886 on the Imposition of Charges for the Use of State or Municipally Owned Land Plots Without Provision and the Establishment of Easements in Cases Stipulated by Subclause 6 of Clause 1 of Article 39.33 of the Land Code of the Russian Federation dated October 14, 2016 // ConsultantPlus Reference Legal System.
  6. Appellate Decision No. 48-APG18–30 of the Judicial Chamber on Administrative Cases of the Supreme Court of the Russian Federation dated December 12, 2018 // ConsultantPlus Reference Legal System.
  7. Appellate Decision No. 9-APG18-13 of the Judicial Chamber on Administrative Cases of the Supreme Court of the Russian Federation dated November 14, 2018 // ConsultantPlus Reference Legal System.
  8. Decision of the St. Petersburg and Leningrad Region Commercial Court No. A56-24161/2021 dated July 19, 2021; Award of the Thirteenth Commercial Appellation Court No. 13AP-30006/202 dated December 28, 2021; Award of the North-Western District Commercial Court No. F07-4520/2022 dated April 28, 2022. URL: <https://ras.arbitr.ru/>
  9. Ignatyeva I.A. The Use of Land and Land Plots with Electric Power Facilities: Law and Practice. Moscow: Prospect, 2019.

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