

COMPULSORY SEIZURE OF THE LAND PLOT IN KAZAKHSTAN AS THE SANCTION FOR BREACH OF LAND LEGISLATION

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ABSTRACT

The article is devoted to the assessment of justice in the application of sanctions regarding the land plot condemnation in the Republic of Kazakhstan and the countries of the former Soviet Union; the historical analysis of the application of this sanction in Kazakhstan for the period from 1991 to the present, as well as an analysis of the consequences of the selective application of sanctions for participants in land relations in the Republic of Kazakhstan is carried out.

Keywords: Land Plot, Condemnation of Land Plot, Non-Use of Land, Violation of Land Legislation, Justice, Title to the Land, Land Use Right.

INTRODUCTION

The presence of justice and equality in the legislation is a rather sore point, because to ensure them it is necessary to limit certain rights of participants in legal relations. However, any person is more likely to appreciate the justice of other people's rights than their own, that's why justice should always be somewhere in the middle, not offending either the first or the second, creating the necessary balance in society. Disbalance of rights and obligations of subjects of legal relations always leads to negative social consequences.

When assessing the justice of the standards on the right, it is important to pay attention not only to the nature of the liability of the subjects of legal relations, but also to the type of sanctions applied for violation of such obligations. And sanctions against one kind of violators are often not applied equally. If the degree of guilt, social or property characteristics of a person, or even his physical condition are taken into account in criminal or administrative law when determining the type of sanction, then the regulatory authority is relied upon completely different stich tings in land relations, at least in Kazakhstan.

Condemnation of a land plot from the land owner and land user is one of the types of sanctions in the land legislation of the Republic of Kazakhstan (hereinafter referred to as the RK), which can be applied to a person because of non-use (non-development) of the land plot and violation of the laws of the Republic of Kazakhstan, an comprehensive list of which is given in Article 93 of the Land Code of the Republic of Kazakhstan (hereinafter - the Land Code of the RK), including: non-purpose use of land, use of agricultural land in violation of the rules of rational use, non-performance of reclamation and other related works in accordance with

paragraph 4 of Article 99 of Land Code of the RK, as well as the use of land with the consequence of a significant environmental deterioration. However, at the moment, not all landowners in Kazakhstan may forfeit their right to land as a result of non-use of the land plot. The ability to terminate in a compulsory manner the land title for its non-use depends on the type of land title, as well as on the category of land and the allowable use of the land plot.

The society does not have questions when the compulsory forfeiture of the land title is allowed in relation to land users and is not allowed in relation to owners, since the right of ownership is a peremptory real right guaranteed by the Constitution, and no one can be deprived of his property, except through a court proceeding. But when the law also divides the owners into persons to whom the sanction of compulsory seizure of land can be applied, and to whom such sanction is not applicable, then doubts occur as to the equality of persons before the law and, in general, the justice of the law.

The ownership to land acquired and exercised by citizens, legal entities and directly by the State in accordance with the law is an important right among other ones. This is explained by the fact that land is the main national wealth, which is under special protection of the State (Kelman et al., 2020).

The selective imposition of sanctions in the form of seizure of land for its non-use, as a result, led to a number of land issues in Kazakhstan, which will be discussed below.

MATERIALS AND METHODS

To achieve this goal and solve the tasks set, the research was based on the general scientific dialectical method of cognition, which assumes the objectivity and comprehensiveness of cognition of the studied phenomena, as well as on the following special research methods: complex, systemic, comparative-legal, normative, historical. The studied constructions were analyzed in relation to similar legal categories, taking into account both external and internal relations.

RESULTS AND DISCUSSION

The History of the Imposition of Sanctions in the Land Legislation of Kazakhstan

Prior to the collapse of the Soviet Union, the Kazakh Soviet Socialist Republic did not have the concept of private ownership of a land plot, the land was only in state ownership, that's why only two types of land rights were recognized in Kazakhstan: right of possession and right of use. Only citizens and legal entities of Kazakhstan could have the right to own land. Citizens were provided with land as inherited lifelong possession, and legal entities were provided with land as a permanent possession. On the right of use, land was provided to both legal entities and physical persons, including foreign persons with the right of permanent or temporary use. Any unwarranted transactions with land plots (purchase and sale, exchange, granting, etc.) were prohibited in Kazakhstan.

The norms of the Land Code of the Kazakh SSR (1990) regarding the use of land plot in the Soviet Kazakhstan were the same for everyone, both for owners and users of land. Everyone was required in equal measure to use the land, prevent its down time, use the land in accordance with its intended purpose, efficient and rational use, with measures to improve the fertile layer of

the soil and maintain a satisfactory environmental situation. Accordingly, for violation of the above obligations, both the owner and user could equally lose their land plot. According to Article 24 of the KazSSR Land Code, a land plot could be confiscated from owners or users on the fact of non-purpose use of land, littering, land pollution, soil fertility fall, non-payment of taxes or rents within 3 months from the expiration of the payment term, non-use of the land plot within a certain period (1 year for any agricultural plot, except peasant, 2 years for a plot for non-agricultural production, 2 and 3 years for the user and owner of land for peasant agriculture respectively).

After the collapse of the Soviet Union (1991) Kazakhstan continued to live according to the norms of Soviet land law for another 4 years. Only in December 1995 a new normative standard governing land relations-Decree of the President of the Republic of Kazakhstan No. 2717 dated December 22, (Legislation, 1995) was developed and put in force in the Republic of Kazakhstan "*On the Land*" (hereinafter-the Decree). After a long absence, this Decree introduced for the first time the concept of private ownership of a land plot in Kazakhstan, and at the same time introduced the unequal liability of the persons to land law. From all the previous liability, land owners were left with only criminal liability for poisoning or pollution of the land, with infliction of harm to the citizens or the environment as a whole, with a maximum liability of 5 years of imprisonment (upon the death of human). At the same time, the land user continued to be responsible for any significant or insignificant pollution, infection of the land, as well as for the non-development (non-use) of the land plot. As a sanction for non-performance of any of the above obligations, the land user could be deprived of the land title, which was unacceptable in relation to the owner of the land.

This state of affairs was observed before the entry into legal force of the new Law of the Republic of Kazakhstan No. 152-II "*On Land*" (2001), namely until January 24, 2001. The Law has equalized the rights and obligations of owners and land users. Now, land owners, on equal terms with land users, could be deprived of their land title in case of non-use of the provided land plots, in case of encroachment of the allowable use of the land, in case of allowing the use of land in ways that lead to agricultural land fertility fall, in the case of land use in a way that allows or commits environmental deterioration.

Equality in responsibility of participants in land relations was not established for long. The Land Code of the Republic of Kazakhstan (2003) it was introduced, which extended the application of the sanction in the form of seizure of land plot for its non-use only to owners and land users who own land for agricultural production or for construction purposes. Thus, all other land users and owners of agricultural land with allowable use for farmer and peasant agriculture, private subsidiary farming, afforestation or gardening were actually protected by the state from the seizure of land plot in case of non-use, since the concept of "agricultural production" is an independent allowable use not covering farmer and peasant agriculture, private subsidiary farming, afforestation or gardening.

In fact, such expression in the Land Code of Kazakhstan appeared as a result of the adoption of norms from the Land Code of the Russian Federation, which indicated (and indicates) the possibility of seizure of land plot for agricultural production and for construction purposes from land users, landowners and land tenants in case of non-use of the land and breach of legislation of the Russian Federation (Legislation, 2001). At the same time, the Kazakhstan legislator did not take into account that there are no land owners on this list. Compulsory seizure

of land from owners is defined by the Civil Code of the Russian Federation (hereinafter - the Civil Code of the Russian Federation), and the norm on liability of owners for non-use of lands is defined slightly differently. Land owners in Russia, according to the Civil Code of the Russian Federation, are deprived of the title for non-use agricultural land plots and land for construction purposes. It would be more correct for the Kazakhstan legislator to adopt just such an edition of the norm on liability, since it is broader in content than the norm from the Land Code of the Russian Federation.

For Russian legislation, such a “*word-play*” does not present a particular problem, since the meaning of the terms “*land for agricultural production*” and “*agricultural land*” is synonymous. As Golyshev N.A. and Krassov O.I. note, the concepts of “*agricultural land plots*” and “*land plots for agricultural production*” in the Russian land legislation are identical, since Article 78 of the Land Code of the Russian Federation determines that land for agricultural purposes is used for agricultural production, that’s why the land owners and land users of land for agricultural purposes in the Russian Federation, regardless of the permitted use of their land plot, are equally responsible for the non-use of land (Golyshev & Krassov, 2010).

However, in Kazakhstan such concepts are not identical. The land for agricultural production in Kazakhstan, as noted above, is one of the types of allowable use of land for agricultural purposes, not involving private plot activities, gardening, afforestation, farmer or peasant agriculture. The confirmation of this is the content of paragraph 6 of Article 97 of the Land Code of the Republic of Kazakhstan, which makes it clear that land for agricultural purposes can be granted ownership to citizens of the Republic of Kazakhstan for the purposes of gardening, summer cottage construction or for private plot activities, and for use by other natural and legal persons of the Republic of Kazakhstan for peasant/farmer agriculture, afforestation, agricultural production, etc. That is, all of the listed activities are independent, not duplicative and not including each other.

At the end of July 2011, the list of persons from whom it was possible to seize the land plot for non-use of land was supplemented by persons owning the land plots for peasant or farmer agriculture, although the responsibility was extended only to land users. Land owners with the allowable use “for farmer or peasant agriculture” remained under state protection. Two years later, namely in July 2013, the responsibility in the form of land plot seizure for the non-use of the land plot began to extend equally to both land users and owners of land for farmer or peasant agriculture.

Later, in July 2013 orphans and children without parental care were rightly released from the obligation to use their land plots until they reached the age of eighteen, in January 2015 the age of orphans for land plot development has been extended to 21 years. Alongside with the latest amendment, the Land Code of the Republic of Kazakhstan was supplemented with another new condition: the owners of land plots for private housing projects (hereinafter referred to as PHP) were released life-long from the obligation to use the land plot.

The protection of PHP land owners against forced seizure of land by “*strange chance*” coincided with the end of the building binge in Kazakhstan, thanks to which the demand for land plots increased exceedingly between 2003 and 2012, and their value “*skyrocketed*”. During this period, many enterprising wealthy citizens, taking advantage of the lack of restrictions on the size of their land, actively bought up unoccupied land for the purpose of subsequent quick resale. And when property development activity in Kazakhstan began to decline in 2013, many

landowners faced the problem of using their land plots for PHP due to a decrease in demand for land, for non-development of which threatened with seizure. Well, and as a result, soon the law began to protect such owners. Until the present owners of land plots for private housing projects in Kazakhstan enjoy the state guarantee of the safe conduct for their unused land plots, which creates a chance for such persons not only to preserve, but also increase significantly their capital.

Post-Soviet Countries

From the former USSR countries, Kazakhstan is not the only country demonstrating the privileges of some to the detriment of others. Conditionally, in this regard the post-Soviet countries can be divided into two categories:

1. Countries with privileges for selective landowners;
2. Countries with equal responsibility for landowners.

In addition to Kazakhstan, the first category includes Azerbaijan, Uzbekistan, Moldova, and Ukraine. The second category includes Belarus, Kyrgyzstan, Tajikistan, Turkmenistan and Russia. Let's consider briefly the grounds for the compulsory seizure of land plot for breach of land legislation in each of the above countries.

The Republic of Azerbaijan is the former republic of the USSR, in which the current land legislation distinguishes three forms of land ownership: the right of ownership, the right of permanent or temporary use, and the tenant-right. Unlike Kazakhstan, Azerbaijan does not divide the owners into those from whom it is possible to seize the land, and from whom the seizure is unacceptable. The rights of owners are equally protected by the state, that's why, the sanction in the form of forfeiture of the land title for breach of land legislation is not applied to land owners, while users and tenants of land plots can lose their land title as a result of non-purpose use of the land, or acquiescence of a deterioration of land quality, its pollution, pollution of the environment, other similar actions directed against the conservation of land and the environment, or as a result of non-use (downtime) of land plots for agricultural or non-agricultural purposes, or (iv) as a result of nonpayment of land tax.

The Republic of Uzbekistan declares "*ensuring the equal rights of participants in land relations*" as one of the principles of the Land Code, but, unfortunately, the declared equality of rights in Uzbekistan is not adhered (Legislation, 2019). According to the Land Code of Uzbekistan, the country recognizes the right of ownership of a land plot, the right of possession, the right of use, and a tenant-right is allocated separately. The list of lands that may be the item of property is rather limited; perhaps this is one of the reasons for the exceptional protection by the state of such a small circle of owners. The right of ownership in Uzbekistan is provided for only four types of objects:

1. For the land on which the privatized objects of trade and services are located;
2. For the land on which the buildings owned by diplomatic missions, international organizations equated, their employees are located, or on which there are residential premises owned by foreigners with certain criteria;
3. For the land of citizens who own land for the construction of an individual residential building;
4. For the land of legal persons on which their own (or planned for privatization) buildings, facilities, industrial infrastructure are located.

Only landowners, land users and tenants can forfeit their land for breach of land legislation in Uzbekistan, the grounds for this can be non-use, or non-purpose use, or irrational use of land, pollution of the land plot and environmental deterioration, soil fertility fall, as well as systematic non-payment of land tax or rent, etc. Land owners do not face land seizure for breach of land legislation (The Land Code of the Republic of Uzbekistan, 1998).

The Republic of Moldova recognizes the right of ownership, the right of possession and the right of use the land. The Code clearly identifies the subjects and purpose of land plots, the right to which cannot be lost as a result of failure to comply with regulations of the land legislation. Such protected entities are owners of land for private housing projects, for household outbuildings and kitchen gardens. It is impossible to seize the land from such persons not only in connection with breach of land legislation, but also in connection with state and public needs, the latter, admittedly, is quite humane on behalf of the Moldovan legislator (The Land Code of the Republic of Moldova, 1991). At the same time, all other participants in land relations-owners of land plots and land users-may forfeit their land title due to non-use of the land, degradation, contamination, imbibition and other deterioration of soil and environmental conditions.

The Land Code of Ukraine (hereinafter-the Land Code of the Republic of Ukraine) distinguishes two types of land title: the right of private ownership and the right of use. Articles 140 and 141 of the Land Code of Ukraine (2001) contain an exhaustive list of grounds for the deprivation of the rights of land owners and land users, respectively. According to Art. 140 of the Land Code of the Republic of Ukraine, owners can forfeit their land title either voluntarily (on the basis of abandonment, alienation or change of allegiance) or compulsorily (the claim of creditors, for community needs and in connection with seizure), breach of land legislation is not ground for the seizure of land from the owners. At the same time, the land user may lose his right for non-purpose use of the land, for breach of environmental requirements when using land, or for the cultural heritage conservation when using his plot.

It should be mentioned about not entirely appropriate edition of the Land Code of the Republic of Ukraine in relation to the forfeiture of the land title. In addition to Articles 140 and 141 of the Land Code of the Republic of Ukraine, which provides for the deprivation of the rights of owners and land users, there is article 143, which essentially duplicates the content of these articles. It establishes a list of grounds for the compulsory termination of land title by litigation and clouds the understanding of the responsibility of land owners and users in Ukraine, which sometimes leads to improper enforcement. So, in 2009, the Ovidiopol District Court of Odessa Region, based on the provisions of Article 143 of the Land Code of the Republic of Ukraine, gave an opinion to terminate the ownership of citizen A. in connection with the non-purpose use of his land plot for three years. Later, in August 2010, the Supreme Court of Ukraine established that Article 143 of the Land Code of the Republic of Ukraine is not applicable to owners of land plots; accordingly, non-purpose use of land cannot be a basis for deprivation of land ownership, such a ground is applicable only to land users. Thus, the owners of land in Ukraine can not lose their land title for breach of land legislation.

The second group of post-Soviet countries represented by Armenia, Kyrgyzstan, Tajikistan, Turkmenistan, Belarus and Russia is trying to adhere to the principle of equal responsibility of persons in land relations.

The Republic of Armenia recognizes the following persons in land relations: owners, honorary users and tenants (The Land Code of the Republic of Armenia, 2001).

The mentioned persons may equally be deprived of the land title in any of the following cases: due to the non-use for 3 years of the land plot provided for agricultural or construction purposes, due to the non-purpose use of land, due to the pollution/contamination of the provided land plot, and due to non-payment the land tax for 3 years and repayment of debts during the 4th year.

The persons of land law of the Kyrgyz Republic-owners and tenants-may equally forfeit their land plot for non-use an agricultural land plot for 3 years, non-agricultural for 5 years, or for non-purpose use of land, or for non-payment of land tax, or (iv) for non-payment of contributions under the state social insurance program (Legislation, 1999).

Seizure of land plot in Kyrgyzstan from both the user and the owner is equally carried out in compliance with a court order.

The Republic of Tajikistan, like the Republic of Uzbekistan, declares the equal rights of participants in land relations, the protection of their legal rights and interests as one of the principles of land legislation. After the collapse of the USSR, the country did not introduce the right of private ownership of land; all the land of Tajikistan belongs to the state, that's why only the right to use a land plot that can be alienable or inalienable is recognized in the country (The Land Code of the Republic of Tajikistan, 1996).

All participants in land relations are equal when sanctions are applied to them for breach of land legislation. A land plot can be equally compulsorily seized from any user for non-use of agricultural land for two years, non-agricultural land for 3 years, for non-purpose use of land, and for irrational use of land that led to contamination of the land, its fertility fall and other consequences associated with the state of the land.

The Code of Turkmenistan On land provides three types of land title: ownership, the right of permanent or temporary use, and tenant-right (Legislation, 2004). The sanction is applied to all of the above persons in land relations in the form of compulsory termination of the land title for the following breach of land legislation: non-purpose use of land, non-use of land by tenants during the year, users during two years, owners of agricultural land during two years, land for personal subsidiary plots, private housing projects during five years, environmental deterioration as a result of economic activity, as a whole for breach of land legislation, which can be expressed in any irrational use of land, pollution, soil depletion, etc.

The Republic of Belarus distinguishes four types of participants in land relations: private owners, landowners with the right of lifelong hereditary possession, land users and tenants (Legislation, 2008). The land title among participants in land relations may be equally terminated for the following breach of land legislation: non-purpose use of land, non-use of agricultural land during one year and non-agricultural land during two years, if a citizen did not begin to occupy the plot during one year, and a legal person during six months from the date of registration of the land plot and the acquisition of a rights to it, failure to implement measures to protect land. The sanction is provided for owners and land users separately in the form of seizure of land for non-payment of land tax after two tax periods.

As already noted above, the grounds for the forfeiture of land title of owners, landowners, land users and tenants in the Russian Federation (hereinafter referred to as the Russian Federation) are provided for by various regulatory acts of the Russian Federation, but despite this, as well as some incoherence in the wording of breach types, all persons in land relations can equally forfeit of their land title for non-use of land and for breach of the legislation of the

Russian Federation, which can be expressed in non-purpose use of land, in a significant land fertility fall, and environmental harm.

CONCLUSION

Regulation of land relations is one of the most important tasks of state economic reforms, on which the success of socio-economic transformations, stability and security of the state depend. Moreover, one of the most pressing issues of the century is the task of protecting land resources and ensuring their rational usage (Chabanenko et al., 2020).

In our opinion, this is as fair as possible when in land relations all owners of land plots, regardless of the type of legal relationship with land, are equally responsible for the non-use or non-purpose use of land, since land is not just an object of property law, it is, first of all, our common natural resource, the handling of which should be under the focused attention of the state. If land is provided to a person who does not have the time, desire to use it, to take care of it properly, and such land should be seized from the person without taking into account his land title and without taking into account the purpose of the land plot. Land should be used by the person who really needs it, who understands the necessity to care for the land; otherwise, the state is simply engaged in the encouraging some to the detriment of others.

Today in the Republic of Kazakhstan, only owners and land users with land plots for construction, agricultural production, as well as for farmer or peasant agriculture are responsible for the non-use of the land plot. The list of persons responsible for land non-use does not include owners and land users owning land for personal subsidiary plots, gardening, afforestation, as well as the owners of land plots for private housing projects (PHP). As a result of property rights protection of the latter, Kazakhstan faced a heavy deficit in land plots for private housing projects, as well as long lines of the needy in land for private housing projects. According to the Committee on Land Management of the Ministry of Agriculture of the Republic of Kazakhstan, as of the end of the first half of 2019 the number of persons in need in line for the land for private housing projects in Kazakhstan is 1,456,379 people, which is about 8% of the total population of Kazakhstan. In addition, a narrow class of speculative large landowners was formed in the country, earning serious capital from the sale of “*captured*” lands and artificially supporting a housing bubble formed in the land market of Kazakhstan.

So, as a result of the analysis of existing offenses in the sphere of land relations in Kazakhstan, we can assert that they require change and transformation and successful achievement of the results is possible with competent coordination of actions between state authorities and public activists and prevention of offenses (Tuyakbayeva et al., 2018).

It is not known in what direction the land legislation of Kazakhstan will go further, but at the moment in the Republic of Kazakhstan there is a tendency to protect the rights of the haves to the detriment of the poor.

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