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CONTENT

ANALYSIS OF LAND OWNERSHIP IN FOREIGN LAW: CONCLUSIONS AND RECOMMENDATIONS FOR THE REPUBLIC OF KAZAKHSTAN

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Annotation. Buying and renting land are the most common ways of transferring land ownership and land use rights, often in modern conditions in order to consolidate farms and create economically more stable farms. They constitute the most important elements of the land market and, as such, are subject to civil law and in many, if not most, cases of state regulation, the latter being determined by both national specifics and more general factors such as land security and the desire to keep the land viable farms.

Keywords: land law, land lease, legislation of Kazakhstan, property rights, foreign law

Introduction. From the date of getting independence the most relevant issues for state and whole society are questions about regulation of land relations.

According to leading Kazakh scientists in the field of land law, positive perspectives for the development of Kazakhstan's society depends on the appropriate choice of the economic and legal concept of interaction between the state, society and the land market. This is a meaningful task facing behind society of Kazakhstan [1, 12]. In order to solve these tasks, it is necessary to research meticulously the progressive foreign experience of regulating land relations.

Regulation of agricultural land is given special attention by the state as the most socially significant object, the main purpose of which is to produce agricultural products. The current state of regulation of land ownership relations in foreign countries is the result of a long evolution associated with the restriction of the rights of private owners for the benefit of the entire society.

At the present time relevance of the problem is caused by the need to resolve issues with reference of the announcement of a moratorium and the suspension of certain norms of the Land Code of the Republic of Kazakhstan regarding the sale and transfer of agricultural land.

In a message to the people of Kazakhstan dated October 5, 2018, the First President, Elbasy, the Leader of the Nation, Nursultan Nazarbayev hand out assignment to create a unified information database on the land fund and real estate, focusing on the need to restore order and transfer land to real investors. On September 2, 2019, Head of state Kassym-Jomart Tokayev set the task of attracting foreign investment in agriculture, more efficient use of land resources, and confirmed the restrictions associated with the sale of land to foreign residents.

In the Republic of Kazakhstan, the institution of private ownership of agricultural land was introduced in 2003 with the adoption of the Land code. In Kazakhstan, the total area of agricultural land is 217 million hectares. At the same time, agricultural land constitutes 105.2 million hectares, of which only 1.4% is privately owned. In that way, the reserve lands amount to 96.7 million hectares, this indicates that there is a significant potential for their involvement in the market turnover.

Private ownership of agricultural land, as an integral and mandatory attribute of market relations, has not received the expected spread in Kazakhstan.

The issue of ownership of land in Kazakhstan is the most socially vulnerable, so it is necessary to grant land ownership taking into account national interests. In particular, in 2016, after making a number of amendments to the land legislation and announcing the start of auctions for agricultural land, a number of rallies were held across the country. For the most part, this happened due to the incorrect reporting to the population of information on the amendments made and the lack of understanding by citizens of the essence of the land reform. However, this indicates the need for a more sensitive approach to the consideration of issues of agricultural land lease.

In this regard it is necessary to carefully and selectively refer to foreign experience in resolving these issues. This is the purpose of this research. The obtained results should have practical benefit and be implemented in subsequent legislative work.

Research methodology. The methodological base of the research is based on the methods of empirical (observation, comparison, measurement) and theoretical (abstraction and concretization, induction and deduction, systematization and interpretation of facts) research.

In order to comprehensively analyze some of the problems of protecting land ownership, we have undertaken an analysis of the legislation of the OECD countries, as well as other foreign countries. In addition, the content of research materials of foreign scientists-lawyers, specialists in the field of civil and land law was studied. Hereby, the methodological basis of the research includes: system analysis, comparison, theoretical and legal forecasting.

Research results. From the experience of foreign countries the experiences of the OECD countries have primary interest for the Republic of Kazakhstan. In this regard, the study is intended to focus on the experience of OECD countries in the first place, and only where necessary, on the experience of other countries.

Under Hungarian law, the concept of land ownership is defined as:

- norms of land law contained in the Constitution of Hungary, laws and subordinate legislation on land relations;

- land legal relations that are formed between the subjects of property rights and other persons- holders of land rights and obligations;

- rights of land owners.

The General provisions of § 9 of the Hungarian Constitution also constitute the basis for the legal regulation of land ownership relations. In accordance with clause 1 of this paragraph, the Hungarian economy is defined as a market economy based on the existence of public and private property, which are declared equal and enjoy equal protection.

Land ownership relations are regulated in the civil code of the Republic of Hungary. In § 97 of the civil code, it is stated that the owner of the land owns the right of ownership of the building. In cases stipulated by law or a written agreement concluded with the land owner, the property right to the building may belong to the developer. The civil code establishes the right of pre-emptive purchase of a building by the **owner** of a land plot, as well as the right of pre-emptive purchase of a land plot by the developer.

The concept of «land ownership right» also implies a subjective right to exercise the powers of possession, use and disposal, as enshrined in chapter X Civil Code of Hungary.

Within the limits of their authority, owners own, use and dispose of their land. They have the right to perform certain actions in relation to the land or not to allow them to be performed.

Individuals have the right to have land plots in private ownership for personal or farm management, for personal subsidiary farming, gardening, growing grapes, nuts, activities in the forestry sector, as well as for housing, garage and dacha construction.

Grave restrictions on the purchase of real estate in Hungary are provided only for agricultural land and protected areas (vineyards, orchards, meadows, pastures, reeds, forests, fishing lakes, etc.).

In this regard, it should be noted that in December 2010 the European Commission confirmed the right of Hungary to set restrictions on the acquisition of agricultural land by foreign citizens for a further 3 years. Thus, for foreign legal entities and individuals in Hungary, there are appropriate restrictions on the acquisition of agricultural land in Hungary. However, there are certain exceptions that allow both legal entities and individuals from states that are not members of the European Union to acquire ownership of agricultural land on the territory of Hungary. In particular, persons from third countries have the right to acquire ownership of agricultural land and land protected areas in the case of legal inheritance.

As a second exception, we can consider the right of foreign persons, but in this case only from EU member states, to acquire ownership of agricultural land in cases where they intend to live in Hungary and carry out agricultural activities as independent entrepreneurs, provided that they have already lived continuously legally on the territory of Hungary for at least three years.

Similar restrictions apply to the right to use agricultural land. However, legal entities and individuals from third countries have the right to conclude land lease agreements for a period not exceeding 20 years, and for a plot of land not exceeding 300 hectares. In this regard, it should be noted that in practice there is a conclusion of so- called «pocket contracts» for the acquisition of agricultural land by foreign persons on the territory of Hungary. These contracts are not officially registered in Hungary and are concluded in violation of the country's rules. According to some expert estimates, about 30-40 % of all agricultural land in Western Hungary has already been sold to foreigners [2].

In Germany, according to section § 903 of the civil code, the owner has the right to dispose of a thing at his own discretion, if his ownership is not restricted by law or the rights of third parties. German civil code does not give a legal definition of property rights, but speaks about its content, defining property through the rights of the owner. The civil law concept of property differs from the constitutional legal concept of property established by article 14 of the Basic law of Germany. The basic law guarantees not only the right of ownership of a thing, but also all subjective rights to property, thereby guaranteeing the right of ownership.

Ownership of the land includes both the right to space above the surface of the land and the right to subsoil located under the land, but does not cover the right to groundwater flowing under the land, except for artificially supplied water.

In German law, the basis of the institution of real estate is the legal regime of the land plot, while objects not covered by this regime are considered, from the legal side, movable things. However, the BGB does not provide a direct explanation of these terms.

According to §94 BGB structures and things that are firmly connected to the land are among the essential components of the land plot. Thus, buildings and houses are inseparable from the land plot. Other property traditionally related to real estate is equated to it by law. In particular, E. R. Furich indicates the right of development, the right of ownership of the apartment [3, 38]. Therefore the legal status of ownership of an apartment is equated to a land plot.

In Germany, constant monitoring of any changes in ownership or lease of farmland is maintained. The transfer of rights to any agricultural land requires special permission, which is necessary in three cases: when this transfer of rights leads to an undesirable distribution of land, for example, the transfer of farmland to non -agricultural uses, which is usually considered undesirable. If there are several people who want to buy or lease land, preference is given to the one who is already engaged in agricultural production. The other two reasons for limiting land management are to avoid undesirable fragmentation of plots (plot shouldn't be less than 1 hectare) or excessive concentration of land (maximum 400 to 500 hectares). However, this does not apply to the Eastern lands (former GDR). As for the lease of land, it is subject to the same restrictions as the purchase.

In ***the United States***, the institution of land ownership came from the UK, which led to its uniform understanding and application in almost all states. But over time, the influence of the continental model of this institution on state law has intensified. The degree of influence varies from state to state. This influence led to "the Europeanization" of the English Institute of Property Law. This was very clearly manifested in the laws of the state of California. The Civil Code of the State California gave a legal definition of ownership, which is not typical for state law. Unlike Great Britain, in the USA there is no sole absolute owner of the land (like the monarch in England).

Land as a natural object involved in the system of public relations has certain physical, industrial, technological and other characteristics and signs, which, when reflected in law, acquire legal significance. These properties of it significantly affect the nature of the rights and obligations

of subjects of the right to use and determine the content of legal relations regarding the use and protection of land resources.

The desire of the legislator to maximally link the content of rights and obligations with the objective properties of land is manifested in US law. As well as in the principle of regulating its use in limited territories - in areas within which the lands have similar socio-economic characteristics. Especially this principle manifests itself in the regulation of the use of agricultural, moist, marshy and other lands important from an environmental point of view [4].

The legal literature of the Soviet period rightly emphasizes that in the United States by the end of the twentieth century a new legal community has emerged, which is referred to in the American legal literature as "Land use control" or "Land use law," in other words, legal regulation of land use. Unfortunately, the legal nature of the legal community in the Russian (and Kazakhstan's) literature is still unexplored.

At the same time the study of the scientific literature, legislation and judicial practice of the United States allows us to make an unambiguous conclusion about the objective trend of becoming a relatively independent institution of land use law in the legislation. and not about the modernization of private property law, which turned out to be socially ineffective in the traditional civilian version. The differences between the right of ownership and land use is confirmed in legislative practice by the introduction of new concepts, such as the right to development, concept "land user-entrepreneur" and etc.

Right of the ownership of land in ***Canada*** belongs to governments, indigenous groups, corporations and individuals. Canada is the second largest country in the world by area; for 9,093,507 km2 or 3,511,085 miles of land (and more, if you do not take into account fresh water), it occupies more than 6% of the Earth's surface. Since Canada uses mainly English common law, land owners actually have land ownership (permission to own land from the crown) and not absolute property [5].

The largest landowner group is provincial governments, which hold all unclaimed land in their jurisdiction. More than 90% of Canada's stretched boreal forest is the provincial Crown Lands. Provincial Lands account for 60% of Alberta, 94% of land in British Columbia, 95% of Newfoundland and Labrador, and 48% of New Brunswick [6].

In Canada, most mineral rights belong to the royal authority, that is, the "Crown", but the degree of ownership of the Crown varies from province to province. While a provincial government has general authority over its natural resources, federal jurisdiction may overlap these provincial responsibilities. Examples of this include when indigenous peoples are affected, if the project crosses provincial or international borders, or when the project is carried out on the shelf. When overlapping jurisdictions occur, both federal and provincial regulators may be involved.

The Canadian Constitution recognizes three groups of indigenous peoples: the natives, mestizos, and Inuit people. Land tenure that has been recognized as a contract or dispute settlement agreement between these groups and the federal and / or provincial governments is generally owned by the governing body of the group and is akin to crown tenure.

The Canadian land law is related to the nature of land ownership law [7]. Legal definition: "Land" includes land of any tenure, as well as mines and minerals, regardless of whether they are kept separate from the surface, buildings or parts buildings (regardless of whether the division is horizontal, vertical or in any other way) and other material inheritance rights. Also the estate and rent and other incorporeal inheritance rights, as well as the easement, right, privilege or benefit, in excess or received from the land.

Conclusions. Thus, most foreign countries exercise fairly tight control over the land market. At the same time, there are countries with a much more liberal land market regime - this refers to land trade and rent, although there are also restrictions on the withdrawal of agricultural land from circulation, taxation, inheritance rights and other factors. But the market is more liberalized there. It affects both national traditions and the availability of land resources. These

countries primarily include the USA, Australia, Canada. Somewhat less control is also in the UK, Belgium and Greece. However even there the state reserves the right to intervene, for example, from an environmental point of view. For example, in Australia, where most of the land is state property, the issuance of permits for its use or leasing is subject to the observance by farmers of the relevant rules for the use of land, in particular, erosion control and prevention of desertification.

Even in the United States, with its liberal regime, in the most developed agricultural areas, the state at the legislative level prohibits non-farmers from acquiring agricultural land. So, in 13 of the most agriculturally important states of the Midwest, legal entities are prohibited from buying agricultural land. However, if farmers themselves create any associations that have the status of a corporation under American law - for example, family corporations where the farm is owned by family members, then this restriction does not apply to them. The meaning of the law is to prohibit the purchase of land by non-farmers or the potential withdrawal of this land from agricultural circulation.

In most countries there is no juxtaposition of land ownership and leasing. For example, England is a classic example of the state of the farming on leased land. In France 50% of the land is leased and in Belgium - 66% of the land is leased. And in all these states has been achieved a high level of agricultural production intensity.

In general, we can conclude the desire of many states to extend lease terms and stabilize rental rates.

This experience can be integrated in the Republic of Kazakhstan only if certain national characteristics are taken into account. Thus, the introduction of partial restrictions for foreigners on the ownership of agricultural land on a rental (sublease) basis can give significant results. Along with this, it is possible to provide the opportunity to carry out investment activities by this category of entities into existing Kazakhstani agricultural enterprises, as well as into business entities owned by Kazakh citizens. This will allow, firstly, to limit foreigners from direct ownership of land in Kazakhstan, and secondly, to leave the opportunity for foreigners to invest in agriculture of the Republic of Kazakhstan and increase the turnover of agricultural land.

Thus, based on the data obtained during the research, a number of general conclusions and recommendations can be made for the subsequent implementation of foreign experience in the legislation of the Republic of Kazakhstan.

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