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ENSURING A FAIR BALANCE OF INDIVIDUAL AND COLLECTIVE INTERESTS IN THE USE OF LAND DESIGNATED FOR BURIALS

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Abstract. *The article is focused on the problem of the usage of civil burial grounds, while observing the balance of public and private interests. Ensuring the rational use and protection of burial grounds, sometimes opposing interests, in modern contexts, is a very important task of land legislation, and it is necessary to establish this balance as cultural traditions, religious beliefs, family ties are involved, and the state has to put this activity in the legal framework.*

When developing the lands of military burial grounds, public interests are of special importance in the context of regulating the use of these territories, since the lands on which the lands of military burial grounds are located are the subject of special attention from the state and society, are of historical and memorial value, as well as being objects of memory about the historical history. At the same time, the responsibility for the conservation of these lands and their correct and rational use lies with local self-government bodies.

Keywords: *cemetery, burial place, land legislation, principle of land legislation, municipal property, military burials, civil burials, public interest.*

Introduction. One of the principles of land legislation is the concept of combining the interests of society and the legitimate interests of citizens, according to which the regulation of the use and protection of lands is carried out in the

interests of the whole society while ensuring the guarantees of each citizen for free possession, use, and disposal of the land plot belonging to him.

Method. In analyzing the problem, the imperative method was used, reflecting the active role of the state in regulating the use of natural resources and ensuring its protection.

Results. To establish a reasonable balance of sometimes opposing interests, without giving unconditional priority to any of them, is a very important objective in the field under study. This principle of land legislation is constantly increasing its influence, being a legal analog of the model of rational choice when making complex legal decisions (including conflicts of equivalent rights). The balance of the adopted decision depends on the way (procedure) of its adoption, in which the detailed justification of why one right or interest (for example, the interests of public authorities) are preferred over another (the right to a favorable environment of the residents of the municipality) plays a decisive role. This manifests the effect of the constitutional principles of democracy and the rule of law and, as a consequence, ensures the principle of maintaining the trust of citizens in the actions of public authorities.

This becomes especially important when the decision is made under the influence of cultural traditions, religious beliefs, historical significance of the individual and family ties: the state has the right and should put such activities within the legal framework, including by changing the procedure for approval of certain urban planning acts, but without forgetting the direct action of constitutional values, the highest of which is a person and his rights (Article 2 of the Constitution of the Russian Federation)¹.

The process of building a cemetery begins with the land plot allocated for the future burial site. The reason for making such a decision is the exhaustion of available space in already existing cemeteries. The selection of a particular land plot is carried out by the Chief Architect of the city in coordination with housing, communal services, and sanitary and epidemiological services. The decision to establish a cemetery is approved by the executive authority of a constituent entity of the Russian Federation or a local government body. Taking into account the significant number of residents in megacities and the presence of objective logistical and infrastructural problems, the approval of the allocation of a specific land plot for the construction of a cemetery should be accompanied by preliminary engineering and environmental documentation confirming the fact of compliance of this territory with the stipulated land, urban planning, and sanitary and epidemiological norms.

¹ Constitution of the Russian Federation (adopted by national referendum on 12.12.1993, with amendments approved in a Russian national referendum on 01.07.2020) // The Russian Newspaper. 2020. No. 144.

According to the Sanitary Regulations and Standards (hereinafter — SanPiN), the sanitary protection zone of cemeteries is set up to 50 meters, depending on the class of burials. SanPiN 2.2.1/2.1.1.1.1200-03 allocates 5 classes of danger to cemeteries and burials¹. The problem is that there is no further control.

Registration of a land plot is carried out upon application of an authorized local government body in the sphere of municipal property management in the Department of the Federal Service for State Registration, Cadastral Records and Cartography. Provision of a land plot for the establishment of a cemetery may be accompanied by the forced withdrawal of adjacent (nearby) land plots that are in private ownership, with compensation of their market value to the owners.

For example, one of the land disputes related to the expansion of the territory of a cemetery was considered by the Supreme Court of the Russian Federation. In this case, the plaintiffs owned on the right of common share ownership a land plot intended in accordance with the category for agricultural activities. As the territory of a nearby cemetery expanded, part of this plot became part of the cemetery's territory. At the same time, the municipality made no efforts to buy the land plot from the owners².

The dispute was considered by several courts before it reached the Supreme Court of the Russian Federation. In the court of first instance, the owners of the land plot succeeded in obtaining allowance of their claims for its withdrawal in favor of the municipality with compensation for the market value of each owner's shares. The court of first instance came to the conclusion that the Administration of the municipal entity had seized the land plot illegally.

However, the court of second instance overturned this decision, citing the fact that the inability to use the land plot for farming was not the defendant's fault. The court of appeal concluded that the plaintiffs should have directed their claims to the original owner of the land plot, from whom they had purchased it, since he had not sold it with an encumbrance and limited right of use. The cassation instance agreed with these arguments. Finally, only the Supreme Court of the Russian Federation came to the conclusion that the plaintiffs' claims were legitimate, since the municipal entity was obliged to take action to withdraw the relevant land plot into municipal ownership with appropriate compensation to the owners for its market value.

Specialized services act as an economic entity, carrying out functional responsibilities for the implementation of the right of citizens to burial, which consists both in the direct provision of land and burial services, and in the

¹ Sanitary protection zones and sanitary classification of enterprises, structures and other objects (SanPiN) 2.2.1/2.1.1.1.1200-03 // Consultant Plus.

² Ruling of the Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation No. 4-KГ21-25-K1 of June 15, 2021 // URL: http://vsrf.ru/stor_pdf.php?id=2009488 (date of access: 01.08.2024).

provision of a wide variety of ritual and legal services accompanying the process of burial. It should be noted that the specialized service must be established directly by the local government, as the function transfer of an economic entity for the provision of funeral services to any legal entity is not allowed. It follows that local self-government bodies do not have the right to delegate powers in the sphere of provision of funeral services and funeral business to commercial organizations or individual entrepreneurs.

As noted above, land for burial is provided free of charge by local governments on an equal basis to state or municipal unitary enterprises¹. The free provision of land for burial is guaranteed by the current legislation, taking into account the fact that this land plot allows further burial next to the first burial of a deceased close relative. However, provided by Article 21 of the Federal Law No. 8 “On burial and funeral business”, the right to receive land for family burial often faces organizational obstacles in the form of a ban on the prohibition of omissions in the row of graves². In fact, the authority to provide the relevant land plots is discretionary in character and is not fully realized. The current regional legislation (for example, in the Republic of Tatarstan, each rural settlement has a resolution where the issue of family burials is solved³) provides special norms that allow citizens to realize their right to create family burials. As a result of granting the relevant land plot, there is no transfer of ownership rights, and citizens do not acquire the rights of the owner in respect of this land plot. The burial grounds that are in federal ownership are excluded from civil turnover and, according to the Land Code of the Russian Federation, cannot be provided for private ownership, as well as be the objects of transactions provided for by civil legislation⁴. Consequently, there is a ban on the transfer of the relevant land plots into private ownership. It is worth noting that the withdrawal of burial lands from civil turnover creates objective obstacles to the development of the sphere of private cemeteries, well known to foreign legal orders (but, as we can see, to date, Western countries are also abandoning it in favor of a favorable environment).

One of the positive characteristics of the Legislative Draft No. 91300-8 “On Funeral Business in the Russian Federation and on Amendments to Certain Legislative Acts

¹ *Burganova G. V.* Yuridicheskie protsedury predostavleniya zemelnykh uchastkov dlya zakhoroneniya [Legal procedures for granting land plots for burials] // *Administrativnoe i munitsipalnoe pravo* [Administrative and municipal law]. 2023. No. 2. Pp. 11–23.

² Federal Law of 12.01.1996 No. 8-Φ3 (ed. of 30.04.2021) “On burial and funeral business” // *The Russian Newspaper*. No. 12. 20.01.1996; No. 96, 05.05.2021.

³ Resolution No. 10 of 11.04.2022. “On Approval of the Procedure for the operation of public cemeteries and the Rules of maintenance of burial places on the territory of Shushmabash rural settlement of Arsk municipal district”.

⁴ The Land Code of the Russian Federation of 25.10.2001 No. 136-Φ3 (ed. of 25.12.2023) (with amendments and additions, in force since 05.01.2024).

of the Russian Federation” was an attempt to legislate the need for an inventory of burial places, which can become a significant area of work for the state in the field of protection of burial grounds¹. In the Order of the Government of the Russian Federation from 02.09.2021 No. 2424-p, for the period up to December 31, 2025, it is proposed to ensure the organization of an inventory of cemeteries and burial sites on them, the creation in the subjects of the Russian Federation based on the results of such an inventory, and the maintenance of registers of cemeteries and burial places with the placement of these registers on regional portals of state and municipal services. A problematic aspect of the implementation of state control in the field of rational land use is the presence of a significant number of abandoned cemeteries, the inventory of which would allow the subjects of the Russian Federation to solve numerous problems in the field of protection of the relevant category of land².

In general, the legal regime of burial lands is characterized by the presence of a significant number of requirements for the organization of cemetery territories, taking into account a variety of environmental, physical-geographical, and social factors that determine the allocation of land for burial places. The provisions of Article 16 of Federal Law No. 8 establish the need for a correlation between the number of inhabitants of the settlement and the size of the land plot for the cemetery. The determination of the boundaries of the relevant land plot is a necessary condition for its cadastral registration.

Quite common is the situation when municipalities do not carry out proper work on land parcelization and registration of land under the cemetery into municipal ownership. Such problems are not only an obstacle to compliance with sanitary and epidemiological requirements, but also serve as a barrier to the implementation of the powers of municipalities in the field of ritual services and maintenance of burial grounds. In turn, failure to comply with the procedure for registration of the land plot under the cemetery into municipal ownership, as stipulated by the legislation, leads to the impossibility of allocating budget funds for its maintenance. The above-mentioned situation with the presence of virtually ownerless cemeteries (churchyards), which due to the duration of their existence fall out of the focus of attention of the subjects of the Russian Federation and are not transferred

¹ Passport of the draft Federal Law No. 91300-8 “On Funeral Business in the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation” (introduced by deputies of the State Duma of the Federal Assembly of the Russian Federation S.V. Razvorotneva, I.I. Gilmudtinov, R.V. Karmazina, A.Yu. Kiryanov, S.V. Kolunov, M.E. Orgeeva, M.B. Terentyev) // ConsultantPlus: legal reference system.

² Order of the Government of the Russian Federation from 02.09.2021 No. 2424-p (ed. from 13.07.2022) “On Approval of the National Plan (“road map”) for the development of competition in the Russian Federation for 2021–2025” // The Collection of Legislation of the Russian Federation. 13.09.2021. No. 37. Art. 6553.

to municipal ownership, does not contribute to the proper organization of work to ensure rational land use of these territories.

Often, municipalities are faced with the need to expand the territorial boundaries of the cemetery, which raises the question of the need to buy out land plots adjacent to the sanitary zone around the cemetery. It should be noted that the possibility of expanding the territory of the land plot for burial grounds should be provided for at the planning stage of the cemetery, but in reality, this issue is sometimes not provided for in urban planning schemes due to the age of the cemetery. In this case, the municipality is faced with the necessity of forced redemption of nearby land plots from individuals and legal entities. As is known, the norms of civil legislation provide for cases of compulsory redemption of land). An agreement between the owner of the land plot and the municipality is the final stage of negotiating the terms of redemption. If such an agreement is not reached, the municipality has the right to appeal to the court with a claim for the withdrawal of the land plot.

The owner also has the right to initiate the process of redemption of the respective land plot, for which purpose it applies to the local self-government body with a proposal for redemption. Law enforcement practice knows cases of citizens applying to the court with a request for compulsory redemption of a land plot, if the expansion of the territory of the cemetery leads to the relocation of the relevant land plot into the sanitary zone around the place of burial. In this case, the owner, in particular, is deprived of the opportunity to engage in housing construction on this land plot¹.

When expanding the territorial boundaries of the cemetery, the owners of nearby land plots may also suffer losses in the form of a decrease in the market value of these land property objects. Due to the restrictions provided for by legislation for sanitary protection zones around cemeteries, the possibilities of using the respective land plots are significantly reduced, which entails a decrease in their market value. In other cases, the expansion of cemetery boundaries may be carried out at the expense of state or municipally owned land. For this purpose, the land legislation of the Russian Federation provides for the procedure of land redistribution, as a result of which new land plots may be formed.

Issues of liability in the sphere of offenses encroaching on burial grounds are subject to the general rules of land legislation. Since burial lands are exclusively in public ownership, there is no possibility of withdrawal from the property of citizens and legal entities for them².

¹ Appellate determination of the Judicial Collegium for Civil Cases of the Chelyabinsk Regional Court from October 17, 2013, in case No. 11-10505/2013. URL: <https://base.garant.ru/119372510/> (date of access: 01.08.2024).

² *Misnik G.A. Publichnye i chastnye interesy v ekologicheskom prave* [Public and private interests in environmental law] / G.A. Misnik, N.N. Misnik // *Gosudarstvo i pravo* [State and law]. 2006. No. 2. Pp. 29–37.

Conclusion. Summarizing the results, we can conclude that the problem of balancing private and public interests is to determine the boundary of private property for the implementation of possession, disposal, use of the land plot as the owner, and the regime of restrictions that are imposed to protect public interests. All this is expressed in the imperfection of legal control, establishment, and change of legal norms for the use of land and land plots intended for civilian and military burials.

References

Burganova G. V. Yuridicheskie protsedury predostavleniya zemelnykh uchastkov dlya zakhoroneniya [Legal procedures for granting land plots for burials] // *Administrativnoe i munitsipalnoe pravo* [Administrative and municipal law]. 2023. No. 2. Pp. 11–23. (In Russian)

Misnik G. A. Publichnye i chastnye interesy v ekologicheskom prave [Public and private interests in environmental law] / G. A. Misnik, N. N. Misnik // *Gosudarstvo i pravo* [State and law]. 2006. No. 2. Pp. 29–37. (In Russian)

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