

THE FEATURES OF THE LEGAL REGIME OF AGRICULTURAL LAND

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Abstract

In Section 2, Art. 1 of Land Code of the Republic of Kazakhstan stated that the legal regime of land is determined on the basis of their belonging to one category or another, and permitted use in accordance with the zoning of land (territory). The existing legislation of Kazakhstan indicates the presence of one additional element that affects the legal regime of the land. Zoning as one of the major functions of management of land fund is affect on political, social and economic interests of various levels of population and the state.

Keywords

Land fund; legal regime of land; agricultural land; zoning; legal regulation

Introduction

From the standpoint of social stability, sustained and sustainable development of the land issue is not only the social-economic, but also special political importance. On this basis, providing quality and effective legal regulations remains rather urgent task of legal science and legal policy. The Land law has always occupied a special place in the law, but in the context of increasing scale of economic turnover of land, involving land and land rights in the sphere of the market, its socio-regulatory significance increases. The land legislation of Kazakhstan is developing quite dynamically. The reforms in the economy, the transition to a new system of property relations, changes in land turnover led to a need for a substantial renovation of the system of land legislation. The first statute of the independent Kazakhstan on land matters was the Land Code of 16 November 1990, replaced by the Edict of the President of the Republic of Kazakhstan with the Effect of Law On Land of 22 December 1995, which in its turn has been replaced by the Law of the Republic of Kazakhstan On Land of 24 January 2001, replaced by the 2003 Land Code. [1] Adopted on

20 June 2003 the new Land Code of the Republic of Kazakhstan is a forth-generation statute and is a key act of the ongoing land reform in Kazakhstan. Prior legislation, including the 2001 Law On Land and the 1995 Edict of the President On Land allowed the private ownership of certain types of land. During the period of development land relations have been accepted also other important regulations which provide for significant changes in land area, including more than 100 sub-legal acts of the land, mediating absolutely new institutes and categories of land law. The agricultural land of the Republic of Kazakhstan has been excluded from the private ownership except for ownership by citizens of Kazakhstan for development of their personal homesteads and gardens, and construction of their summer houses. The new Land Code has abolished this exclusion, and private ownership of agricultural land by Kazakhstani legal entities and individuals for farming and agricultural production, is now permitted thereby creating another opportunity for investments and development of land market in Kazakhstan. In addition to this, the Land Code has clarified and streamlined the rights of foreign persons to own and lease land in Kazakhstan.

Land Fund of the Republic of Kazakhstan in accordance with the purpose divided into the following categories:

- 1) agricultural land;
- 2) land settlements (cities, towns and villages);
- 3) land for industry, transport, communications, defense and other non-agricultural purposes;
- 4) land protected areas, land, health, recreational, historical and cultural destination;
- 5) forest land;
- 6) water fund land;
- 7) reserve lands (i.e., all lands that are owned by the state and are not allocated for use or private ownership).

The legal regime of land is determined on the basis of their belonging to one category or another, and permitted use in accordance with the zoning of land (territory). The concept «zoning» is included in land legislation of the Republic of Kazakhstan rather recently and has not received still accurate, unequivocal legal definition. The circle of law relations covered by concept «zoning» is not defined. The land legislation has defined only the most general approaches and principles of regulation are on the formation stage. The meaning of zoning is to prevent incompatible land uses through the development of comprehensive plans for municipalities and the distribution

of species and density of land use in accordance with these plans. Once designated, the land and property located thereon contains restrictions on the use and type of constructions that can be built. Any acquisition and alienation of a land parcel are subject to land designation and zoning requirements. Land designation and zoning is performed by a local Land Resource Management Agency under the administration of a local executive authority, Akim, and requires approval of a local representative authority, Maslikhat. It is important, therefore, to verify the designation of a land parcel before transacting therewith.

Agricultural land as a «special» category of land

In the regulation of land relations often use the term «legal regime of land». In modern legal literature, there are different points of view about the concept. The legal regime of these lands has a number of significant features, in view of the «special object and subject composition». Giving certain rights and responsibilities of owners and homeowners land derives from the order of the use and protection, as well as on the conditions and requirements of the zoning given land. The Land fund of the Republic of Kazakhstan includes all land within its territory. Agricultural land occupies first place in the hierarchy of the land fund of the country. Legal definition of agricultural land is given in Section 1, Art. 97 of Land Code of the Republic of Kazakhstan, stating that «agricultural lands are lands granted for agricultural purposes, or intended for these purposes». «Here formulated an important position on the division of land into separate categories that have a specific legal regime, depending on the purpose of land. This provision is first received by the legislative embodiment in Art. 21 of Basics of land legislation of the USSR and Union Republics in 1969.

Transferred from the old to the current Code the legal aspects of agricultural land: the provision of land for agriculture and the purpose of land for agriculture can hardly now cause substantial doubt. Since the logical inevitability follows a formula that agricultural lands are the lands provided for the needs of agriculture». [2, p.492] Identifying legal attributes of agricultural land is a priority in determining the content of their legal protection and efficiency. [3, p.77]

In the regulation of land relations often use the term «legal regime of land». In modern legal literature, there are different points of view about the concept. According to G.A. Aksenok to determine the legal regime of any category of land is necessary, first of all a definition of these lands as an object of land relations, and secondly to determine the range of land managers of these lands to establish their rights and obligations, and thirdly, order of state management of these lands, and finally, fourthly, to indicate the form and liability measures that are defined by law for the users. [4] N.I. Krasnov said that «the legal regime of the land» is established norms of

Soviet land law procedure is possible and proper conduct in relation to the earth as an object of exclusive rights of state ownership, government land fund, land use rights and legal protection aimed at ensuring its rational use in as general conditions and the main (principal) means of production in agriculture. [5]

According to the O.I. Krassov, the question of the meaning and scope of this concept remains poorly understood. He writes that «there is a sufficiently large number of works that deal specifically with the legal regime of the categories or types of land. Nevertheless, the vast majority of these works are precisely this concept is not specifically touched on, although the content of studies was reduced in the end, it is to study the legal regime of land». [6, p.36-37] I. Ikonitskaya in its definition of the legal regime of land, places special emphasis on the fact that this mode can be set for «special» object to the land as the object of property rights and public land management and the object of legal protection of land as a natural resource, performing defined by the Constitution of Russian Federation key social-economic functions - the basics of life and health of people living on the territory». [7, p.181] In studying this, the Kazakh researcher Zh.H. Kosanov follows formulates its definition. «The legal regime of the land is established rules of land law and proper procedure for a possible behavior with respect to the earth as an object of public administration, legal protection, property rights, land use rights, aimed at ensuring its sustainable use as general working conditions and the principal means of production agriculture». [8] I.G. Arkhipov is short in its definition. He believes that «the concept of the legal regime of land means the statutory procedure for their use and protection. This order includes requirements to ensure the rational use of land from the environmental safety, public authorities are competent to regulate land relations, rights and duties of the subjects of land rights». [9, p.131]

Diversity and differences of opinion on this issue once again emphasizes that the disclosure of its nature will depend on the effectiveness of legal regulation of certain land relations.

Basics of the legal regulation of agricultural land zoning

In Section 2, Art. 1 of Land Code of the Republic of Kazakhstan stated that the legal regime of land is determined on the basis of their belonging to one category or another, and permitted use in accordance with the zoning of land (territory). As you can see, the existing legislation of Kazakhstan indicate the presence of one additional element that affects the legal regime of the land. We are talking about zoning of land (territory). The meaning of zoning is to prevent incompatible land uses through the development of comprehensive plans for municipalities and the distribution of species and density of land use in accordance with these plans. At its core, the zoning is

an order in respect of new types of land development and therefore has a tendency to form rigid patterns of land use. When zoning is ignored natural contour of the terrain, does not take into account the presence within the zone of sites of ecological or historical value. In order to address these terrain features have been developed flexible zoning techniques, such as floating zones or land with a «planned buildings». [10, p. 9] In the legislation of Kazakhstan this concept was first introduced by Presidential Decree having the force of law «On Land» of December 22, 1995. Under the zoning of land area refers to the determination of land to establish their purpose and usage. The organization of zoning on the regional level (city of republican status, capital) areas (cities of regional importance) to implement the authorized bodies of oblasts (city of republican status, capital) areas (cities of regional significance). The project of zoning be approved by the representative authorities of region (city of republican status, capital) areas (cities of regional significance). The classifier earmarked land is developed on the basis of projects (schemes) zoning and approved by the local executive bodies of oblasts (city of republican value capital), districts (cities of regional significance). Task mode of using the territory defined in the zoning of the land is for the subjects of land relations binding. The zoning of land held by a decision of local executive bodies and at the expense of budget funds. The order of the President of the Republic of Kazakhstan Agency for Land Management on December 29, 2004 № 107-P, approved Guidelines for the development district zoning schemes. [11] According to the document when zoning takes into account such factors as: natural and economic conditions, the purpose of the land, land-quality, their productivity and assessment, ecological condition of land, special or special treatment of different categories of land use and others. The zoning of the land is taking into account the priority of agricultural land, the special protection of agricultural lands and their using. The foundation of zoning of agricultural land is a natural-agricultural zoning with the release of natural zones and suburbs. The natural-agricultural zoning of the land fund of the region is carried on the base and taking into account the national natural zoning. When zoning of agricultural land are taken into account: agro-climatic conditions; soil and vegetation; quality state of agricultural land; specialization of agricultural production; special conditions for the using of land.

Depending on the specific local conditions can be taken into account other factors that influence the nature of land. The territories of land of agricultural land with the usual mode of use for agricultural economic subject. The agricultural land set territories with the specific conditions of land use are identified in the process zoning of land for industry, transport, communications, defense, lands of specially protected natural areas, lands of water fund and other non-agricultural use without the withdrawal of these territories at farm good makers. Besides the territories of agricultural land are reserved required for the development of human settlements, nature reserves and for other purposes not related to agricultural production. It

should be noted that, based on zoning, land supply, forestry, water resources, industry, transport and other non-agricultural use of land are identified, possible to transfer for agriculture.

Experience in legal regulation of agricultural lands in the Republic of Kazakhstan

Kazakhstan, the third country in the Asia and covers an area of 272,5 million hectares, including the ten natural-agricultural areas. On the territory of the Republic of Kazakhstan on natural conditions, divided into the following areas:

- 1) forest-steppe;
- 2) steppe;
- 3) dry-steppe;
- 4) semi-desert;
- 5) desert;
- 6) foothill-desert-steppe;
- 7) subtropical desert;
- 8) foothill-subtropical desert;
- 9) central asian mountain;
- 10) of south siberian mountains.

The four zones: steppe, dry steppe, semi-desert and desert account for 87,4% of the total territory and 88,3% of agricultural land. Land reforms in the country led to some changes in the distribution of land resources by categories and sites: from the agricultural land was transferred to the reserve lands and other categories of 35,0 million hectares (62%). As part of the land fund of the republic 81,7% are agricultural lands, dominated by grassland (84,9%) of desert and semi-desert and arable land amounts to 10,2%. The share of agricultural land in the structure of agricultural lands of the republic is 38,5%. Significant areas of farmland are registered in the reserve lands (50,6%), settlements (8,6%), forest (3,6%) more than 70% of non-irrigated arable land accounted for by three areas: Akmola, Kostanai and North- Kazakhstan, 60,7% of irrigated arable land are concentrated in Almaty and South Kazakhstan, with the largest area of grassland located in the Karaganda and Aktobe regions, respectively: 35,5 million hectares (18,8%) and 25,5 million hectares (14,1%). During the years of reforms in

the structure of agricultural land with significant changes of arable land. Departures from circulation 12,8 million hectares (almost 1/3) of arable land.

Perennial plants in the country currently occupied 121,8 thousand hectares, including: gardens – 97,6 thousand hectares of vineyards - 13,7 thousand hectares. Over the years, land reform, an area of perennial plants decreased by 41,4 thousand hectares or 25%, including for the year - by 1,2 thousand hectares. The area of grasslands in the reporting period was 5,0 million hectares, of which 62,4 thousand hectares - Superior, 731,8 thousand hectares - Lima irrigation. The main type of land in the republic are pastures. They occupy 189,0 million hectares, or 84,9% of agricultural land. Of the total area flooded pastures are 116,9 million hectares, or 61,6%, improvement - 4,8 million hectares, or 2,6%. Non-agricultural lands occupy 49.7 million hectares, or 18,3% of the land fund of the republic. [12]

Land reform in the republic led to the elimination of state monopolies and the gradual expansion of the incidence of private ownership of land. In the private property of citizens and non-state entities are more than 3 million land plots with total area of 589,9 thousand hectares. The land resources of the republic in their management and development capable of ensuring the production of various products in quantities that meet domestic and export demand. [13]

The main features of the agricultural lands are, firstly, the provision of these lands for agriculture, and secondly, the purpose of these lands, the objectives of agriculture. In the land legislation of the Russian Federation contains one additional legal criterion of agricultural land, as required of their position below the settlements, as it follows from Section 1, Art. 77 of the RF. [14]

The existing legislation of Kazakhstan is not a sign that the practice leads to the fact that agricultural land use in the territory of settlements and agricultural land are equalized in the legal status, leads to a blurring of their boundaries, both quantitative and qualitative data recording land. The equation of these types of land can not be unambiguously that follows from the following parameters:

First, the agricultural lands constitute a separate category of land, and have their composition. The legislation comes from the fact that «agricultural land» and «agricultural land use» - not identical concepts. In one case, the specific object of legal regulation are the agricultural land as a part of the lands of Russia, distinguished in a separate category for the intended purpose of land. In the second case, the object of legal regulation are the agricultural land use as a combination of lands from the land settlements, industry and other categories that are used as agricultural land on the lands of the main economic purpose. As part of these lands are allocated in the first place, agricultural land, and secondly, the lands occupied by on-farm

roads, communications, closed bodies of water, land reclamation network, buildings and structures necessary for the functioning of agriculture, third, and other lands (solonchaks, sands, takyrs and other miscellaneous land interspersed in the array of agricultural land). The Agricultural lands are highly productive lands that are subject to special protection. These include arable land, fallow lands, and lands under permanent crops, hay fields and pastures. Relying on the legal definitions of each of agricultural land, the given information in Section 4, Art. 97 of Land Code of the Republic of Kazakhstan can say that they serve as the means of production in agriculture. For example, arable lands used for planting crops, grazing lands are systematically used for haying and grazing animals. As for the land occupied by on-farm roads, communications, closed bodies of water, land reclamation network, buildings and structures, they are necessary for the functioning of agriculture and are more the spatial basis for placing objects in agriculture. Farmland can be irrigated and rained. Other land in the form solonchaks, sands, takyrs may be composed of agricultural land in the form of objective reasons, they are on territory under consideration, i.e., embedded in arrays of farmland. The using these lands for agricultural purposes are not always impossible. Such differentiations is not strength, but strictly take into account the need for effective agricultural production as land, appropriate to their natural, physical and economic properties of the immediate requirements of the crop and the land that serve as operational basis for the spatial location of numerous industrial facilities serving agriculture. It should be noted that the lands of agricultural use of such settlements do not fission, is not legislatively defined composition and structure that can be said for other categories of land resources.

Second, Section 6, Art. 97 of Land Code of the Republic of Kazakhstan define the purpose of use of agricultural land. These include: the management of commercial agricultural production, including farm or farming, forestation, development of private farming, gardening and dacha construction, scientific research, development and training objectives, management subsidiary agriculture, horticulture and animal husbandry. This list is exhaustive and is not subject to broad saying. The conditions of use of agricultural land use settlements, forest and water funds are not regulated by law. In accordance with Section 2, Art. 1 of Land Code of the Republic of Kazakhstan legal regime of land is determined on the basis of their belonging to one category or another, and permitted use in accordance with the zoning of land (territory).

Third, the land laws provided for the principle of priority agricultural land that is not in relation to other categories and types of land. It should be noted that the land of forest and water resources, defense, individual parcels of land are protected areas can be used for agricultural purposes, for example, for haying, grazing of livestock. This use may only be temporary. In the legal literature uses the terms «agricultural land», «agricultural land use», «agricultural land». The latest content is the most concise, needs an

appropriate legal clearance. In our opinion, the use of various categories of land for agricultural purposes is not grounds for their inclusion in the farmland, the spread on their usage and protection of these lands. For example, the procedure and conditions for use of lands of forest fund is regulated in detail by the forest legislation. In relation of them do not apply the principle of special protection of farmland. Therefore, the mechanical inclusion of non-agricultural land categories are temporarily used for agricultural purposes in the agricultural land is unacceptable. In the disclosure of the legal regime of agricultural land occupies an important place the principle of priority of this category of land over the others. The question arises - what is expressed priorities, and how it is provided? According to A.H. Hadzhiyev's point of view «its fixation in the legislation due to the value of one category of land as the main means of production and the conditions of agricultural production, the main factor in ensuring food security of the population». In terms of market time, he has a tendency to continuous improvement and strengthening, which follows from the objective need of transformation and the formation of a new type of land relations in agriculture, land laws in a whole series of previously unknown rules setting higher and special requirements for protection and use of agricultural land». [15, p.98] Agreeing with this view, we believe that it requires further legislative gain in mind, often unjustified inference of their agricultural use of farmland.

Suggestions on the improvement of legislative regulation of agricultural land

From the meaning of existing land laws, giving priority to agricultural land provided by the following legal regulations.

First, these lands are used primarily for agricultural production and other agricultural needs.

Second, the law limits prescribed in the turnover of agricultural lands. Before 2003, before the Land Code of the Republic of Kazakhstan was government owned, now they can be privately owned only by citizens and non-state entities of the Republic of Kazakhstan.

Third, the law provides for supplementary duties from the owners and users of agricultural land for their content. This is evidenced by the rules arising from section 4, Art. 99 of Land Code of the Republic of Kazakhstan. It is the duty to respect the established pattern of alternation of crops on irrigated lands trained engineers, conducting the necessary reclamation and restoration work, including maintenance, as appropriate, existing in the area of irrigation and drainage systems.

Fourth, it is not always allowed the removal of these lands for agricultural needs. For example, according to Art. 90 of Land Code of the Republic of Kazakhstan provides that the removal of irrigated agricultural land, land of experienced field research and educational institutions of the agricultural permitted only in exceptional cases. These exceptional cases, the legislator considers the establishment and expansion of protected areas, implementation of international commitments, the discovery of a section of the deposit of valuable minerals, roads, power lines, communication lines and pipelines, engineering and communication networks, public settlements, and as objects of state significance. Withdrawal of the above land may, in the absence of other options for the possible deployment of these objects.

Fifth, when seizure of farmland for nonagricultural purposes shall be reimbursed the «special» damages, namely the loss of agricultural production.

It should be noted that the Land Law there is another important principle of «special protection of agricultural land». The question arises - what is the ratio of the principles of «priority agricultural lands» and the «special protection of agricultural land»? It should be noted that in the legal literature, these principles are perceived as synonyms, are equated with each other, and often the principle of special protection of agricultural land, ignored that, in our opinion, and is not entirely correct. Moreover, we believe that the principle of special protection of agricultural land requires a specification and amplification. This principle follows from Section 3, Art. 97 of Land Code of the Republic of Kazakhstan, which explicitly states that «agricultural land subject to special protection. The use of these lands for purposes not related to agricultural reduction is allowed in exceptional cases».

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