

LIABILITY FOR VIOLATIONS OF LAND LEGISLATION

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ABSTRACT

The urgency of the problem. The experience of Kazakhstan on legal regulation and responsibility in the sphere of land relations, as well as the experience of the countries of the post-Soviet space, has its own peculiarities. It is not large and still requires transformation. Legal responsibility, namely, criminal, for land crimes in Kazakhstan and CIS countries is considered in this article. Based on the analysis of the land legislation of the Republic of Kazakhstan, the points of view of well-known scientists of land and legal science concluded that the allocation of special land-legal liability is groundless. Particular attention is due to the lack of a unified approach to the location, the rules on unauthorized occupation (seizure) of land or other manifestations of land rights violations. So, the purpose of this article is the experience of Kazakhstan and CIS countries in regulating responsibility for violation of land rights, as a result of which guidelines and recommendations for further improvement of criminal legislation in the context of land relations should be outlined. In the process of research, the directions for further improvement of the current criminal legislation were determined. At the same time, the differences in the construction of the objective side, the degree of public danger and social relations, which are infringed upon by the unauthorized occupation of the land plot, is determined by legal (and not only legal) features of the legal system of a particular country.

Keywords: Land, Unauthorized Occupation, Unauthorized Seizure, Land Rights, Management.

INTRODUCTION

Kazakhstan is a country with incredibly large reserves of land, where the agrarian sector of the economy has been actively developing for more than one century. Therefore, it is the country's land reserves that make up the basis of the country's budget revenues. And legal regulation of land relations and responsibility before the law is the fundamental basis of the country's resource independence. Criminal punishment of Kazakhstan occupies a special place in the context of responsibility for land violations (Khadzhiev, 2002).

Criminal liability for unauthorized land occupation and unauthorized construction was provided for in Art. 199 of the Criminal Code of the RSFSR in 1960 and then in the criminal codes of the Union republics, which were adopted in the early 60s of the XX century. True, the then legislation used the term "unauthorized seizure of land" and only in 1993 in the Criminal

Code of the USSR in 1960 it was replaced by “unauthorized occupation of land” (Constitution of the Republic of Kazakhstan, 1995).

Outstanding scientist M.I. Khavronyuk noted that the reality of today is the interrelation of elements of the national criminal legal system, not only among themselves, but also with the relevant elements of the criminal legal systems (Land Code of the Republic of Kazakhstan, 2003). In this aspect, the study of the experience of criminal and legal protection of land rights not only in Kazakhstan but also in the so-called group of the Commonwealth of Independent States is of great scientific interest.

The implementation of this codification contributed to the growth of scientific and methodological and theoretical studies of the legal regulation problems of land resources, including the issue of responsibility for unauthorized land seizure (Concept of legal policy of the Republic of Kazakhstan, 2002). Thus, the issues of criminal responsibility for unauthorized seizure of land and unauthorized construction during the Soviet period were the subject of scientific research of Adikhanov, Bonner, Gabaidze, Kaplunov, Karpov, Kostrov, Laptev, Lyapunov, Tupik & Fedorov.

The criminal-legal characterization of unauthorized land seizure and unauthorized construction was also carried out by such scientists as Vladimirov, Grishanin and Zhuravlev, Ivanov, Polenov, Stashis, Fedorov, Shishov in the textbooks on criminal law. Certain aspects of unauthorized land seizure were considered in articles and textbooks on land law of Aksenenko, Yerofeyev, Zharikov, Pison and Ryabov.

MATERIALS AND METHODS

The writing of this article was based on the analysis of regulatory and legal documents governing liability in the field of land and legal relations. The existing Criminal Code, Land Code of the Republic of Kazakhstan and the CIS countries, as well as documents in the field of environmental safety, environmental protection and the like were analysed.

At the monographic level, studies of unauthorized seizure of land and unauthorized construction were almost never carried out during the Soviet period. During this period, a characteristic feature of the study of unauthorized seizure of land was that among scientists there was no unified position on the definition of the concept of “unauthorized seizure of the land”. This can be explained by the fact that the land in the Soviet Union belonged to the state (Tyazhkova, 2002).

The first includes those for which unauthorized land seizure was considered one of the forms of illegal land use. So, according to G.F. Polenov, the unauthorized land seizure was provided in the case when the person began to use the land arbitrarily, that is, without proper written permission (Abbasov, 2001). The second group includes those scientists who, in case of unauthorized seizure, focused mainly not on the use of land, but on the moment of unlawful taking over of it. The concept of “land offense” was studied in the theory of land law, but there is no clear definition of land crime in the scientific works of both Kazakhstani and Russian scientists.

RESULTS AND DISCUSSION

With the collapse of the Soviet Union in Kazakhstan, as in most countries of the post-Soviet space, such concepts as “land ownership”, “land market”, “land rights”, etc., have gradually emerged. The active redistribution of land plots affected almost the entire population of Kazakhstan. At the same time, not only entrepreneurs were involved, but also ordinary citizens of the Republic of Kazakhstan, who needed to legitimize their rights to land (The Criminal Code of the Russian Federation, 1996).

At one time, the scientist A.V. Chayanov drew attention to the fact that the will of the owner in the capitalist enterprise and the head of the family in the family itself make it possible to ensure the unity of the organizational plan and the steady implementation of it. And the collective will is, first of all, a weak will, as organizing and entrepreneurial. The land relations of the times of the Soviet Union did not allow the producer to be the owner, that is, they were alienated from the producer (The Criminal Code of the Republic of Kazakhstan, 2001).

Separate issues of unauthorized land plot were investigated in the works of Andreytsev, Kulinich, Nosik, Sidorenko, Levsha and Shulga. In the works of these scientists, the main focus is on determining the unauthorized occupation of the land plot and its essence, attention is focused on its prevalence, the lack of proper counteraction to this negative phenomenon (The Criminal Code of the Republic of Uzbekistan, 2001).

The urgency of solving land issues in Kazakhstan acquires a special meaning from year to year. All because the earth is a necessity for ensuring the vital activity of the country's inhabitants. Agricultural land is an extremely important part of Kazakhstan's economy and accounts for 40% of the country's national income. The processes of reforming land relations changed the approaches to land ownership, facilitated the change of methods and approaches to the management of agriculture as a whole and hence the transformation of the legal framework of Kazakhstan.

Active market transformations contributed to the growth of land crimes, which forced to significantly change the land legislation of Kazakhstan, significantly expanded its effect. In spite of the long period of reforms, the effective land legislation still does not have the concept of “land infringement” in the full sense of this expression. In fact, the definition of “delinquency”, as a rule, defines “guilty” and does not generalize situations in its understanding when its content causes damage to land or other natural resources that entail civil liability.

The concept of land law violation proposed by A. Kh. Khadzhiev, although it indicates clear criteria of law violation (illegality, unlawfulness and, as a rule, the guilt of the act), but does not reflect the specifics of the land law violation, as there is no indication of causing harm to the lands, land rights of individuals and legal entities. We can understand the essence of the land infringement only by considering the extract from the work of A. Kh. Khadzhiev, which we cited in full. (Land Code of the Republic of Kazakhstan, 2003).

In accordance with paragraph 10 of Article 43 of the Code of the Republic of Kazakhstan on Administrative Offenses, purchase and sale transactions for land plots that do not have the necessary documentation are considered illegal. The violation of the right of state ownership of land (according to article 136 of the Code of the Republic of Kazakhstan) is: Seizure or exchange of land plots or the conclusion of other transactions that directly or indirectly violate the rights of state ownership of land, as well as the late return of temporarily occupied land plots. Such an

offense entails sanction in the form of a fine in the amount of seven monthly calculated indices (for physical persons), for officials, small business entities of Kazakhstan or non-profit organizations-in the amount of one hundred and for others-to seven hundred calculated indicators.

In addition, deprivation of the right to occupy the relevant positions or engage in certain activities can be either a basic or an additional punishment, in those cases where the court, in the presence of certain grounds, recognizes that it is impossible or dangerous to preserve the right for such a person to hold the relevant posts or engage in certain activities. In our case, the establishment of this type of punishment for the uneconomical use of land is fully justified, since the need to remove a certain person from a position or activity by which it damages the quality of land and the environment as a whole is obvious (Kazachenko, Neznamova & Novoselov, 1998).

According to Article 186 of the Criminal Code of Kazakhstan, the terminology “unauthorized land plot seizure” is not used, but it mentions “illegal penetration of a foreign land plot”. Criminal liability for violation of the land legislation of Kazakhstan in certain cases is stipulated by Article 201 of the Criminal Code (Zhuravlev, 2012).

For example, in Azerbaijan, Estonia, Lithuania, Moldova criminal codes of foreign countries containing norms providing for responsibility for unauthorized occupation of lands are conventionally divided into groups. In particular, on objects of encroachment, unauthorized occupation of land plots falls into the category of crimes:

- Against Property: The Criminal Code of Kazakhstan (Article 186), the Criminal Code of Azerbaijan (Article 188), the Criminal Code of Kyrgyzstan (Article 172-1), the Criminal Code of Moldova (Article 193);
- Against the Governance Procedure: The Criminal Code of Belarus (Article 386), the Criminal Code of Lithuania (Article 298), the Criminal Code of Tajikistan (Article 338), the Criminal Code of Uzbekistan (Article 229.1);

Criminal Code of Kazakhstan unlawful seizure of foreign land plot is punishable by restriction or imprisonment for up to two years (Ugrekhilidze, 1976).

So, the parliamentarians of Belarus, Tajikistan and Uzbekistan only criminalize those manifestations of unauthorized actions committed after administrative sanctions for the same violations (administrative prejudice). That said, if Art. 386 of the Criminal Code of Belarus and Article 388 of the Criminal Code of Tajikistan provide for criminal liability for unauthorized “occupation”, then Art. 229-1 of the Criminal Code of Uzbekistan-for unauthorized “seizure” of the land plot. Unauthorized occupation (use) of the land plot, as, incidentally, other manifestations of violations of the right of state ownership of land (transactions with land, assignment of special nature use rights, etc.), Uzbek legislators, regardless of the previous prosecution for the same actions, is regarded as an administrative offense (Article 60 of the Code of Uzbekistan on Administrative Liability (Ustimenko, 1989).

So, as was already noted, Art. 273 of the Criminal Code of Lithuania are built on the model of the countries of the German criminal law group, which also provides for liability for illegal land use change. But the Moldovan legislator, when formulating a responsible prohibition (Article 193 of the Criminal Code of Moldova), first of all relied on the experience of the countries of the Italo-Iberian group. Russian criminal law develops in the opposite way. And this despite the fact that the legislation contained the concept of “Illegal seizure of immovable

property” in 1996, which provided for responsibility for unlawfully taking possession of foreign immovable property, committed for personal gain, in the absence of signs of embezzlement.

So, according to O.I. Boytsov, the inclusion of a general rule on the illegal seizure of immovable property in the Criminal Code of the Russian Federation provided reliable protection of natural objects from unauthorized occupation and use (Fesenko, 1997).

In the criminal codes of the post-Soviet states, many criminal-legal prohibitions have a similar interpretation. For example, Art. 188 of the Criminal Code of Azerbaijan and 201 of Kazakhstan have a certain definition of “Violation of the right of land ownership” and “Violation of rights to land”, respectively. It unites the prescriptions and that they say exactly about the arbitrary seizure of land plots. At the same time, the very fact of completing the seizure of a land plot or “replacing or sowing a plot of land”-actions that also appear in the disposition of the criminal norm (formal composition), is enough to bring to criminal responsibility for violation of Article 188 of the Criminal Code of Azerbaijan (Khavronyuk, 2003).

The position of the Kazakhstani legislator looks convincing to us, which is dictated by a logical enough desire of the latter to differentiate responsibility for unauthorized land plot seizure, any manifestation of which drags criminal responsibility and illegal penetration (occupation) of a foreign land plot, which, in the absence of an offense in Part 1 of Art. 201 of the Criminal Code of Kazakhstan on Administrative Offenses.

Despite the large volume of analyzed literature and scientific publications of Kazakhstan and CIS countries, one can draw a conclusion that there is no clear definition of the concept of “*land infringement*”. Only in the training manual of Chubukov & Volkova, the authors give the following definition: “Land infringement is a specific act or inaction that contradicts the norms of the land legislation”. In paragraph 15 of Article 12 of the Land Code of the Republic of Kazakhstan, land legal relations are legal relations on the use and protection of land associated with the management of land resources, the assignment of land plots to individual entities, the exercise of property rights and other rights to land.

The Land Code of the Republic of Kazakhstan (Article 92) provides that in the case when the land plot, on which construction is supposed to happen, is not properly used for more than three years (unless the regulatory documents and project calculations contain the need to extend the construction period), it must be forcibly removed in accordance with the procedure specified in Article 94 of the Land Code of the Republic of Kazakhstan. This norm does not apply to individuals who are citizens of Kazakhstan who privately own land plots intended for the housing construction. If a land plot in Kazakhstan is used with violation, then the local authorities have the right to increase the tax. Wrongful act or inaction, in accordance with the land legislation of the Republic of Kazakhstan-that is all that can cause harm to land.

It is also necessary to remember the principle of saving criminal repression. It is well known that it is impossible to re-educate or correct a convict with the help of isolation alone, even the strictest one. After all, most social and political ties between citizens and the state, citizen and society are weakened or completely broken as a result of the appointment and execution of punishment in the form of imprisonment.

Moreover, domestic scientists are united in the inexpediency in the future application of deprivation of liberty in the volumes that are inherent in modern criminal justice. Analysis of judicial statistics in the appointment of criminal penalties showed that the proportion of liberty deprivation (Korobeyev, 1987). The fact that it provides for punishment in the form of liberty restraint, which is not among the punishments of other countries for committing a land crime

(Georgia, Azerbaijan, Kyrgyz Republic, Republic of Kazakhstan, Russian Federation, Republic of Armenia), suggests that it is also too harsh in our case.

CONCLUSION

So, the conducted research showed that the criminal legislation of the majority of CIS countries knows the instructions on the regulation of liability for those or other types of violations of land rights.

The most significant place in the prevention of offenses in the sphere of land relations occupies the bodies of the Agency of the Republic of Kazakhstan, managing land resources. After all, no one knows land characteristics better than them and no one has more experience. Their role is the protection and restoration of the country's lands.

There is another type of responsibility in the field of land relations, environmental. According to Part 8 of Art. 142 of the Code of the Republic of Kazakhstan dated January 9, 2007 No. 212-III "Ecological Code of the Republic of Kazakhstan", forest monitoring is a system of observations, assessment and forecast of the state and dynamics of the forest fund for public administration in the field of protection, defence of forest resources and reproduction of forests, forest fund use, preservation of biological diversity and ecological functions of forests. The state system for monitoring the environment and natural resources, which is defined by Art. 138 of the Ecological Code of the Republic of Kazakhstan as a multi-purpose information system, includes observations of the state of the environment and natural resources, as well as analysis of data on their actual condition for making managerial and economic decisions to ensure environmental safety, protection, reproduction and rational use of natural resources, epidemiological well-being of the population. With the purpose of regulating the procedure for forest monitoring, the Government of the Republic of Kazakhstan adopted Decree No. 727 of June 1, 2012 "On Approving the Rules of State Forest Monitoring".

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.

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