



## **Agreement of sale and purchase of land property according to the legislation of the Russian Federation and Czech Republic: comparative law research**

*Elena Kurilova*

*Modern University for the Humanities, Russia*

*elena.kur@gmail.com*

It is hard to underestimate the significance of sale and purchase of land property for the development of modern society. This is proved by the great number of research works in this sphere. Our research is aimed at studying the peculiarities of land plots purchase and sale in Russia and the Czech Republic. Firstly, the topicality and significance of this subject is determined by the fact that in the last 20 years land has turned into a true object of civil matters in Russia as well as in Czech Republic, which demands effective legal control. Secondly, as a result of the Czech Republic entering the European Union some amendments were introduced, according to which the land market of the country will soon become open for foreign investors. Thirdly, the comparative law research is very crucial by its essence, because it is comparison which allows distinguishing the general and the special, the accidental and the logical in law.

According to the Russian legislation, a land plot as an object of civil matters is traditionally considered as a thing. According to the Article 6 of the Russian Land Code, the objects of land relations are: 1) land as a natural object and resource, 2) a land plot, 3) a part of a land plot. Meanwhile land as a natural object and resource can not be regarded as an object of contractual relations. They are relevant only for a land plot or its part.

One of the problems of the Russian Land Code concerning land plots purchase and sale consists in the lack of a uniform definition. The definition of a land plot can be come across in different regulatory legal acts, but as a rule they are given in the framework of one concrete act. In our opinion, the definition of a land plot as an object of property rights and liability legal relationship should be worked out on the basis of Article 11.1 of the Russian Land Code alongside Article 261 of the Russian Civil Code. For example, this definition can sound in the following way: "A land plot is a part of the land surface, whose boundaries are defined according to the federal laws and the surface layer of which includes water objects and plants situated on it".

The Czech law operates two definitions describing a land plot – *pozemek* and *parcela*. According to the Real estate registry law of the Czech Republic, the term *pozemek* means a part of the land surface that is separated from neighbouring parts by a boundary of an administrative-territorial entity or a cadastral territory, by a property boundary, a boundary of some real estate, a land category or by a land plot use border-line. The second term *parcela* describes a land plot which has a geometrical and geographical determination, which is marked on the map and has its own registration number.

The next problem of the Russian legislation concerns the divisibility of a land plot. The current problem is not only theoretical but also a practical one, as legal practice lacks a uniform approach to estimating conditions, by which a part of a land plot can be a part of a sale agreement and other deals. Some time ago another approach used to be applied in the Russian legislation. A land plot was regarded as a divisible one, if it could be divided into parts, each of which constituted an independent



land plot that could be used without being included into another land category. Nowadays the land plot divisibility rules are described in Article 11.4 of the Land Code. Meanwhile Article 15 of the Russian Land Code states that an object of a private property right of natural and legal persons can be land plots. According to some experts [1], in this case the law narrows the range of objects of a private property right to only one. If one agrees with this viewpoint, the above mentioned article of the Land Code should also include a provision concerning the fact that objects of a private property right encompass also parts of land plots. Otherwise in practice it can result into a conundrum when by dividing a land plot its owner is deprived of their property right, which is disallowed in chief. However, in our opinion, in this case one can apply an enlarged definition, that is an object of a private property right can be not only a land plot but also its part.

There is no standard definition of the agreement of sale and purchase of land property in Russia and Czech Republic. Since a land plot is a variety of property, in Russia the definition of this agreement is provided on the basis of the legislative definition of the agreement of property sale and purchase. According to Article 549 of the Russian Civil Code, the real estate purchase agreement implies that a vendor shall transfer into ownership of a purchaser a land plot, a building, a construction, a flat or other objects of real estate.

In the Czech legislation there is no definition of property sale and purchase, that is why the definition of the sale and purchase of land property corresponds to the definition of sale and purchase in general.

Article 554 of the Russian Civil Code and Article 37 of the Russian Land Code contain some requirements concerning a land plot purchase agreement. The agreement should include all data allowing to exactly determine an object of real estate that should be transferred to a purchaser according to the agreement. If these data are lacking in the agreement, the condition of a real estate object that should be transferred is regarded as one not being negotiated by parties, and the correspondent agreement is considered to be invalid. According to Article 37, Clause 1 of the Land Code, an object of sale can imply only land plots officially registered in the cadastre chamber office. The registration is provided on the basis of the federal law "State Immovable Property Cadastre". According to Article 1, Clause 3 of the above mentioned law, the governmental cadastre registration of real estate presupposes some actions of an authorized official body concerning submitting to the state real estate cadastre all necessary data about an object of real estate that prove the existence of such an object along with characteristics allowing to define such real property as an individually determined thing, or prove the end of existence of such an object of real estate, as well as other information about an object of real estate specified in the above mentioned law.

The legislation systems of Russia and Czech Republic presuppose cases of limiting the transferability of land plots concerning both land plots and the participants of the commerce. In particular, land plots referred to land withdrawn from commerce can not be transferred into ownership, be an object of deals stipulated by the Civil Code, including sale and purchase agreements. Land plots referred to land limited in commerce are not transferred into ownership except for those cases specified by federal laws. Foreign citizens, stateless persons and foreign legal persons can not possess property rights for land plots situated on border territories, the list of which is established by the President of the Russian Federation according to the federal legislation about the Federal Boundary of the Russian Federation, and on other territories of the Russian Federation having a special status according to federal laws.

Let us consider the legal requirements for a land plot sale and purchase agreement in more detail. Both in Czech Republic and in Russia the price condition is the essential part of the agreement of sale and



purchase of land property. In accordance with the Russian legislation, in the absence of the price condition in the agreement, the latter is considered unconcluded. The fulfillment of the agreement cannot be paid by the price which is usually taken for analogue land plots at comparative circumstances. In accordance with the Civil Code of Czech Republic the absence of the price condition entails the nullity of the agreement.

The Land Code of the Russian Federation contains the list of additional conditions of the agreement of sale and purchase of land property, which are invalid. The conditions have the following characteristics:

- 1) establishing the right of a vendor of repurchasing a land plot by his or her own will;
- 2) limiting the range of further use possibilities of a land plot, including those limiting mortgage, renting of a land plot, performing other deals with this land;
- 3) limiting a vendor's responsibility in case of third parties' claiming for land plots.

In Czech Republic the general provisions of the civil legislation on sale and purchase are applied. In case of transferring a land plot, which does not correspond to the quality conditions of the agreement, the regulations provided by the general provisions on sale and purchase of goods are applied.

The characteristic peculiarity implies the fact that a purchaser of a land plot is deprived of a right of demanding the substitution of this property. A land plot is always an individually determined thing. One should also consider the rule set by Article 556 of the Russian Civil Code. The purchaser's acceptance of a land plot that does not comply with the sale agreement conditions, including cases when discrepancy like this is specified in a document concerning transferring real property, is not regarded as a reason for relieving a vendor's liability for the wrong performing of the contractual conditions.

According to the Land Code of Russia, in case if a seller provides misleading information, which may affect buyer's decision on purchasing this land plot and the requirements of providing which are set by the federal laws, a buyer has the right to claim for increasing the price for it, or for dissolution of the agreement of sale and purchase of land property and for compensation of his/her losses.

Both in Czech Republic and in Russia the agreement of sale and purchase of land property is concluded in the written form. Non-fulfillment of this requirement entails the nullity of the agreement. State registration of transfer of ownership for land plots is obligatory.

As far as the order of a land plot delivery is concerned, according to Article 556 of the Russian Civil Code the delivery of a land plot by a vendor and its acceptance by a purchaser are performed in line with a delivery acceptance act signed by both parties or with any other transfer act. The vendor's obligation of transferring an object of an agreement to a purchaser is considered to be accomplished after delivering this property to a purchaser and signing a correspondent transfer act by both parties. If one of the parties avoids signing a land plot delivery document, this act is regarded correspondingly as a refusal of a vendor to perform their duty of transferring property, and of a purchaser – their duty of accepting property.

## Sources:

1. Notariat and Notarial Activities. Under the editorship of V.V.Yarkov, N.Y.Rasskazova. Moscow, 2009.