



CURRENT STATE AND PROBLEMS OF REGULATION OF LEGAL RELATIONS IN THE FIELD OF LEASE OF LAND PLOTS IN STATE OWNERSHIP

*Dimov Sava Hristov
Smirnov Valery Velerievich
Magdanov Pavel Vasimovich
Turkin Kirkin Yurievich**

Introduction

Land relations are the most important component of socio-economic relations in the state. Land as a factor of production and, consequently, as a source of success in business activities is an irreproducible resource, that is, it cannot be replaced by another similar resource. Even in the XVIII century, representatives of the school of physiocrats considered wealth not money as such (coins and banknotes), but "products of the earth". In their view, the wealth of the nation consisted in receiving land rents in kind as the difference between agricultural products and the products needed for agricultural production. The development of industrial production and industrialization, of course, influenced the point of view of physiocrats, but the essence remains the same: the owner of a

land plot has the right to use it in the most effective way from the point of view of legal permissibility, physical possibility and investment attractiveness: it is possible to extract oil, grow wood, build commercial real estate, etc. The owner of the right to use a land plot gets the opportunity to create and appropriate additional value in the form of residual reserves of recoverable resources, land rents, commercial or residential real estate. Therefore, land is an exceptional resource, without which it is impossible to develop both individual regions and the national economy as a whole.

The content of land relations is fully determined by the legislation of the state on the territory of which the land plots are located. Paradoxically, national legislation may provide for the ability to dispose of surface and subsurface areas not only in other countries, but even in other celestial bodies (North American entrepreneurs have been selling land on the moon for many years). That is why the protection of national interests in the sphere of civil land turnover and the regulation of land relations are so important for national security and socio-economic development.

The article deals with the area of civil law relations that is problematic for the Russian economy—the lease of state real estate, primarily land plots. It is no secret that in large cities there is no free land that is not involved in economic turnover. However, in the Russian regions there are many free land plots for industrial, agricultural and recreational purposes that are not used in economic turnover, do not bring income to owners and do not replenish local budgets at the expense of land tax and other local taxes that are formed from dynamic business activities. In other words, remembering the physiocrats, we can say that the wealth of the nation does not grow, because the key factor—land—is not used properly. The involvement of idle land plots in state ownership through the establishment of fair fees for their use by entrepreneurs is currently an important national economic problem.

Another important aspect is the lease of state real estate—residential and non-residential buildings and premises, social facilities and engineering infrastructure. The profitability of entrepreneurial activity depends on many factors that determine the current state and cyclical development of the market environment, and, accordingly, the profitability of operating activities related to the operation of state-owned real estate

* Authors: Dimov S. H. Ph.D., Professor at the "Burgas Free University". 8001, Burgas, 62 San Stefano Street, Republic of Bulgaria, dimov@bfu.bg; Smirnov V. V. - [team leader](#), Ph.D., associate Professor at the "Financial University under the government of the Russian Federation", vaallera@rambler.ru; Magdanov P. V. Ph.D., associate Professor at the "Financial University under the government of the Russian Federation", magdanov13@yandex.ru; Turkin K. Yu. The expert of the consulting center of the "Financial University under the government of the Russian Federation", kturkin@mail.ru. 49 Leningradsky Ave., Moscow, 125993 (GSM-3), Russian Federation.



objects. Studies have shown that despite the stage of development of the national economy, the current and projected value of the risk-free rate, the market rate of return on investment with a minimum level of risk, the cost of rent, i.e. the right to own and use public real estate, is steadily growing. The increase in rent for state-owned real estate is determined by the budget parameters, i.e. the intention of the budget Manager is to increase revenues regardless of the operating profitability of landlords-users of state – owned real estate.

The purpose of the article is to reflect the current state and reveal the problems of regulating legal relations in the field of leasing land plots that are in state ownership. The authors of the article believe that the problems associated with determining the rental rate of land plots are similar to the problems of renting other real estate objects in state ownership.

The object of research is land plots that are in state ownership.

The subject of research is civil law relations that arise within the framework of lease, i.e. temporary ownership and use of land plots in state ownership.

1. A review of the scientific literature and research methodology

A review of Russian scientific literature has shown that the scientific and methodological problems of calculating rents for state real estate objects, justifying the standards of basic rental rates, calculating auxiliary coefficients and indices are not given enough attention by the scientific community. Nevertheless, it should be noted that there is a growing interest in the problems of determining rental rates for state real estate objects in close connection with the investment attractiveness and socio-economic development of the subjects of the Russian Federation and individual territorial entities.

In Particular, V. V. Kurchenkov, O. V. Fetisova, O. Makarenko [1] point out that land resources are a factor of strategic development of territories, their correct and effective use is a source of economic growth. Scientists point out that in foreign practice, rent payments for land are the most important source of income for local budgets, so land lease is more important than their sale. V. V. Kurchenkov, O. V. Fetisova, O. Makarenko

proposed a very simple method for calculating land rent:

$$R = MV \times C_{my} \times F_c$$

where:

R - rent;

MV - market value of a land plot calculated in accordance with the legislation on appraisal activities;

C_{my} - minimum yield coefficient corresponding to the average annual yield of Federal loan bonds with a maturity of 30 years;

F_c - correction factor.

A. G. Nikonov and Y.R. Pinaeva [2] drew attention to the lack of state regulation of agricultural land turnover. In Russia, according to scientists, the current state of rental relations between the state and entrepreneurs in the agricultural sector constrains economic growth. The authors cite the fact that in the United States, over 66% of agricultural land is leased, while 41% of farmers are its tenants. In Germany, Belgium and France, the share of leased land in land use exceeds 70%. Thus, the justification of methods for calculating rent and the development of legal regulation in the field of agricultural land use is an important state task. A. G. Nikonov and Y.R. Pinaeva believe that the main problem of using agricultural land is the predominance of the interests of the landlord over the interests of tenants – land users.

A. K. Jalal [3] proposed an approach to the organization of lease relations in agriculture based on differential rent. The market price of land lease, according to A. K. Jalal, has a number of features:

– the rent must reimburse the land owner for the amount of annual depreciation of this means of production;

– the rent must give the landowner an income in excess of depreciation not lower than the Bank interest rate (on the value of the leased land);

– rent in market conditions is affected by the ratio of supply and demand for land to be leased.

Accordingly, the annuity rate is determined by the formula:

$$R_a = (A \times C_{1p} + B \times C_{1p}) \times \frac{i_d}{i_s}$$



where:

A - amortization of the value of leased property, %;

C_{lp} - the cost of the leased property, RUB.;

B - bank interest rate, %;

I_d - the index of demand in the rental market of land;

I_s - index of supply in the land lease market.

I. A. Denisenko and I. V. Ivanyuk agree with A. K. Jalal's point of view [4]. In their opinion, the most well-documented approach for the normative monetary assessment of agricultural land is a methodological approach that provides for the use of an evaluation criterion – normative differential (rent) income. This indicator is the difference between the cost of the crop (standard productivity) of a given agricultural group of soils and the cost of growing a specific agricultural crop. Scientists have proposed a formula:

$$AP = \frac{\sum_i LR_i \times CA_i}{AR \times CC}$$

where:

LR_i - land rent per 1 ha when growing the i-th crop, RUB.;

AR - accounting (key) rate, %;

CA - i-th crop area, ha.

N. P. Barinov [5] gave a number of provisions that determine the composition of the methodology for calculating rent for land:

(a) When calculating the market rent for a land plot on standard terms, it is necessary to take into account the growth of rental rates and the market value of the land plot to be leased during the entire term of the contract. Failure to account for this growth when using the yield to maturity of long-term government bonds with constant income, the key rate of the Bank of Russia, or the Bank Deposit rate as a risk-free part of the current yield leads to a significant overestimation of land rents.

(b) The appropriate tool for calculating the risk-free part of the current yield when assessing the market rent for land is government bonds traded on the securities market with an inflation-adjusted par value. The dynamics of cash flows of such bonds is most similar to the dynamics of a typical lease of land plots with indexed rents. The current yield (coupon-to-par ratio) of issued bonds of this type is

2.3-2.5 percent, which is lower than that of fixed-income bonds with comparable maturities.

(c) The values of the contract rent for land plots located in the Federal property may not exceed 2% of the cadastral or market value of the corresponding plot (with the exception of cases when penalties are applied). The same restriction should apply to land plots owned by subjects of the Russian Federation or municipalities, in accordance with the General principle of prohibiting unreasonable preferences.

(d) the Rent for a land plot provided for development, reconstruction or renovation is calculated based on the market value of the long-term lease right or the right to own it (for example, when building apartment buildings). At the same time, the amount of annual lease payments brought to the date of the valuation for the period stipulated in the investment agreement is equal to the value of the long-term lease right (or, where appropriate, the property right).

(e) The cost of rights related to the lease of real estate and transferred to third parties by the lessor or lessee under pledge agreements, subleases, cession, etc., is calculated by discounting (capitalizing) different incomes. The General rule is to analyze the revenue stream received by the transferor. Benefit of the lessor determines the rental payment established by the terms of the lease, the benefit of the tenant – the difference between market rent and contract cost lease in each pay period.

Summing up the review of scientific and practical works of Russian authors on the problem of calculating rent in relation to state-owned real estate, we should draw a number of conclusions.

First. Methods for calculating the standards of basic rental rates from the cadastral value of real estate have a number of significant drawbacks related, on the one hand, to the methodology for calculating the cadastral value, and, on the other, to the problem of justifying and updating correction coefficients. The main methodological problem of cadastral valuation is its mismatch with the market value of the property, which varies over time depending on a variety of external factors. When determining rents for attractive state-owned commercial real estate objects, such methods may give significant errors, and they may not be applicable for evaluating unattractive objects, in particular, agricultural land.

Second. The principles and methodological



recommendations of the government of the Russian Federation [6] and the Ministry of economic development of the Russian Federation [7] are generally not implemented when public legal entities issue normative legal acts that define methods for calculating rent and standards for basic rental rates for state real estate. In some cases, such regulations are more consistent with the above documents, but, as a rule, all researchers note their partial or complete inconsistency. Defining and updating the standards, coefficients and indices used in calculating rents for public real estate is particularly problematic. As a rule, the values of these indicators determined for 5, 10, or even 15 years ago no longer correspond to the market situation.

Third. Annual indexation of rent for the use of state-owned objects, primarily land plots, is unjustified from a scientific, methodological and economic point of view. In General, the use of fixed rental rates or rental rates with an annual indexation on any indicators reduces economic efficiency and thereby generates disinterest of investors to invest in the creation of new real estate and production facilities, agricultural production.

The methodology of this study is as follows. First, the authors consider the historical issues of lease relations for state real estate objects. Second, it identifies the key issues determining the base rates of rent of the real estate which is in state ownership. Third, the authors propose a unified methodological approach to developing a methodology for calculating basic rental rates for state-owned real estate. Finally, the authors formulate the key aspects of the methodology for calculating the basic rental rates for state-owned real estate.

2. Historical aspects of the formation and development of lease relations for state real estate objects

The analysis of the Genesis of lease relations in pre-revolutionary Russia according to the latest research, including such scientists as E. V. Ivanova and N. N. Vladimirova [8] proves the absence of an integral concept of lease relations in the country at that time. This fact is confirmed by the research of K. P. Zmirlov [9], who noted that the concept of property lease or lease in Russian law in the modern sense as such did not exist in pre-revolutionary Russia. Rental relations were somewhat more

developed in the housing sector at that time. Rent in relation to housing was implemented exclusively in large cities [10].

During the revolutionary events of 1917, in accordance with the decree of 1917. "About the earth" [11] "all lands were declared national property", but with the right to lease only to separate collectives. This meant that there was no private ownership of land, which imposed a number of significant restrictions on land transactions and land leases. In 1917, the decree of the Council of People's Commissars "on the transfer of housing to the jurisdiction of cities" was issued [12], and in 1918 Decree of the Central Executive Committee "On the abolition of private ownership of movable property in cities" [13]. In fact, these documents abolished the rudiments of lease relations in Russia in terms of residential and non-residential stock and other types of real estate, which began to develop with the introduction of a new economic policy.

Starting in 1922, the concept of "property hiring" was included in the civil code of the RSFSR, and collective owners – collective farms-were allowed to rent land plots and other real estate. In the future, starting from 1937, any lease of land that is the property of collective farms was prohibited, since according to the Constitution of the RSFSR of 1937 [14] such lands were recognized as assigned exclusively to the Soviet state and are only in the use of collective farms. After the adoption in 1970. The land code of the RSFSR [15] provisions regulating land lease relations have undergone significant changes, and some of them have been partially transformed or lost their force.

Analysis of the legislation on land lease, other types of real estate and property relations shows that the Soviet-type relations were based on state ownership of land, when the land did not represent the object of lease in the full sense of the word and the rights of the tenant were extremely insignificant and unprotected, which can be said for most of the residential and non-residential stock.

The most important part of modern lease relations in the part of real estate owned by the state, as noted earlier, is the relationship over the lease of land. The analysis carried out by academician N. V. Komov and corresponding member of the Russian Academy of Sciences S. A. Sharipov [16] showed that today rental land relations in the country still (in comparison with countries with developed market economies) remain immature, causing significant



problems in various areas of social and individual activities of Russian organizations and citizens. According to A. N. Komov and S. A. Sharipov, the most important problems related to the lease of land belonging to the state include:

- no possibility of introducing a single tax on land and real estate;

- unclear operation of the mechanism for granting land plots for rent, in terms of the terms and procedure for registration of land leasing;

- the lack of a well-functioning mechanism for the functioning of local self-government bodies for the formation of land plots, taking into account the integrated development of territories.

These disadvantages affect numerous areas of the economy, including rental relationships that develop over other types of real estate. For example, in terms of housing stock, it can be noted that from 1991 to 2017, the structure of the Fund has changed significantly—the share of social rental housing has decreased from 85% to 7%, while the share of housing in ownership has increased to 86%. Despite the fact that since 2004 to date, the population's need for housing has decreased by almost 1.5 times, and more than 45% of Russian families are currently unable to purchase property due to low solvency [17].

The problems that have arisen in modern Russia in the field of real estate management, land resources, land management and land capital have led to the following consequences, which should be taken into account in the process of improving methods for calculating basic rental rates for state-owned real estate, namely:

- the lack of complete and reliable market information about the quality of: land, which is the basis for providing a mechanism for regulating land turnover, establishing lease payments for land, as well as other types of real estate;

- non-compliance by real estate owners, landowners and land users, including land tenants, with restrictions and encumbrances on the rights to use real estate objects;

- violation of stability and compactness of land management and real estate objects;

- the appearance of unacceptable land use deficiencies;

- the loss of land boundaries;

- reduction of the tax base;

- the presence of errors in the registration of rights and the impossibility of setting many real

estate objects, land plots for cadastral registration;

- significant underestimation of lease payments for used real estate objects, including land plots, and purchase prices for these objects that are in state ownership.

3. The key problem of determining the base rates of rent of real estate, state-owned

The key aspect, the essence of civil law relations in the field of leasing state real estate, land plots, in particular, is the procedure for setting the rental rate and value. The authors' analysis of methods and standards for determining rental rates for state-owned real estate, including land plots, led to the following conclusions.

(i) The existing legal framework for regulating civil relations in the field of state real estate leasing does not allow us to effectively solve the problems of improving the method of calculating rent for the use of state real estate objects. The situation is complicated by the presence of a wide variety of legal acts issued by public legal entities, which contain many different approaches, methods and techniques for calculating rent, determining standards and basic rates. The situation is complicated by the fact that in reality there is no single government body responsible for solving issues at the national level of improving methods for calculating rent for the use of public real estate objects.

(ii) The methods used, the values of standards (coefficients), and the conditions for annual rent indexation do not have a solid scientific and methodological justification. There are no references to sources of information about the methods and standards used in the legal acts of public entities. The Ministry of economic development of the Russian Federation or any other government body does not provide an appropriate level of scientific and methodological support for pricing for rental of state-owned real estate.

(iii) The standards applied in the calculation of rent are usually discriminatory, contribute to the development of the inflationary process, and do not contribute to the filling of local budgets at the expense of other regional taxes and fees. The exclusive priority of the interests of landlords does not create sufficient opportunities for stimulating the socio-economic development of territories, creating new jobs and, as a result, increasing the



income of the population and filling local budgets.

(iv) An important area for improving the methods of calculating rent and determining the norms of basic rental rates for state real estate objects is to take into account the factors of socio-economic development of the subjects of the Russian Federation and individual territorial entities and to encourage investment activity related to the construction of new social, industrial and economic facilities.

4. Unified methodological approach to the development of a methodology for calculating basic rental rates for real estate owned by the state, including land plots

The analysis of normative legal acts regulating the methods of calculating rent and the standards of basic rental rates for state real estate, carried out by the authors of the article, revealed a wide variety of calculation methods used. The vast majority of the methods used do not have a solid scientific and methodological basis. A unified methodological approach is needed to develop a methodology for calculating basic rental rates for state-owned real estate.

The author's approach involves the implementation of the following provisions of the methodology for calculating basic rental rates for real estate owned by the state.

First. Typification and classification of state property objects used for social, public and commercial purposes. There are four main types of real estate: land plots, residential real estate, commercial real estate, and public real estate. This classification does not include land plots containing subsurface resources—a part of the earth's crust located below the soil layer, and in its absence – below the earth's surface and the bottom of reservoirs and watercourses, extending to depths accessible for geological study and development.

Second. Defining the goals and objectives of using state real estate objects for commercial or social purposes. In this case, it does not matter in principle which economic entity is the tenant of a particular state real estate object, it matters what use of the object offered for rent is being carried out or is planned for implementation.

Third. Territorial location of the state real estate object. The location of a real estate object is the main factor determining its attractiveness in

terms of the possibility of making a profit, as well as in terms of the possibility of implementing social and social tasks. The complexity of this aspect is that in public legal entities, the benefits of territorial location are defined differently. Each city has a unique territorial zoning, which cannot be unified in terms of methodology. Key factors are: distance from the city center (regional center), location along the main streets (leading highways), proximity to transport hubs (airports, train stations, metro stations, shopping and entertainment venues, etc.), terrain, transport accessibility, environmental factors, etc. It is important to note that the combination of factors that determine territorial attractiveness depends on the type of real estate object and its intended use during the lease period and after it (for example, the sale of improvements on the site).

Fourth. Assessment of key factors affecting the market value of a state-owned real estate object. These factors include: physical (technical) condition, condition of finishing, availability of Parking, ownership of the land plot, stage of the investment cycle (stage of construction), degree of completion of construction, etc. For each type of property, there is a specific set of key factors that determine its market value. In valuation practice, such factors are well known. The method of calculating rent should take into account the amount of benefits that the lessee acquires or can acquire by obtaining the use of an object of state real estate. Accordingly, the methodology should include appropriate correction factors for those properties whose market value is significantly affected by the factors mentioned above or similar to them.

Fifth. Determination of the base for calculating rent for the use of an object of state immovable property. There are three main factors that determine the base rental rate of a real estate object, namely: cadastral value, market value, and average market rate. The first base is established by the authorized body within the framework of mass assessment, the second and third bases are determined based on the results of the assessment in accordance with the evaluation legislation. For the first and second factors – market or cadastral value – profitability is important, i.e. the amount of benefit that the lessor will receive with the highest level of risk from the transfer of the temporary right to use the state real estate object to the lessee.

Sixth. Regular updating of basic rental rates



for the use of public real estate objects. The base rates used for rent calculations should be updated periodically based on the current state of macroeconomic and market conditions. Standards (coefficients, indices, ratios) are also affected by market conditions, and they cannot be maintained for a long period. The values of base rates, standards, coefficients and indices should be based on calculations based on economic and mathematical models, and, of course, correspond to the predicted changes in market conditions, the current profitability of operating activities of state real estate tenants. It is important not to discriminate against the expected income from different types of state-owned real estate owned by the subjects of the Russian Federation and municipal entities.

5. The methodology for calculating base rates of rent in respect of property in the state ownership, including of land

The authors of the article define the following basic methods for calculating rent in relation to immovable property in state ownership. These methods are universal and can be applied to all types of state – owned real estate-land plots, real estate objects of residential and non-residential stock.

1. Depending on the cadastral value

General formula for calculating the rental rate:

$$P = K * S * \prod_i r_i$$

where:

P - the amount of rent per year;

K - cadastral value of the property;

S - basic rental rate as a percentage of the cadastral value;

r_i - correction factor. Take into account the territorial location of the object, the stage of the investment cycle, the physical condition, the location near highways and transfer points, etc.

Scope of the calculation formula from the cadastral value: objects of high commercial attractiveness with a low level of business risk. Examples of such objects are:

- land plots for commercial and residential development;
- administrative buildings used in commercial

activities;

- high-class industrial and warehouse buildings of modern construction;
- built-in and attached non-residential premises for commercial and office purposes.

2. Depending on the market value

The first formula for calculating the rental rate:

$$P = M * D * \prod_i r_i$$

where:

P - the amount of rent per year;

M - market value of the property. It is determined on the basis of the appraiser's report in accordance with the legislation on appraisal activities;

D - risk-free rate of return, for example, the average annual yield of Federal loan bonds with a maturity of 30 years;

r_i - correction factor. Take into account the level of socio-economic development of the municipality, the stage of the investment cycle, and other factors that cannot be properly taken into account when preparing an assessment report.

The second formula for calculating the rental rate:

$$\bar{P} = \sum_{i=1}^n S_i * \prod_{j=1}^m \frac{(1 + a_{ij})}{(1 + |a_{ij}|) * \sum_{i=1}^n |a_{ij}|}$$

where:

P̄ - specific rental rate per year per 1 sq m;

S_i - unit rental rate for an analogous object **i**;

n - number of properties that are similar to the unit rental rate;

m - number of adjustments to the analog object;

a_{ij} - the size of the **j** adjustment for the object analogous to **i**.

This method is used in evaluation activities within the framework of a comparative approach, and can be applied independently without drawing up an appraiser's report.

Scope of the formula for calculating the rental rate from the market value: objects with medium and low commercial attractiveness and with a high



level of business risk.

Examples of such objects are:

- land plots for industrial development;
- medium-and low-class industrial and warehouse buildings;
- built-in and attached production and storage facilities.

3. Depending on the purpose of use (differential rent)

General formula for calculating the rental rate for agricultural land:

$$P = \frac{\sum_i z_i * s_i}{D * R} * 100\% * 100\%$$

where:

Z_i - land rent per 1 hectare when growing the i crop;

D - risk-free rate of return, for example, the average annual yield of Federal loan bonds with a maturity of 30 years, %;

S_i - i crop area, hectares;

R - capitalization rate, %.

Land rent is determined by the formula:

$$Z = Y * (V - C_o)$$

where:

Z - land rent;

Y - yield, per hectare;

V - revenue from sales of products;

C_o - the cost of production.

Scope of the calculation formula from the cadastral value: objects with unstable cash flow that are affected by uncertain uncontrolled factors, such as climate conditions. Examples of such objects are:

- land plots for agricultural production;
- real estate for agricultural production.

4. A fixed rate of rent

General formula for calculating the rental rate:

$$P = T * I$$

where:

P - the amount of rent per year;

T - the base rental rate. It can be determined a) by administrative means, taking into account mandatory payments, and b) based on the appraiser's report;

I - the annual index increase in the cost of rent.

It can be used for organizations that lease state-owned real estate objects exclusively for the following purposes:

-implementation of functions of state (municipal) administration, functions of local self-government and territorial self-government;

-performing social and social tasks and functions, including education, medical services, scientific research, culture, children's recreation, public health, security, etc.;

-management of public utilities, engineering infrastructure, life support systems, energy supply, transport, telecommunications and communications, etc.;

-placement of organizations whose maintenance is financed from the territorial or Federal budget.

The standards, coefficients and indices used for calculating basic rental rates for state-owned real estate should be determined for each subject of the Russian Federation. This ensures that the macroeconomic conditions of the operating activities of the lessees correspond to the benefits that can be extracted by the lessor and the lessee.

It is advisable to use statistical (actual) and forecast (expected) data as a basis. A differentiation of norms for industries, types of real estate, TSE-Lam of their use of the tenants, should not be too deep, but should reflect basis-copy level of profitability and the average profitability of operating activities of tenants of state property.

Conclusion

The authors analyzed methods and standards for calculating basic rental rates for state-owned real estate, including land plots. The results obtained should be used to develop and improve methods for calculating rent for the use of state real estate objects at the level of public legal entities-subjects of the Russian Federation, municipalities. The application of the results obtained in the field of administrative regulation and control of the activities of public legal entities in terms of establishing methods for calculating rent and setting standards for basic rental rates for the use of state real estate objects can be of practical value.



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