

Hot topic:

Opinion of the Russian Constitutional Court on administrative liability for a misuse of land plots



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On October 16th 2020, the resolution of the Constitutional Court of the Russian Federation No. 42-P "In the Case of Verification of the Constitutionality of Part 1 of Article 8.8 of the Code on Administrative Offences of the Russian Federation in connection with the Complaint of Citizen M.G. Antsinova" ("the Resolution") was published. It concerns the unconstitutional character of section 1 of Article 8.8 of the Code of the Russian Federation on Administrative Offences (misuse of land plots).

After the Resolution was adopted by the court, the issue of the liability of the right holder of the land plot, in case of failure to record the subsidiary type of permitted use, in the Unified State Register of Real Property ("the USRRP"), became clear. Previously, there was no unified approach in court practice, including at the level of the Russian Supreme Court.

FACTUAL BACKGROUND OF THE CASE

M.G. Antsinova, who owned two land plots, with the permitted use "placement of an individual residential house" and "completion of construction of an individual residential house", was held administratively liable for violation of part 1 of article 8.8 of the Code on Administrative Offences of the Russian Federation (the "CAO"), due to the fact that the land plots were used by her, for keeping

farm animals, while the permitted use of these land plots, according to the USRRP, did not provide for an option of such use.

However, the land use and development rules, applicable to the territory where the land plots were located, provided for the possibility of establishing a subsidiary type of permitted use, allowing the construction of buildings for the keeping of farm animals.

COURT PRACTICE AND CONFLICTING JUDGMENTS BEFORE THE DECISION

The Constitutional Court has emphasized that there is no unified court practice as to whether, or not, a right holder should record a subsidiary type of permitted use, in the USRRP. This has created legal uncertainty, in relation to situations similar to that discussed above:

- The prevailing position of courts is that if the subsidiary type of permitted use is not recorded in the USRRP, the right holder breaches Article 8.8 of the CAO, when using a land plot pursuant to this type of permitted use. The Supreme Court of the Russian Federation, in its Review of the practice of consideration by the courts of cases related to changes in a type of permitted use of land plot, dated November 14th 2018, stated that

the right holder is required to choose the specific type of permitted use, i.e. should (when contemplating a change of use) apply for a change of information in the USRRP, regarding the permitted of the land plot.

- Further, the position of the Supreme Court of the Russian Federation on the issue has changed to the opposite conclusion: the right holder of the land plot cannot be held liable for its misuse, if the subsidiary type of permitted use, according to which the land plot is used, is provided by the land use and development rules, but is not recorded in the USRRP by the rights holder (the Ruling of the Supreme Court of the Russian Federation no. 310-ES20-8733 dated October 1st 2020).

POSITION OF COURTS OF GENERAL JURISDICTION ON THE CASE

The courts of general jurisdiction relied on the decision at first instance in the M.G. Antsinova case. Guided by the ruling of a judge of the Ingodinsk District Court of Chita, dated 12th December 2017, which was left unchanged by higher courts (including the Supreme Court of the Russian Federation): the complaint, against subjecting M.G. Antsinova to administrative liability, was rejected.

WHAT DECISION DID THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION MAKE?

The Resolution provides that the current content of Part 1 of Article 8.8 of the CAO creates uncertainty:

- in the issue of the need for a subsidiary type of permitted use, to be recorded in the USRRP by the right holder, in order to use the land plot, in accordance with this type of permitted use;
- in the issue of the need to subject the right holder of the land plot to administrative liability for the use of the land plot, in accordance with the subsidiary type of permitted use, in the absence of information about such type of permitted use in the USRRP.

As a result, part 1 of article 8.8 of the CAO is declared partially to be unconstitutional.

Prior to the adoption of the federal law resolving these matters, part 1 of Article 8.8 of the CAO cannot be a basis for administrative liability of the right holder, which does not record the information on a subsidiary type of permitted in the USRRP, but uses the land plot pursuant to such type of permitted use, under the land use and development rules of the territory.