

September 1989

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Recommended Citation

I. A. Iconitskaya, *Legal Protection of Land in the USSR*, 7 Pace Envtl. L. Rev. 161 (1989)
Available at: <http://digitalcommons.pace.edu/pelr/vol7/iss1/19>

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Legal Protection of Land in the USSR

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Land is one of the most important elements of the biosphere. Its protection as part of the human environment is of the greatest importance.

The term "legal protection of land" represents a system of norms designed to promote open space preservation, land reclamation, and improvement through the rational regulation of land use. These norms provide for sanctions for violations of their guidelines. They are stated in the Constitution of the Union of Soviet Socialist Republics (USSR)¹ as well as in specialized legislation, such as the Fundamentals of Land Legislation of the Union of Soviet Socialist Republics² and the individual republics, land codes of the republics, the laws pertaining to environmental protection, and other normative acts.

Land possesses the quality of being the all-encompassing operational base. It is the fundamental basis for production in agriculture and forestry and has inherent value for industrial and commercial development. Soviet land legislation establishes six categories of land, and special regulations for the utilization and protection of the land in each category. Article IV of the Fundamentals of Land Legislation defines the following categories of land. Together these categories make up the single state land fund of the USSR:

1. land intended for agriculture;

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1. KONST SSSR art. 18 (1977), *cited in* 1 COLLECTED LEGISLATION OF THE USSR AND CONSTITUENT UNION REPUBLICS, UNION REPUBLIC LEGISLATION arts. 136-40 (W. Butler trans. 1982).

2. Ved. Verkh. Sov. SSSR art. 18, No. 51, item 485 (1968), *amended by* No. 51, item 771 (1977); *cited in*: The Soviet Legal System: Legislation and Documentation (W. Butler ed.)

2. land for population centers (e.g., cities, towns and agricultural villages);
3. land for industry, transport, resorts, preserves and other non-agricultural uses;
4. land of the state forest fund;
5. land of the state water fund; and
6. land for the state reserve.³

Because of the particular importance of arable land, Soviet land legislation gives priority to agricultural uses of land. This principle is expressed in two ways. First, lands which are suitable for agricultural purposes are to be made available to agricultural enterprises. Second, valuable arable land can be used for non-agricultural purposes only in extraordinary cases, and then only in accordance with a decree by the government of the union republic.

During the last twenty years, the rapid development of industry, construction, and other non-agricultural branches of the economy have led to the removal of 8.2 million hectares of arable land, including 1.7 million hectares of plowed fields from *kolkhozs* (collective farms) and *sovkhozs* (state farms).⁴ This loss of agricultural land has continued unabated. Halting this loss of arable land appears to be impossible. Thus, the goal is to reduce to the greatest extent possible the misallocation of productive agricultural land for non-agricultural purposes. In other words, it is necessary to prevent the unjustified removal of valuable agricultural land from the *sovkhozs* and *kolkhozs*.

It is obvious that the terms "justified" or "unjustified," as applied to land removal, are defined in economic terms. The justified removal of a certain land unit from agricultural use suggests a well thought-out consideration of not only the needs of the individual land users, but also the possible economic consequences for the economy as a whole. The calculation of the economic justification for and the decision as to the appropriateness of the removal of land from agricultural

3. *Supra* note 2, art. 4.

4. *Izvestiya*, Nov. 1, 1982.

use are beyond the limits of jurisprudence. However, the legal norms provide for a decision making process in which factors other than economics alone are considered in deciding whether or not a particular removal is justified.

According to Article 10 of the Fundamentals of Land Legislation,⁵ plots of land are granted according to decrees of the Councils of Ministers of the union and autonomous republics and decisions of the executive committees of the Councils of People's Deputies, as defined by the respective republic land legislation. Within the union republics, a well defined procedure is provided for claims and the review of petitions for land grants.

An important step in an economically justified decision is the preliminary agreement on the location of the site and the approximate amount of land to be used. All of the interested parties, including state inspectors for the use and protection of land and representatives of the forestry enterprises, take part in this agreement. In order to arrive at the preliminary agreement on the site's location, the following factors must be considered: the availability of land which is either less suitable or unsuitable for agricultural use, the prevention of erosion, and the proper allocation of capital investment for land irrigation and drainage.

During the preliminary agreement stage, the issues of reimbursement for damages and losses in agricultural production are discussed. The rule established under Article 16 of the Fundamentals of Land Legislation is also of great importance. This rule specifies that the removal of land in use by *kolkhozs* can take place only upon the agreement of all of the members of the *kolkhozs* at a general meeting of the plenipotentiaries.⁶ The removal of land from other agricultural enterprises is conducted through agreement with land users, relevant ministries, state committees, and agencies of the USSR or union republics.

The preliminary agreement stage is concluded by the acceptance of a decision by the appropriate state authority

5. *Supra* note 2, art. 10.

6. *Supra* note 2, art. 16.

whose jurisdiction includes the granting and removal of certain categories and sizes of tracts of land. The financing of industrial and other non-agricultural projects becomes possible only after a well-coordinated agreement is reached.

State monitoring of decisions to remove or grant land rests with the Councils of People's Deputies, their executive committees, and the Special Service for the Protection of Land. In accordance with the decree of the Central Committee of the Communist Party of the Soviet Union (CPSU) and the Council of Ministers of the USSR, *On the Fundamental Restructuring of the Affairs of the Protection of Nature in the Country*, control will also be exercised by the USSR State Committee for the Protection of Nature and its regional units.⁷

Another important issue is the problem of protecting fertile land from construction within the *kolkhozs*, *soukhzozs*, and other agricultural enterprises. Recently, there has been a tendency toward the unjustified reallocation of valuable arable land, including plowed fields, for livestock complexes and processing enterprises.

Presently, the union republics have normative acts which regulate the selection of plots for the establishment of production sites on irrigated lands, drained lands, plowed fields, and lands for perennials for which the *kolkhozs* and *soukhzozs* are responsible. In the Russian Soviet Federated Socialist Republic (RSFSR), for example, permission for such construction is granted by the Councils of Ministers of the autonomous republics, or the *kray* or *oblast* Councils of the People's Deputies, in exceptional cases only. The membership of these bodies includes a wide variety of specialists. They are established for the purpose of site selection for intra-enterprise construction. If for such construction, valuable arable land must be used, the remaining arable land must be improved by cultivation and irrigation work.

7. *On the Fundamental Restructuring of the Affairs of the Protection of Nature in the Country* SP SSSR No. 6, at 14 (1988) (Decree of the Central Committee of the Communist Party of the Soviet Union (CPSU) and the Council of the Ministers of the USSR) [hereinafter *Protection of Nature*].

The procedures outlined above, which were established in the mid-1970's, restricted the independence of agricultural enterprises in the use of their land. They were implemented because agricultural land users did not have sufficient economic incentive to use fertile land primarily for agricultural production. It appears that, under the new management conditions, such administrative procedures will gradually be replaced by economic incentives. The gradual introduction of a leasing system, the granting of the right to agricultural enterprises to sell part of their production on the green market, and the change in agricultural planning procedures by the *kolkhozs* will provide significant economic incentive to keep fertile land primarily for crop production, rather than converting it to non-agricultural uses.

Land legislation includes a series of requirements regarding the protection of the quality of arable land. To meet these requirements, Article 13 of the Fundamentals of Land Legislation and Article 2 of the Law on the Protection of Nature in the RSFSR⁸ stipulate that land users must: take effective steps directed toward the improvement of soil fertility, and implement a system of organizational-economic, agro-technical, forestry-related irrigational and hydro-technical measures directed toward the prevention of water and wind erosion of soil. Land users must also prevent an increase in salinity, the development of marshes, the pollution of land, the spread of weeds, and other changes that are detrimental to the soil state.

Measures pertaining to irrigation, the protection of agricultural and forest land against erosion, and other means for improvement of land are stipulated in the state plans for economic and social development. Such measures are carried out by the ministries, the agencies, and the land users themselves.

A broad program of measures for the prevention of soil exhaustion was outlined in both decrees of the Central Committee (CC) of the CPSU and the Council of Ministers in *On Urgent Measures for the Protection of Soil from Wind and*

8. *Supra* note 2, art. 13.

Water Erosion,⁹ and by the Council of Ministers of the USSR in *On Measures for the Organization of Efforts to Protect Soil from Wind and Water Erosion*.¹⁰ These decrees require that special anti-erosion measures such as the introduction of crop rotation and a system of agro-technology and land cultivation be undertaken. The organizational efforts to implement anti-erosion measures on lands for agricultural use became the responsibility of the then Ministry of Agriculture of the USSR, now *Gosagroprom* of the USSR. Managers and specialists at *kolkhozs* and *soukhozs* are responsible for ensuring the implementation of anti-erosion activities and the maintenance of forest standards and anti-erosion installations.

The obligation of land users in the struggle against soil erosion and other detrimental processes is enhanced by the establishment of sanctions. According to the Directive of the Presidium of the Supreme Soviet of the USSR, *On the Administrative Responsibility for the Violation of Land Legislation*, officials guilty of non-compliance with the obligatory land improvement and anti-erosion measures are subject to a fine of up to one hundred rubles.¹¹

To ensure the fertility of the soil and to protect against the soil exhaustion that results from monoculture, Article 23 of the Fundamentals of Land Legislation places responsibility for implementation of effective crop rotation systems, that are compatible with local conditions, on the land users.¹² In accordance with the decree of the Council of Ministers of the RSFSR, *On Measures for the Improvement of Land Cultivation and the Introduction and Implementation of Proper Crop Rotation at Kolkhozs and Soukhozs*,¹³ crop rotation

9. *On Urgent Measures for the Protection of Soil from Wind and Water Erosion*, SP SSSR No. 9, at 45 (1967) (Decree of the Central Committee of the CPSU and the Council of Ministers).

10. *On Measures for the Organization of Efforts to Protect Soil from Wind and Water Erosion*, SP SSSR No. 21, at 144 (1975) (Decree of the Council of Ministers of the USSR).

11. *On Administrative Responsibility for the Violation of Land Legislation*, Ved. Verk. Sov. SSSR No. 20, at 165 (1970) (Directive of the Presidium of the Supreme Soviet of the USSR).

12. *Supra* note 2, art. 23.

13. *On Measures for the Improvement of Land Cultivation and the Introduc-*

must ensure high productivity from arable land and an increase in the fertility of the soil.

Crop rotation is developed directly by the *kolkhozs* and *soukhozs* with participation by the collective farmers and the *soukhozs* workers. Rotation must take into account contemporary methods and recommendations from research facilities, and must be specifically documented in planned intra-enterprise land regulation. Officials found guilty of non-compliance with the approved plans of land cultivation are subject to a fine of up to fifty rubles.¹⁴

For the purposes of land protection, the Fundamental Land Legislation imposes upon industrial and construction organizations the duty to prevent pollution of agricultural land by industrial sewage or other waste. Officials who are found guilty of a violation of this duty are subject to a fine of up to one hundred rubles.¹⁵

The use of land for mining which results in damage to the surface soil is the subject of special ordinances. Article 17 of the Fundamental Land Legislation requires enterprises, organizations, and institutions conducting geo-photographic sampling, geodesic, and other activities related to prospecting to conduct their operations so as to preserve the original state of the land for further productive use.¹⁶ In 1976, a special decree of the Council of Ministers of the USSR, *On the Recultivation of Land and the Conservation and Rational Use of the Fertile Stratum of Soil when Mining Useful Minerals and Peat or Conducting Geological, Construction and Other Types of Work*,¹⁷ was passed. This decree requires that any enterprise conducting work which results in damage to the top soil remove, preserve, and re-introduce top soil to the re-culti-

tion and Implementation of Proper Crop Rotation at Kolkhozs and Soukhozs, SP SSSR No. 11, at 52 (1966) (Decree of the Council of Ministers of the RSFSR).

14. *Id.*

15. *Id.*

16. *Supra* note 2, art. 17.

17. *On the Recultivation of Land and the Conservation and Rational Use of the Fertile Stratum of Soil When Mining Useful Minerals and Peat or Conducting Geological, Construction and Other Types of Work*, SP SSSR No. 11, at 52 (1976) (The Council of Ministers of the USSR).

vated land. Additionally, top soil is to be placed on areas of low fertility if economically feasible. Accordingly, land plots used for mining are to be transferred to agricultural land users only after the mining enterprises have recultivated them. The legislation also establishes a detailed procedure for the transfer of re-cultivated land to agricultural users. It stipulates the rights and responsibilities of the special committees involved and the responsibility of those participating in the recultivation. A fine of up to fifty rubles has been established for failure to return the land to a condition suitable for further use.

In addition to the indicated administrative penalties for violations of the land regulations, civil and criminal penalties have also been established. Criminal liability is outlined in the Fundamentals of Land Legislation and specified in the respective republic criminal codes. For example, the criminal code of the RSFSR establishes penalties for the unauthorized seizure, purchase, or sale of land plots.¹⁸ The criminal code of the Turkman SSR provides penalties for the criminal and careless use of irrigated land. Civil law penalties are widely used in cases of violations of land legislation. The guilty party is liable for material damages. In addition, all illegal agreements involving the land are annulled.

The land legislation also provides penalties for violations of land regulation. A typical penalty for violation is forced revocation of the right to use the land. This penalty is used against enterprises, organizations, and institutions which have improperly used an assigned land plot for two consecutive years. The penalty is also used against citizens who have conducted illegal deals regarding the land. Land restitution, or the return of illegally seized plots of land to the legal land user, is also a widely used penalty for land law violations.

State monitoring of the use and protection of land plays a very important role in ensuring the protection of land. According to Article 20 of the Fundamentals of Land Legislation, the state monitoring authorities are to ensure compliance

18. *Supra* note 2, art. 50, § xi.

with the regulations by the ministries, agencies, state cooperative and public enterprises, institutions, and the citizens.¹⁹

The state monitoring authorities include, the Council of People's Deputies, their authorized executive bodies, and the land regulation service, which until recently was located in *Gosagroprom* of the USSR. When the State Committee for the Protection of Nature was created, it was charged with the responsibility of the protection of land. The officials of the land regulation service include state monitors on both the union and regional levels.

State inspectors have the right to: 1) give binding directives to all land users regarding the protection of land and its use; 2) temporarily halt forestry or agricultural projects; 3) propose the curtailment of certain types of construction, mining, or prospecting if the continuance of these activities may result in land damage; and 4) propose the removal of land from current land users for non-compliance with land use regulations. Until recently, state inspectors merely had authority to file charges with the administrative commissions of the executive committees of the Council of People's Deputies. By a decree of the Central Committee of the CPSU and the Council of Ministers of the USSR, *On the Fundamental Restructuring of the Affairs of the Protection of Nature in the Country*, the state inspectors were given the authority to assess fines for violations of the land legislation.²⁰

Voluntary inspectors provide significant assistance to the state inspectors. The Ministry of Agriculture of the USSR approved the *Statement on Voluntary Inspectors of the Use and Protection of Land*.²¹ These inspectors are recommended from among agriculture specialists and other officials knowledgeable in the field of agricultural production. They operate under the auspices of the district organs for the monitoring of state land. These organs oversee the volunteer inspectors' activities. Their role is similar to that of the state inspectors for

19. *Supra* note 2, art. 20.

20. *Supra* note 7.

21. *Statement on Voluntary Inspectors of the Use and Protection of Land*, SP SSSR No. ____ (19__). (Decree of Ministry of Agriculture).

the use and protection of land. In the event of a violation of the land regulations, the voluntary inspector gathers necessary evidence for the state inspector so that appropriate measures can be taken. The public prosecutor's office also plays an important role in ensuring compliance with land legislation.

In addition to land legislation, special legislation exists regarding the use of other natural sites such as forests, mineral deposits, and waters. Presently, these requirements are stated only in a general way. However, through the development of land legislation, a clearer picture has emerged as to the type of procedures that will be necessary to effect the rational use of other natural resources.