

ISCKMC 2020**International Scientific Congress «KNOWLEDGE, MAN AND CIVILIZATION»****ROLE OF PROSECUTOR'S SUPERVISION IN HISTORY OF
LAND PROPERTY PROTECTION INSTITUTIONS**

Ilya Chudeevich Aksenov (a)*, Tevkya Erdnievna Tsekeeva (b),
Kishtya Yurievna Buluktaeva (c), Bella Nikolaevna Lidzhieva (d)

*Corresponding author

(a) Kalmyk State University, Elista, Republic of Kalmykia, Russia, akseov_ich@mail.ru,

(b) Kalmyk State University, Elista, Republic of Kalmykia, Russia, tsekeeva-te@yandex.ru,

(c) Kalmyk State University, Elista, Republic of Kalmykia, Russia, kbuluktaeva@mail.ru,

(d) Kalmyk State University, Elista, Republic of Kalmykia, Russia, madam.lidzhiewa2016@yandex.ru

Abstract

The article analyzes the history of prosecutorial supervision and land property legislation and their relationship in pre-Soviet Russia. The indissoluble connection of these institutions was established. The dynamics of development of land and civil legislation on land property was studied. To identify the purpose of a social institution, it is necessary to conduct a historical analysis of its creation and formation. Studies of the land property sphere allowed us to identify various reasons for failures of the land surveying procedures. The role of the Prosecutor's office in the land surveying activities was crucial. The article reveals the specifics of the Russian cadaster. The analysis of the history of formation of the institutions of prosecutorial supervision and land surveying identified the inextricable connection between the development of these institutions and the level of development of land legal relations. Land surveying played a crucial role in the control and accounting of the lands that formed the territory of the Russian state, which required state supervision.

2357-1330 © 2021 Published by European Publisher.

Keywords: Land surveying, Prosecutor's supervision, surveying, cadastre



1. Introduction

To identify the purpose of a social institution, it is necessary to conduct a historical analysis of its creation and formation. The relevance is due to the fact that through the study of historical aspects, one can choose a vector for further development, as well as take legislative and organizational actions to increase the effectiveness of activities of this institution in modern conditions.

2. Problem Statement

The study of the history of prosecutorial supervision and the law of land ownership and their relationship is an important contribution for further scientific research in the areas under consideration.

3. Research Questions

For a long time, the land has been the main factor of production, a key instrument of the economy; the prosecutor's office of the Russian Federation protects the rule of law, rights, freedoms and legitimate interests of society.

The "land issue" and "prosecutor's supervision" are involved in many spheres of public life and aspects of the policy of the Russian Federation.

4. Purpose of the Study

The purpose of this article is to study the interaction throughout the development of institutions such as land ownership and prosecutorial supervision. To achieve this goal, the tasks are: to study the history of development of land surveying, to analyze the role of prosecutorial supervision in land surveying, and their interaction, peculiarities of cadaster work and surveying of lands occupied by nomadic peoples (the Kalmyk steppe).

5. Research Methods

The methodological basis of the research includes both general scientific methods of cognition (dialectical, systemic, general scientific ones) and private scientific methods (normative-logical, technical-legal ones). The main research method is historical and legal, through which the analysis of legal acts that was carried out.

6. Findings

An analysis of the history of prosecutorial supervision identified the inextricable connection between the development of the prosecutor's office and land relations. Land surveying was a key tool in the control and accounting of lands that formed the territory of the Russian state. It was necessary to carry out competent land surveying by the prosecutor's office.

For a deeper study of the role of prosecutorial supervision in the protection of land property, it is necessary to analyze the development of these institutions.

According to the Constitution of the Russian Federation, land is the most important natural resource, used and protected as the basis for life activities of peoples living on its territory. Therefore, the legal status of lands is crucial.

In Russia, land rights were recorded in the 16th century. Moreover, records of land transactions were made in the Local Order. By the 17th century, orders become the guarantor of property rights, kept records of property transactions. According to the Cathedral Code of 1649, the orders contained cases of the transfer of ownership with a delimitation of the type of ownership.

Further development of land and civil legislation is connected with the reforms initiated by Peter I. In March 18, 1714, the terms "immovable" and "movable" property were introduced by his decree on inheritance in movable and immovable property. Property was bequeathed to any of the sons. Klyuchevsky (1922) wrote that the law established the inheritance and the indivisibility of real estate.

The procedure for property transactions has also changed. In 1719, the Chamber of Serfs ("serf office") was established at the Justitz College. According to the Cathedral Code of 1649 (Ch. X. Art. 240–259), "fortresses" meant any written obligations and agreements. Under Catherine II, the record of the deed in the book was replaced by announcements in *Vedomosti*, and the extract from the land register began to be called a serf deed. The moment of transfer of rights was established; it was connected with the date of "putting into possession", which was recorded in the register. This provision was the prototype of the modern registration of real estate in the USRN. The judicial reform of 1864 transformed the institution of notaries, and the Regulation on the Notary Part of April 14, 1866, being included in the Judicial Charters, came into force. This order was changed only in 1917.

In many countries, the cadastre develops taking into account peculiarities of the state and legal structure. In China, the land was subdivided into nine classes, and in Ancient Egypt, it was divided into numerous categories (Danilenko, 2014). The cadastre in Russia has its specificity. Land plots, their quality and ownership began to be registered with the strengthening of statehood.

By the time the Russian centralized state was formed, the most complete description of land plots had been completed. Under Tsar Ivan IV (the Terrible), almost all lands were recorded, and in the 16th century a state body performing land surveying functions was created.

Land and property relations of this period are associated with two types of documents: Scribes (16th – mid-17th centuries) and Landmark books (16th–19th centuries) (Sukharev, 2006).

In the era of Peter I, the cadastral service began to develop rapidly: by the end of the fall of the local system, the land had become the hereditary property of the nobility; however, the latter wanted to have firm, legally protected borders of their possessions. The Emperor decided to create a General Map of the Russian Empire.

The need for general land surveying became obvious. The first attempt was made by Peter I in Ingermanland. In 1712, an extensive distribution of lands begun. In 1731, Anna Ioannovna initiated a new land survey.

Under Elizaveta Petrovna, the government took similar measures. On May 13, 1754, she approved instructions for Land surveying offices (Speransky, 1830).

By the decree of February 5, 1755, the Main Land Survey Office under the Governing Senate and the Land Survey Office for Moscow Province were established (German, 1914).

Studies of the land and property sphere show that failures of the land survey were caused by a variety of factors. Many landowners did not have documents and avoided surveying for fear of losing their lands (Pobedonostsev, 2002).

The reasons for the failure were outdated documents of the authorized bodies; unavailability of general surveying personnel; imperfect state supervision.

In 1765, Catherine II initiated the "General Land Surveying". This event was a new stage in the history of the Russian land surveying.

By the decree of March 5, 1765, the Senate established the General Survey Commission. The main result of the Commission's work was the Manifesto on the General Delimitation of Lands of the Empire of September 19, 1765, which served as the legal basis for the land surveying (Soloviev, 1998). The experience of the past land surveying required the introduction of prosecutorial supervision over the implementation of a new land survey (Aksenov & Makutsaeva, 2018).

To ensure state supervision over the land surveying, Prosecutor General Vyazemsky A.A. was appointed as the head of the main land survey institution.

In 1766, two land surveying instructions were developed for conducting the General Land Survey (provincial offices). The largest event was aimed to strengthen land laws and protect rights of land users. Since then and until the October Revolution of 1917, the prosecutor's office had been exercising supervision s to ensure the rule of law in the field of land relations.

This situation was due to the fact that the prosecutor's office is a special state body with its own history, goals, objectives and functions. Its founder, Peter I, shifted the entire center of gravity of the prosecutor's tasks "to the activities of all state bodies" (Zvyagintsev & Orlov, 1994). An analysis of the history of the prosecutor's office allows us to argue that under Catherine II, the status of the prosecutor's office changed. Thus, the prosecutor's office acted independently not only together with the Senate, but apart from it. The Prosecutor General oversees the rule of law, his power was of a ministerial character (Klochkov, 1911).

The role of the prosecutor's office became more significant in the land surveying area. In 1836, Nicholas I included the Land Survey Corps and the Land Survey School into the Ministry of Justice, which entailed the concentration of all land surveying issues in the hands of the Prosecutor General (Zvyagintsev & Orlov, 1995).

The Manifesto of 1765 created a unified all-Russian administrative and judicial system – the Land Survey Service, which included a set of technical and legal actions to establish the boundaries of lands; the land survey court; staff (Zakharov, 2008a, 2008b). All activities were carried out under the supervision of a prosecutor.

The "program for surveying the economy and population" manifested itself through the data on the land use, land tenure and landowners available in the land surveying (Golubinsky et al., 2011; Goncharova, 2016). Land surveyors combined the duties of land survey technicians and land surveying managers. To monitor the land surveying functions, a provincial land survey office was established in each province (Speransky, 1830).

The difficulties which arose in Kalmykia were due to the nomadic way of life. Traditionally, the unit of account for the number of Kalmyks was "kibitka". But there was another problem. The Kalmyk people lived on the vast territory of the Russian Empire.

The Great Steppe, which does not have convenient pastures, territories, lacks water and a water supply system made it impossible to live a settled life; this territory was recognized as a common possession of the uluses, and therefore no definite boundaries were established between the uluses.

At the beginning of the 19th century, according to the legal act of the Russian Empire on management of the people (RI Imperial Majesty, 1848), the bulk of the Kalmyks lived in Astrakhan province as part of the tribal uluses. The territory of the Zadonsk steppes occupied by the Kalmyks was transformed into the Kalmyk Cossack District of the Don Army. The Kalmyks also served in Orenburg and Astrakhan Cossack troops, etc.

We see that the Kalmyk uluses were torn apart between the Astrakhan and Stavropol provinces. This situation could not but cause both uncertainty in the administrative subordination of the Kalmyks and leave its imprint on the management, and complicate the collection of statistical information (Eldyaeva, 2005). It would be a big mistake to exclude these particulars from the Kalmyk history. Moreover, at the beginning of the XX century the Kalmyk history again became a single Kalmyk one. Therefore, in this study, the issues of the land use cadastre are considered in terms of the development of the main territories of Kalmyks' residence in the period under consideration.

In 1832-1833, Astrakhan provincial prosecutor Nefediev (1834) communicated directly with people, living in Kalmyk uluses, studied their language and customs. In 1834 he published the book "Detailed information about the Volga Kalmyks".

The land use issues of the Kalmyks of the Bolshederbetovskiy ulus of Stavropol province were resolved in a completely different way. However, in 1862 the Minister of State Property suggested transferring the Kalmyk people to a sedentary lifestyle, which entailed the beginning of a general land survey of the Kalmyk steppe. Thus, the Kalmyks were allotted land for permanent "use by family" (Aksenov, 2004), which led to socio-economic and legal changes in the life of the Kalmyks.

In Russia, the procedural and legal institution were important for resolving boundary cases – the boundary court resolved boundary disputes about land rights.

Cadastral activities were carried out under full-fledged prosecutor's supervision. Boundary disputes were resolved by the boundary office (Laws of boundary, 1900). Decisions of the office were taken collectively and approved by the prosecutor. During the reign of Paul I (1796–1801), the prosecutor was included in the Land Survey Office who carried out the prosecutor's supervision in the Land Survey Court of Appeal (Nosenko, 1892). The prosecutor supervised the execution of officials' duties, the procedure for returning land to the treasury, resolution of land disputes, and expenditures.

An important moment in the history of land surveying is the creation of the Land Survey Archive, with the aim to store land surveying documents.

The Landing Section of the Ministry of Justice was transferred to the jurisdiction of the People's Commissariat of Agriculture of Soviet Russia, and the issues of state registration of property rights became irrelevant.

7. Conclusion

Thus, the analysis of the history of formation of the institutions of prosecutorial supervision and land surveying identified the inextricable connection between the development of these institutions and the level of development of land legal relations. Land surveying played a crucial role in the control and accounting of the lands that formed the territory of the Russian state, which required state supervision.

References

- Aksenov, I. C. (2004). Formation and development of the Kalmyk statehood and law in the 17th – 19th. *Centuries Thesis*, 112–117.
- Aksenov, I. C., & Makutsaeva, K. E. (2018). Prosecutor's supervision during the formation of institutions for registration of land property, rights to land and land surveying in Russia. In *Actual problems of law, state, society. Collection of scientific papers* (pp. 132–149). ZAO NPP Dzhangar.
- Danilenko, E. P. (2014). *Introduction to the profession "City cadastre"*. Course of lectures. BSTU Publ. House.
- Eldyaeva, N. A. (2005). *Evolution of methods of regional statistical observation. Monograph*. JSC "APP "Dzhangar".
- German, I. E. (1914). *History of Russian land surveying*. V. Richter.
- Golubinsky, A. A., Khitrov, D. A., & Chernenko, D. A. (2011). Final materials of general surveying about the possibilities of generalization and analysis. *Bull. of Moscow Univer. Ser. 8. History*, 3, 52–68.
- Goncharova, E. V. (2016). Study of the noble possessions of Pskov province based on land surveying materials of the last quarter of the 18th century. *Petersburg Histor. J. Stud. in Russ. and general history*, 1(9), 6–14.
- Klochkov, M. V. (1911). *Prosecutors General under Paul I. J. of the Ministry of Justice*.
- Klyuchevsky, V. O. (1922). *Course of Russian history in 5 parts*. St. Petersburg.
- Nefediev, N. (1834). *Detailed information about the Volga Kalmyks, collected at the site*. St. Petersburg.
- Nosenko, D. A. (1892). *Proceedings of court-boundary cases in court rulings. Subject to legalization with explanations on the decisions of the civil cassation department and general meetings of the Governing Senate*. Print. house M.M. Stasyulevich.
- Pobedonostsev, K. P. (2002). *Civil law course. Part 1. Patrimonial rights*. tatut.
- RI Imperial Majesty (1848). The highest approved Regulation on the management of the Kalmyk people in 1847. In *Complete collection of laws of the Russian Empire. Second meeting. Vol. XXII, no. 21144*. II Branch of His Imperial Majesty's Own Chancellery.
- Soloviev, S. M. (1998). *History of Russia since ancient times*. Bell Press.
- Speransky, M. M. (1830). *Complete collection of laws of the Russian Empire. Meeting First. 1649–1825*. II Branch of His Imperial Majesty's Own Chancellery.
- Zakharov, V. V. (2008a). *Court and Institute for the Execution of Judgments in Civil Cases in the Russian Empire in the First Half of the 19th Century: Legal Basis and Problems of Their Practical Implementation (Historical and Legal Research)*. Kursk State Univer.
- Zakharov, V. V. (2008b). Special civil courts in Russia in the first half of the 19th century. *Russ. Judge*, 8, 37.
- Zvyagintsev, A. G., & Orlov, Y. G. (1994). The Sovereign's Eye. In *Russian prosecutors. XVIII century* (p. 15). Russ. Politi. Acad.
- Zvyagintsev, A. G., & Orlov, Y. G. (1995). Privy Counselors of the Empire. In *Russian prosecutors, 19th century* (pp. 219–220). Russ. Political Encyclopedia (ROSSPEN).