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# PRINCIPLES OF LEGAL ZONING IN THE JUDICIAL PRACTICE**

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The present article deals with the study of the principles of legal zoning through their disclosure in judicial practice. The topic is underdeveloped. The purpose of the study is to identify the role of judicial practice in the legal regulation of urban zoning, as well as the impact on law enforcement and law-making activities in this area. The authors propose to use a classification of principles of legal zoning by level of their action (general legal principles, principles of sectoral legislation and special principles) and revealing their content through the analysis of judicial practice materials. In addition to general scientific methods, the comparative legal, formal legal and interpretation methods made it possible to achieve better results.

The analysis was conducted with respect to judicial acts adopted by the Supreme Court of the Russian Federation, as well as judicial acts of courts of general jurisdiction and arbitration courts of cassation and appeal instances. More than 150 judicial acts in several categories were examined in total:

– Challenging general plan and land use rules as a legal act;
– Challenging the refusal to grant permission for permitted use or challenging the granted permission for permitted use;
– Challenging the refusal to grant permission to deviate from the maximum parameters of permitted construction, reconstruction of the object of construction or challenging the permission to deviate from the maximum parameters of permitted construction.

According to the results of the study it is possible to identify several ways of working with the principles of legal zoning:

– direct quotation and application, if it is a principle of sectoral legislation, which is enshrined, for example, in the Urban Planning Code of the Russian Federation;
– disclosure of content without precise formulation, for example, the principle of protection of previously arisen rights of right holders of land plots when changing legal zoning, which is not directly mentioned in judicial acts, but is disclosed through references to current legislation;
– the formation of new principles not enshrined in the current legal acts, such as the principle of primacy of the master plan or the principle of belonging of a land plot only to one territorial zone.

Approaches and legal provisions, broadcasted by judicial practice, are reflected in the law enforcement and law-making activities of local self-government bodies. The authors draw attention to the fact that local self-governing bodies assess and take into account the emerging judicial practice in different ways. This fact is confirmed by the current editions of the rules of land use and development in different Russian cities.

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## 1. Introduction

The institute of urban zoning as part of the overall system of urban regulation and urban planning law is complex and intersectoral in nature, affects many areas of activity, and can also be expressed in the constant search for a balance between public and private interests. In this connection, the observance of legal principles that serve as a guideline in making decisions in law enforcement practice, as well as in challenging these decisions in court, is so important.

The topic of urban zoning principles was most widely developed by E.K. Trutnev, L.E. Bandorin [1]. E.K. Trutnev characterizes the principles and reveals their content through compliance with the criteria of the zoning model [2, p. 22-24].

In the legal literature, much attention is paid to the system of principles of law in general, their role in legal regulation [3], the sectoral principles of legislation on urban planning [4], as well as directly urban zoning [5], are studied.

Opinions are also expressed about the lack of the possibility of building principles for individual institutions in urban planning law [6, p. 284], which can be considered premature in relation to such a young institution as urban zoning. Another point of view is the formulation and systematization of the principles of urban zoning, as well as their proper combination with those norms of laws that contain targets for participants in legal relations, and the implementation of such principles should contribute to the achievement of results recognized by the legislator as mandatory, desirable or acceptable.

The considered materials of judicial practice make it possible to reveal the content of generally accepted legal principles, norms-principles of sectoral legislation, as well as to identify other principles that are formed and translated through judicial acts.

Consideration of the system of principles determines the demand for various principles, the features of their application, on the basis of which we can conclude about the nature of the influence of judicial regulations on the law-making and law enforcement practice of public authorities exercising municipal powers in the field of development regulation.

The analysis was carried out in relation to judicial acts adopted by the Supreme Court of the Russian Federation, as well as judicial acts of courts of general jurisdiction and arbitration courts of cassation and appeal instances. More than 150 judicial acts were examined, including such categories as contesting the master plan and rules for land use and development, contesting the refusal to grant permission for a conditionally permitted type of use (hereinafter referred to as CPTU) or contesting the granted permit for CPTU, contesting the refusal to grant permission to deviate from the limiting parameters of permitted construction, reconstruction of capital construction objects (hereinafter referred to as limiting building parameters) or contesting the granted permission for deviation from the limiting building parameters.

## 2. The role of the court and judicial practice

The reference in the study to the materials of judicial practice is not accidental. Both in domestic and foreign scientific literature, the importance of the activities of the judiciary has long been recognized not only as direct law enforcers in resolving specific disputes [7-9]. From this we can conclude that in the countries of both the continental and the Anglo-Saxon legal families, judicial practice provides reasons and material for further actions and research, which are applied and taken into account in their own way, taking into account the peculiarities of national law [10].

Based on the significant influence of judicial practice on the law-making process and legislation, various views have been formed on the degree and nature of such influence [11-12].

One of the important conclusions, in the opinion of the authors, is the conclusion about the development of legal provisions in the process of judicial activity [13-14]. Scientists noted that judicial practice as a result of the activities of the judiciary is associated with the development of certain legal provisions through the interpretation of the meaning and content of the law. These results reveal and deepen the content of the applicable rule of law, concretize it in the form of certain provisions of a peculiar normative nature - legal provisions [15, p.16].

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The novelty and cross-sectoral nature of the institute of urban zoning does not make it possible to speak about the existence of a well-established methodological basis or methodological explanations and instructions of the authorized bodies in this area, which naturally affects the formation of legal provisions in judicial practice, which are subsequently translated into law enforcement ("the effect of replication") and law-making (become officially encouraged) activities of local governments.

The exceptional value of the latter in this case is that it "formulates approved and adequate legal provisions ready for perception, which can be included in the legislation practically without changes" [16, p. 75]. In addition, many authors take a position on the leading role of the court in relation to the legislative process, since in the absence of an immediate legal norm, the judge cannot refuse justice and "is obliged to resolve the dispute based on the general principles of law" [17, p. 147].

Given the complexity of the institution of urban zoning, its intersectoral and basically conflict nature due to the constant clash of private and public interests, when resolving disputes, the courts turn to both general legal principles and principles from different industries, applying one or another principle depending on circumstances of a particular case, as well as form other principles through the specifics of the institution of urban zoning.

**3. General legal principles**

As general legal principles, the authors single out the following principles: legality, fairness, legal certainty, independent decision by local governments of issues of local importance. These principles are based on constitutional and legal significance[1].

The principle of legality from the point of view of urban zoning implies mandatory compliance with the procedure for adopting land use and development rules, making changes to them, as well as making decisions on granting permits for CPTU, on deviation from the limiting parameters of development or on refusal to grant such permits to authorized bodies. In addition, the content of such decisions must comply with the requirements of the current legislation.

Judicial practice has formed approaches that complement and clarify existing regulatory requirements. As an example, we can cite the position of the Supreme Court of the Russian Federation[2] and the Constitutional Court of the Russian Federation[3], according to which it is permissible not to submit draft decisions on urban development for public hearings if they knowingly contradict the current legislation. In this regard, local governments may, on this basis, refuse to consider applications for granting permits for CPTU or for deviation from the limiting building parameters. Examples of such a position have taken place before, and are currently confirmed by judicial practice.

In this vein, it is important to mention the requirement of reasonableness imposed by the court on decisions made. On the one hand, "the courts are not entitled to discuss the issue of the advisability of adopting a disputed act by a body or official" [4], and there are examples in judicial practice when the court, referring to the specified explanation, rather formally rejected the arguments of administrative plaintiffs[5]. On the other hand, there is a different position, according to which the courts evaluate the motives for adopting a normative legal act (the validity of the decision), arguing that it is inadmissible to make arbitrary decisions on the part of state authorities and local self-government[6].

[1] Information of the Constitutional Court of the Russian Federation "Methodological aspects of constitutional control" (approved by the decision of the Constitutional Court of the Russian Federation of 10/19/2021). ConsultantPlus

[2] Determination of the Supreme Court of the Russian Federation No. 308-ES19-16677 dated October 1, 2019 in case No. A53-20602/2018. ConsultantPlus

[3] Determination of the Constitutional Court of the Russian Federation of July 23, 2020 No. 1653-O. ConsultantPlus

[4] c. 28 of the Decree of the Plenum of the RF Armed Forces dated December 25, 2018 No. 50. ConsultantPlus

[5] Appeal ruling of the Second Court of Appeal of General Jurisdiction dated 06/14/2022 in case No. 66a-516/2022. ConsultantPlus

[6] Appellate ruling of the Judicial Collegium for Administrative Cases of the Armed Forces of the Russian Federation (hereinafter referred to as the SCAD of the Armed Forces of the Russian Federation) dated July 24, 2019 No. 53-APA19-28. ConsultantPlus

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The principle of justice is a fairly capacious category, which should be considered through the balance of private and public interests, as well as the equality of rights and legitimate interests of the right holders of land plots and capital construction projects. The land use and development rules should contain the "rules of the game" for the subjects of urban planning activities in such a way that any person at any time has the opportunity to get acquainted with information about what objects and in what parameters may appear on a particular land plot.

Many authors believe that the creation of a transparent and specific system of norms for the regime of legal use of urban areas is the main purpose of the rules for land use and development [18-19], ensures the investment attractiveness of the city, respect for the rights and interests of individuals and legal entities, which leads to minimization of possible disputes over about the use of land and city resources, and in general the sustainable development of urban areas.

A feature of the document on urban zoning is that, on the one hand, the rules for land use and development are created for land owners who must have a framework for the use of their land holdings, on the other hand, this is an act for everyone, that is, public authorities must take into account the interests of different groups , to achieve a balance in this and be aimed at sustainable development [20, p. 86]. The CPTU Institute also initially acted as a tool for reconciling conflict types of use [21, 22, p. 70] on nearby land plots, which predetermines the importance of the results of public hearings or public discussions when considering disputes in this area[7].

The institute of deviation from the limiting parameters has not received due development in the urban planning legislation [2, p. 80-81]. Currently, the implementation of the principle of justice is revealed through the court's examination of the existence of grounds for granting permission to deviate from the limiting building parameters.

In the future, there is a complication of disputes and the emergence of a discussion regarding the permissible limits of such a deviation. According to the authors, they should be based on the simultaneous observance of two principles: compensation for the volume of development that is impossible to implement and changes in the limiting parameters of development should not prevent the implementation of the construction volume of neighboring land plots specified by the urban planning regulations.

Translated into urban planning regulations, the principle of legal certainty means that the volume of building changes and their spatial dimensions, building parameters are harmonized and exclude their inconsistency, a single volume of building changes operates within the boundaries of the territorial zone, and a system of concepts for an unambiguous description of the calculation of the numerical values of the building parameter is presented[8]. A violation of the principle of certainty is the inclusion in the urban planning regulations of requirements for the implementation of additional procedures, in particular, obtaining various approvals[9].

**4. Principles of sectoral legislation**

This category of principles is contained in the Urban Planning Code of the Russian Federation and the Land Code of the Russian Federation. As a rule, these principles are contained in the motivational part of the judicial act by direct reference to them.

The principle of ensuring the integrated and sustainable development of the territory based on territorial planning, urban zoning and territory planning is directly indicated in numerous judicial acts and manifests itself as a justification for the connection between urban planning documents for various purposes. Its conceptual content is not static and focuses, among other things, on the directions approved by the world community in the field of sustainable development [23]. Appeal to this

[7] Decree of the Arbitration Court of the WSO dated 02.04.2019 No. Ф04-817/2019 in case No. A46-9522/2018, Ruling of the Arbitration Court of the SKO dated 06.07.2021 No. Ф08-6011/2021 in case No. A32-20225/2019. ConsultantPlus

[8] Appeal decision of the SCAD of the Supreme Court of the Russian Federation dated May 23, 2018 No. 75-APG18-4. ConsultantPlus

[9] Appeal determination of the SCAD Supreme Court of the Russian Federation of May 16, 2018 14-APG18-8. ConsultantPlus

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principle is also connected with the way of coordinating state, public and private interests in order to comprehensively ensure favorable living conditions, as well as a fair balance between the interests of different groups of subjects of urban planning activities[10].

The courts pay attention to the principle of participation of citizens and their associations in the implementation of urban planning activities, ensuring the freedom of such participation in assessing the procedures that guarantee such participation, expressed in holding public hearings and public discussions. Given the nature of the urban planning industry and the requirements for the procedures for making urban planning decisions, this principle is one of the most used, especially in the categories of cases on CPTU and deviation from the limiting building parameters. At the same time, the implementation of the principle of citizen participation is considered both as part of the general procedure in terms of the legality of the latter, and as a meaningful aspect with an assessment of the results of such a public procedure and their significance in a particular case. In general, the courts proceed from a recommendatory nature, but there is another practice that indicates the decisive nature of the results of public hearings in making decisions regarding the granting of permission for CPTU[11].

This position resonates in municipal lawmaking, in particular in the form of grounds for refusing to provide a municipal service for granting permission for a conditionally permitted type of use of a land plot or a capital construction object[12].

The principle of carrying out urban planning activities in compliance with the requirements of technical regulations is especially clearly manifested in the categories of disputes over deviation from the limiting parameters of development, expressed in the mandatory assessment by the courts of a decision taken by a public authority on compliance with technical regulations. The disclosure of the principle, as a rule, is supported by references to the norms of Art. 37 and 40 of the Urban Planning Code of the Russian Federation, which directly provide for the obligation to comply with the requirements of technical regulations when changing the type of permitted use, as well as when granting permission to deviate from the limiting building parameters.

The implementation of the principle of urban planning activities in compliance with the requirements of environmental protection and environmental safety is aimed at protecting against unsystematic and unjustified urbanization of territories and adverse environmental conditions. The principle connects urban planning legislation with other, adjacent to it, legislation in the specified area (water, forestry, etc.). In the same context, the regulation of specially protected natural areas is considered.

The foregoing predetermines the use of this principle as a direct transition to the rules of law governing special legal relations. For example, in disputes related to the reflection in the rules of land use and development of zones with special conditions territories[13].

The principle of carrying out urban planning activities in compliance with the requirements for the preservation of cultural heritage sites is based on the norms of the Urban Planning Code of the Russian Federation, as well as the Federal Law of June 25, 2002 No. 73-ФЗ “On Cultural Heritage Sites (monuments of history and culture) of the peoples of the Russian Federation”, in practice it is reflected in checking compliance with the requirements of the current legislation for existing restrictions in connection with the presence of a cultural heritage

[10] Appeal rulings of the SCAD of the Supreme Court of the Russian Federation of December 11, 2019 No. 18-APA19-74, of December 11, 2019 No. 18-APA19-74, of September 13, 2018 No. 81-APG18-11. ConsultantPlus

[11] Decision of the Arbitration Court of the Far East District dated 08/05/2019 No. F03-3089/2019 in case No. A04-9237 / 2018. ConsultantPlus

[12] For example, clause 2.9.1 of the Administrative Regulations of the Administration of the Civil Defense of the city of Kulebaki on the provision of municipal services (Decree of the Administration dated 09.08.2019 No. 1648) indicates the negative opinion of the majority of persons participating in public hearings as the basis for refusing to provide municipal services .; Decree of the Arbitration Court of the East Siberian District dated March 21, 2022 No. F01-399/ 2022 in case No. A43-3700/2021. ConsultantPlus

[13] Appeal decision of the SCAD of the Supreme Court of the Russian Federation dated May 29, 2019 No. 10-APA19-6. ConsultantPlus

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site[14]. The impossibility of complying with such restrictions and requirements entails the impossibility of making appropriate decisions in the implementation of urban zoning.

**5. Special principles of urban zoning**

Analyzing special principles, we will focus on the most relevant at the present time.

Thus, the principle of "zoning" of territories implies that the establishment of territorial zones is carried out in relation to the totality of land plots and territories that do not have formed land plots, and not single land plots. And if the previous legislation in earlier editions of the Urban Planning Code of the Russian Federation provided for a provision that ensures the implementation of the principle in question. However, Federal Law No. 283-FZ of August 2, 2019 excluded it. The court, applying the above principle, proceeded from the fact that its existence does not, however, provide a strict prohibition on the establishment of a territorial zone in relation to a separate land plot[15].

In general, there are indeed territorially capacious land plots occupied, for example, by production facilities or other large property complexes, in respect of which it is most effective to establish one territorial zone. This circumstance does not allow to reasonably introduce a general rule on the prohibition of establishing a territorial zone in relation to a separate land plot.

But the liberalization of the provisions of the Urban Planning Code of the Russian Federation in this direction can provide an incentive for appropriate abuses on the part of public authorities.

The principle of operation of a unified urban planning regulation within the boundaries of the territorial zone provides the maximum effect for the majority, ensures the implementation of the design intentions of land owners with maximum parameters both for new construction and reconstruction. The purpose of the principle is to provide guarantees for the predictable use of land plots, construction changes on land plots within the boundaries of territorial zones and ensuring neighbor rights.

In addition to directly indicating that a unified urban planning regulation is established for land plots within the boundaries of one territorial zone, the courts also link the establishment of a unified urban planning regulation with the implementation of the requirement for the certainty of the legal regime of a land plot[16].

The principle of compliance of land use and development rules with the master plan is also formulated by judicial practice and has become widespread due to the inclusion in the Review of the Supreme Court of the Russian Federation Judiciary Practice[17], it has significantly influenced the strategies for developing land use and development rules and master plans by local governments over the past four years.

It is important to note that this principle is often associated with the conclusion that the master plan has greater legal force than the rules for land use and development, which is of key importance when considering cases of challenging the established territorial zones in relation to land plots. Thus, decisions on special cases become a general rule on the requirement of full compliance of one document with another.

The literature also notes that the master plan is increasingly becoming a document of direct action [24], which, in the opinion of the authors, cannot be recognized as corresponding to either the doctrinal understanding or the literal reading of the Urban Planning Code of the Russian Federation.

The authorities in the field of development regulation take into account the positions developed by the jurisprudence regarding this principle, which is expressed in one of two main approaches:

1) full compliance with the rules of land use

[14] Determination of the SCAD of the Supreme Court of the Russian Federation of February 27, 2019 No. 8-APG18-32. ConsultantPlus

[15] Appeal decision of the SCAD of the Supreme Court of the Russian Federation dated February 13, 2019 No. 4-APG18-33. ConsultantPlus

[16] Appeal decision of the SCAD of the Supreme Court of the Russian Federation of November 27, 2019 No. 53-APA19-41. ConsultantPlus

[17] It is also presented in paragraph 57 of the Review of the judicial practice of the RF Supreme Court N 3 (2018), approved by the Presidium of the RF Supreme Court on November 14, 2018. ConsultantPlus

and development of the master plan[18]. This position is not supported in the scientific discussion, since the strict compliance of the land use and development rules with the general plan actually turns the urban zoning document into a copy of the territorial planning document [25];

2) development of limits for taking into account the provisions of the territorial planning document in the rules for land use and development[19], for example, through the goals of achieving technical and economic indicators and implementing the measures defined by the master plan, listing the zones in relation to which accounting is carried out (zones of the road network, natural areas and similar).

The authors express the opinion that the issues of the limits of accounting and the subject of compliance (verification) of the rules of land use and development with the master plan require development. Taking into account the differences in the content of these documents, in the subjects of their regulation, it is fair to recognize their mutual correlation, but not to reduce it to full compliance of one document with another.

At present, the development of a balanced approach in judicial practice to determining the relationship between land use and development rules and the master plan is an important task that requires detailed study[20]. At the same time, in general, the resolution of the identified contradiction can serve both the adoption of a resolution of the Plenum of the Supreme Court of the Russian Federation, which would provide explanations on these issues, and the introduction of amendments to the Urban Planning Code of the Russian Federation.

[18] For example, in the PZZ of Kazan, approved by the decision of the Kazan City Duma dated August 16, 2021 No. 5-8 (Article 22). ConsultantPlus

[19] For example, in the PZZ of the urban district of the city of Voronezh, approved by the decision of the Voronezh City Duma dated April 20, 2022 No. 466-V (Article 19). ConsultantPlus

[20] Cassation determination of the RF Armed Forces SCAD dated July 27, 2022 N 78-KAD22-11-K3. ConsultantPlus; Appeal decision of the SCAD of the Supreme Court of the Russian Federation of February 6, 2019 N 41-APG18-26. ConsultantPlus

## 6. Conclusions

Based on the results of the analysis of judicial acts, several approaches of the courts to use the principles of urban planning zoning should be distinguished, including both direct quotation and application, disclosure of content without precise formulation, and the formation of new principles.

1. In case of challenging decisions on granting permission for CPTU, the principle of independent decision by local governments of issues of local importance, the principle of participation of citizens and their associations in the implementation of urban planning activities, ensuring the freedom of such participation are applied.

2. When contesting decisions on granting permission to deviate from the limiting parameters of development or on refusal to grant such permission, the principle of carrying out urban planning activities in compliance with the requirements of technical regulations is applied.

3. In case of contesting the rules of land use and development in terms of the established territorial zones, attention should be paid to the principle of compliance with the rules of land use and development to the general plan, the principle of operation of a unified urban planning regulation within the boundaries of the territorial zone, the principle of protecting the rights of land owners that have arisen earlier when changing urban zoning, the principle of legal certainty of the regime for the use of land plots and capital construction facilities (the principle that a land plot belongs to only one territorial zone).

As a general trend, there is a decrease in the importance of taking into account actual land use when making urban planning decisions on the establishment of territorial zones. At the same time, in order to maintain a balance of interests, the courts turn to Parts 8-10 of Article 36 of the Urban Planning Code of the Russian Federation. However, this practice is highly controversial, as it actually allows some principles to prevail over others.

Many approaches and legal provisions, translated by judicial practice, are reflected in the law enforcement and law-making activities of local governments. At the same time, local governments evaluate and take into account the emerging judicial practice in different ways.

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In this regard, it is important to further work with the principles of urban zoning. Judicial practice, on the one hand, reveals the content of the principles and thereby influences municipal lawmaking, on the other hand, gives an incentive to the legislator to find solutions to harmonize the institutions of land and urban planning legislation in relation to their subject areas, as well as authorized bodies for development organizational and methodological foundations in these areas.

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