LEGAL ASPECTS AND PROSPECTS FOR THE IMPLEMENTATION OF THE LAND LAW OF KAZAKHSTAN

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Abstract
The objective of the land legislation is to ensure the rights and interests of the subject in the land, which should be reflected in a clear legal regulation of procedures and conditions for seizure of land. According to the Land Code of the Republic of Kazakhstan dated 20.06.2003, all land should be used for its intended purpose. Use of land for the intended purpose means that the site should be used in accordance with the originally set goals - for agricultural production, housing, etc.

The paper analyses the features of the application of the law of the land when considering land issues in Kazakhstan, considered the legal aspects and the implementation of land legislation, including the decision to land disputes, issues of private property rights, the need to protect the rights of citizens. Also is provided analysis of land relations, the emergence of new economic actors and arising in connection with these matters.

Keywords: land use, land disputes, confiscation of land, land law, land use rights.

Introduction
Processes of economic and political transformations taking place in accordance with the strategic directions of economic and spatial development of the country, necessary for the improvement of land relations and their legal security in order to improve the management of land resources and their rational use and protection (Stamkulova A., Stamkulov G., 2004).

Land Code of the Republic of Kazakhstan (hereinafter - Land Code) dated June 16, 2003 was adopted as the main legislative and legal act regulating the main complex of land and legal relations.

According to paragraph 1 of Article 6 of the Constitution of the Republic of Kazakhstan in Kazakhstan is recognized public and private property. The existence of other kind of property in the Republic of Kazakhstan is possible if there are made additions to basic regulation of law, but it may cause further negative preconditions for the emergence of misconduct or distortion of norms in the alienation of real property by natural and legal persons (The Constitution of the Republic of Kazakhstan, 1995).

State shall have exclusive ownership on natural resources. Land as an element of natural and economic resource, and having economic value, can be privately owned. In the legal system of Kazakhstan land as an element of the environment is the object of ownership.

Legal regime governing the ownership and use of land is regulated, as we noted above, by the Land Code.

In the legislation there are problematic relations in the field of land use, methods and ways of regulation which are significantly different from each other.

Land Code allows private ownership for foreign citizens, stateless persons and foreign legal entities for settlement land. So, according to part 4 of Article 26 of the Land Code, for non-residents are provided private property rights on land plots allocated for construction or built-up production and non-production, including residential, buildings (constructions) and their complexes, in accordance with their purpose (Zemelnyj kodeks Respubliki Kazakhstan, 2003).

Thus, the legal analysis of certain categories of land shows that existence of private property for non-residents on the land immediately adjacent to the state border is not excluded, but rather takes place and can create adverse background security threats as state borders and national security in whole.

In the area of legal disputes on land there is incomplete and week regulation of disputes. Thus, according to Article 167 of the Land Code land disputes, arising from land relations, have to be solved in the courts (Svodnyj analiticheskij otchet o .., 2014).

This rule relates to relationships where are directly infringed the subjective civil rights and legitimated interests of citizens and therefore citizens are able to protect their rights (ownership, land use) in order of action proceedings may file suit in court. These basic rights are secured and regulated by the basic laws of the Republic of Kazakhstan, Civil Code and the specific laws. But from a theoretical point of view, consideration of land disputes in the courts is not the only procedural order to protect the rights and legitimate interests of land users.
One of the types of land disputes, which are related to specialized inter-district economic courts of the Republic of Kazakhstan, are disputes on the seizure of land used not for its intended purpose, or not used for their intended purpose. In the legislation of Kazakhstan exist the constitutional norm of the exclusive right of state to forest ownership which is determined in relation to natural forests and planted forests grown at the expense of the national budget. But the existence of private ownership of forests of artificial origin, grown at the expense of private forest owners, is regulated in Article 6 of Part 4 and Part 2 of Article 7 of the Forestry Code of the Republic of Kazakhstan. The current land and forest legislation of Kazakhstan admits the right of state and private ownership of forests and lands occupied by forests. Thus, consideration of land disputes in the administrative court, as opposed to production can be regarded as procedural forms, not mutually exclusive, they can also act as a single system to ensure and guarantee the protection of the rights and legitimate interests of citizens.

Discussions and results
The study was conducted as a result of state control over land use and protection, held by regional inspectorates. Based on the results of inspection, there was identified land, unused and used in violation of the laws of the Republic of Kazakhstan with the provision of information on these violations of the territorial bodies of land management areas and cities of national importance. Objectives of state control are to ensure state institutions, physical and legal persons to identify and eliminate violations of the law of the Republic of Kazakhstan, the restoration of violated rights of citizens and legal entities, in compliance with the land legislation of the Republic of Kazakhstan compliance related to land use rights, the correctness of the land cadastre and land management and implementation of measures for the rational use and protection of land (Svodnyj analiticheskij otchet …, 2014).

During the 2013 by the Committee on Land Resources of the Republic of Kazakhstan were realized about 16 thousand territorial land inspections having the aim to control land relations in compliance with land legislation. As a result, there were found about 6 thousand cases of violations. Violations covered an area of about 2.5 million hectares. According to results of land inspections in more than 5 thousand cases against violators were instituted administrative proceedings, more than 4 thousand cases of which against violators according the land legislation were applied administrative sanctions – financial sanctions for total amount more than 5 million KZT (currency of Kazakhstan), in 675 cases administrative sanctions were used preventive measures and 160 cases sanctions were discontinued. To administrative responsibility were made answerable 1530 physical persons for 97 million KZT, 490 authorised persons for 40 million KZT, 786 individual entrepreneurs for 56 million KZT, 74 non-profit organizations for 6 million KZT, 1 thousand subjects of small and medium-sized business for 132 million KZT, 348 subjects of large business for 217 million KZT.

Breakdown of types of violation indicators discovered by regional inspectorates is following:
- violation of the right of state ownership of land – 2375 cases;
- violation of the established order of approval of land use documentation -149 cases;
- elimination of special characteristics – 203 cases;
- damaged land -79 cases;
- unsustainable use or non-use of agricultural land -1739 cases;
- non-conformity to environmental trend of land use – 48 cases;
- use of the land not for its intended purpose -854 cases;
- non-conformity of use of temporarily occupied land to conditions suitable for further use – 99 cases;
- terrain estimate without permission - 9 cases;
- violation of the terms of consideration of applications for land – 116 cases;
- concealment of information on the availability of land for housing – 49 cases;
- misrepresentation of data in process of state registration, inventory and valuation of land – 14 cases.

In 2013 also was conducted work on preparation of lawsuits in court for seizure of land which is unused or is used with violation of the law on land. From 2581 identified land parcels in 805 cases were discovered violations, for previously identified 1940 land plots claims of legal authorities were abolished, and more than 1 thousand cases are under consideration. 785 land plots with total area about 150 hectares were returned to state ownership (Fig. 1).
During the past period in respect to the local executive institutions were conducted 842 inspections. According results of inspections were discovered more than 2 thousand illegal decisions on allocation of land plots. In these cases local governmental offices issued binding instructions for all decisions, 372 decisions are existing in conformity with the law on the land, but 379 decisions were cancelled by local municipalities, materials of 951 decisions were submitted to judicial authorities for abolishment, 215 of which were cancelled by the court, others are under consideration.

![Fig. 1 The results of state control over the use and protection of land discovered by territorial land inspection in 2013.](image)

Also were carried out 39 control cases on correctness of land cadastre. There were discovered 35 violations, of which 27 violations were eliminated, the rest are in the process of elimination.

18 inspections were conducted on control over land reclamation, were identified 16 violations, of which at present are eliminated 15 violations, but in the process of eliminating is one case. In the course of monitoring of implementation of land management projects and other projects on the use and protection of land, were identified 91 violation, of which 66 are eliminated, and the rest are in the process elimination.

According to the Land Code, all land should be used for its intended purpose. Use of land for the intended purpose means that the site should be used in accordance with the originally set goals - for agricultural production, housing, etc. Changing the purpose of land use is allowed only after its transformation to another category in the manner prescribed by the law on the land. Even if the owner seems that he uses land efficiently than originally anticipated, it does not protect from the decision to withhold the site.

The basis for the reclamation of land not used for its intended purpose, is a violation of the legal entities to claim 1 Article 92 of the Land Code, according to which, in cases where the land intended for agriculture or housing or other building is not used for appropriate purposes for two years (unless a longer period is provided by the laws of the Republic of Kazakhstan), and the land given to the right of land use for agricultural production, including for farm, is not used for a total of two years in the five-year period, calculated from the first detection of non-use of land for other purposes, such land subject is obligated to compulsory withdrawal from the owners and users.
Land Code provides as obligatory pretrial procedure in case of seizure of land. An action of forcible seizure of land in the case provided in Land Code, may be brought only after written notice of the owner or user on the need to use the land for its intended purpose, made not less than one year before the claim and provided that during this time the land owner or land user has not taken the necessary steps to use this site for its intended purpose. Consequently, the legislation of the Republic of Kazakhstan has established for owners and land users specific timetable for intended use, as well as to eliminate the violations set forth in a written warning. Subject of judicial protection rights and interests of citizens and legal entities associated with the lawful use, enjoyment and disposal of land. In this regard, the parties shall submit to the court other documents of title to the disputed land, evidence of supplies of land (Novokhatskiy, 2006).

In particular, such documents are:

- state certificate for the right to permanent use of the right of private ownership of land;
- the land lease contract;
- certificate of title to the land share (for individuals who received land as a result of the privatization of state agricultural enterprises or leaving for the formation of peasant economy);
- plan of land, technical passport of home and other buildings, indicating the share of each owner;
- an agreement how to use common land;
- legal act, an act of the local executive authority or agreement of the parties, indicating an easement on the land;
- vouchers for payment of land tax or rent, and others.

Existing state legislative land use policy, linked to normative conflicts, argues not substandard law making, and especially deep social processes in society.

Conclusions and proposals
1. Society requires not systemic changes, and above all, effective state approach, primarily to basic democratic ideals of society.
2. In order to improve land legislation is necessary support in the following questions and norms -: optimization procedures for granting rights to land within the boundaries of settlements; improvement of mechanism for allocation of land plots for individual housing; clarification of the concept of "unused land" and "unused agricultural land"; development of land reserve policy; clarification of existing legislation regulating the use of land for private farming, gardening and dacha construction.
3. Creating the necessary conditions for the implementation of the rights of citizens, the creation of a mechanism to protect public and private property, impact and expand of presence of the citizens in the most important areas of social life - there is value ideals preached by any civilized society.

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