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**Some of the legal regulation of
land relations in the Republic of
Kazakhstan**

Land Law of Kazakhstan – one of the fastest growing areas of law. Trends, the dynamics of land legislation reflect the legal and political will, conceptual approaches of power on the land issue and, ultimately, are the legal expression of objective processes in the land sector. Conceptual foundations of modern land – legal policy defined by the Constitution of the Republic of Kazakhstan dated August 30, 1995, based on scientific analysis of legislation the author reveals the specific features of the legislative provision of land law in modern Kazakhstan.

From the standpoint of the stability of society, sustained and sustainable development of the land issue is not only socio-economic but also a special political significance. On this basis, providing quality and effective legal regulation remains quite urgent task of jurisprudence and legal policy. Land law has always occupied a special place in the legal system, but in the context of increasing the scale of economic turnover of land, involving land and land rights in the sphere of the market, its socio – regulatory value increases.

Key words: land, land law, land law, land management, legal regulation.

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**Қазақстан Республикасындағы
жер қатынастарын құқықтық
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ҚР жер құқығы – динамикалық құқық саласы дамуының таралған бір түрі. Жер мәселелері бойынша тұжырымдамалық тұрғыдан жер заңнамаларының даму динамикасы, тенденциялары саяси-құқықтық еркіндікті бейнелейді, қорытындысында жер саласында объективті процестердің заңды маңыздылығына мән беріледі. 1995 жылғы 30 тамыздағы Қазақстан Республикасы Конституциясында қазіргі жер-құқықтық саяси тұжырымдамалық негізі айқындалған. Жер мәселелерін дамытудың үдемелілігі мен тұрақтылығы, тек қана әлеуметтік-экономикалық ғана емес, бірақ қоғамдағы тұрақтылықты қамтамасыз ету тұрғысынан саяси мәні ерекше. Яғни, бұл дегеніміз құқықтық реттеудің тиімділігі мен сапалылығын қамтамасыз етудегі құқықтық саясат пен құқықтық ғылымның өзекті міндеттерінің ауқымдылығы болып қала береді. Құқық жүйесінде жер құқығы әрдайым ерекше орын алады, бірақ жердің шаруашылық айналымы көлемін күшейту шартында, нарық саласында жерге құқық пен жерді игеру, оның әлеуметтік-реттеуші мәні өсуде.

Түйін сөздер: жер, жер құқығы, жер заңнамалары, шаруашылық жер, құқықтық реттеу.

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**Некоторые вопросы правового
регулирувания
земельных отношений
в Республике Казахстан**

Земельное право РК – одна из наиболее динамично развивающихся отраслей права. Тенденции, динамика развития земельного законодательства отражают политико-правовую волю, концептуальные подходы власти по земельному вопросу и, в конечном итоге, выступают юридическим выражением объективных процессов в земельной сфере. Концептуальные основы современной земельно-правовой политики определены Конституцией РК от 30 августа 1995 г. На основе научного анализа законодательных актов автор выявляет специфические черты законодательного обеспечения земельного права в современном Казахстане.

С позиций обеспечения стабильности в обществе, поступательного и устойчивого развития земельный вопрос имеет не только социально-экономическое, но и особое политическое значение. Исходя из этого, обеспечение качественного и эффективного правового регулирования продолжает оставаться достаточно актуальной задачей правовой науки и правовой политики. Земельное право всегда занимало особое место в системе права, но в условиях усиления масштабов хозяйственного оборота земель, вовлечения земель и земельных прав в сферу рынка, его социально-регулятивное значение возрастает.

Ключевые слова: земля, земельное право, земельное законодательство, земельное хозяйство, правовое регулирование.

**SOME OF THE LEGAL
REGULATION OF
LAND RELATIONS IN
THE REPUBLIC OF
KAZAKHSTAN**

Desirable and undesirable degree of state intervention in the economy of the country has long been a subject of lively debate almost in all countries of the world. In the USSR, the conflict of opinion on this subject was largely an abstract exercise. Under the domination of the Soviet Union in a planned economy, the state's monopoly on the land and on all means of production and in the conditions of the ban private enterprise market economy in general and the market turns to the land in particular, was not only encouraged, but in most cases were directly illegal.

From the standpoint of stability in society, progressive and sustainable development of the land issue has not only economic and social, but also has a special political significance. On this basis, providing quality and effective legal regulation remains quite urgent task of legal science and legal policy. Land law has always occupied a special place in the legal system, but in the context of increasing the scale of the economic turnover of land, involving land and land rights in the sphere of the market, its socio – regulatory value increases [1].

The land legislation of Kazakhstan is developing quite dynamically. The reforms in the economy, the transition to a new system of property relations, the changes in land turnover led to a need for a substantial upgrade of the entire system of land legislation. During the years of independence have been taken –land law of Kazakhstan dated November 16, 1990. Decree «On Land» of 22 December 1995. Law «On Land» dated January 24, 2001., land law of 20 June 2003. [1, s.72-84]. The land legislation of the Republic of Kazakhstan in its development passed four stages. The basis of division into stages is the main focus of functional target of legal acts on the key issues of land reform. The first stage (1990-1993.) is characterized by the design of the political and legal foundations of a new land system based on LL RK Kazakhstan dated 16 November 1990 and the Presidential Decree. In the second phase (1993-1995 gg.), special presidential decree lays the beginning of market regulatory framework of land reforms: fixed the principles of sustainability and market turnover of land use rights, the legal framework of transition to non-government commodity agricultural production on market principles. The third stage is connected with the Constitution of the Republic of Kazakhstan from August 30,

1995 and the Decree «On Land» dated December 22, 1995 is a turning largely dominant in the legal foundations of the market land relations. The fourth stage, the adoption of the Law «On Land» dated January 24, 2001, unfortunately, has begun the process of departing from a number of market and social principles to the land and the legal regulation [2].

Modern, fifth stage dates back to the adoption of Lan Law from 20 June 2003. Land code contains fundamental innovations with respect to a number of institutions of the land law. First of all, highlighted the changes related to the introduction of private ownership of agricultural land, with the establishment of new legal parameters of the acquisition, ownership, use and disposal of agricultural land. Go to the market, the need for the involvement of land into circulation led to the need to consolidate the regulatory system of property rights on the land. Real rights on land expresses the property aspects of land relations, including various legal ways of implementing ownership, implementation and the impact of owning the land. Despite the absence of previous land law term «property right» in certain types of property rights, as a land easement in the form of livestock paths of temporary (seasonal) use, land use rights, land tenure rights of citizens, farms were known to the legislation from the Soviet era [3].

This basic legal act does not eliminate the deficiencies, retreats, and in some aspects, on the contrary, deteriorated further legal regulation of the previous settings. But overall, if you generalize the results of the formation and development of land laws, it can be argued that the right to set up his rod towards the legal basis of market land relations. It is possible to talk about the reception (or repetition due to the similarities of socio-economic conditions and prerequisites of reforms) in the Kazakh land and agrarian law of the main approaches and positions of the East European doctrine of legal support of land reform.

It should highlight the procedural aspect of the implementation of land rights. That is a key factor in the development of land relations, ensuring its social orientation. Meanwhile, the process of acquiring land rights is facing serious shortcomings, from the stage of consideration of accounting and entities on the allocation of land plots: the abandonment of appeals and petitions without consideration; violation of terms of consideration, the mandatory registration of applications. The justice of the subjects of land relations formed prejudice on the corrupt nature of land relations. So often actors in the implementation

of their land rights are adjusting their actions on the basis of the presumption of corruption land management, administrative actions. This in itself creates a favorable background set forth for offenses of corruption in the land sector. If we talk about the administrative aspect, the main contradiction in the system of state regulation of land relations is that the inevitable specialization of management is not accompanied by giving them the appropriate powers and clear separation of functions. It does not provide a functional balance between the structures of the management system, based on the goals, objectives, nature of the interacting structures. It not fully implemented the principle of independence of the control – supervisory functions from the executive body.

Outlined the legal situation increases the likelihood of corruption in the process of disposal and privatization of agricultural land fund. Under the guise of protection and realization of the public interest may be inconsistency in ensuring the full scope of the rights and interests of the owner of property (land user). Here found socially unjust, and so methodologically flawed regulatory structure «to ensure the public interest by the infringement of private interest.» It forgets that any public interest, ultimately serves the epitome of private interest. The law is viewed lack of consistency to the principles of private property. LL, on the one hand, greatly expanded the boundaries of private property rights, on the other hand – significantly weakened guarantee its effective functioning and protection. «Truncated» construction of private property rights dilutes the essence of the property – the possibility of disposal of the object of ownership. It is inconsistent with the right to fair compensation [4].

Consistent application of market mechanisms, except for the limitations of social orientation, should be defined as the structural foundations of creation, change and termination of the right of private property and private land.

The framework of legal regulation of the land and must be based on the methodological problems of finding and fixing the conceptual and theoretical law and legal methods of interaction models of legal regulation. On the basis of the general laws of legal mediation of market relations is acceptable, the following approach: a method of a private regulation in the sphere of land relations should be present to the extent that it does not infringe on the fundamentals of land system, the public interest subjects of land relations; method of public regulation may mediate land relations to the extent that it does not violate the essence of a private mediation of land relations, its

market, property orientation. The modalities for the conversion of the legal possibilities a reality right [5].

At the present stage of development of land laws have neither the one nor the other. The current land legislation avoids consistent application of a private method of regulation. At the same time there is a full and public regulation. Many contradictions and reasons leading to decrease in the social, regulatory effectiveness of the land legislation, connected with this issue unresolved.

State regulation of land relations – a system of measures aimed at ensuring the efficient and effective use of land, its protection, reproduction and improvement of soil fertility, preservation and creation of people-friendly environment, to protect the rights of ownership, possession and use of land by carrying out a complex of organizational, legal, economic measures.

With the development and changes in land relations functions of the state also does not stand still – evolving, changing and improving. For example, some of the features appear as a completely new, some may fall away, from the third can identify a number of new features, and so on. State in the exercise of its activities appeals of functions, using both individual and collectively, but at the present stage the question of the amount (volume) of the functions is not so important as the question of the classification of the last ones [6].

In Kazakhstan it is difficult to determine which bodies perform general, special and other functions in economic, legal, organizational ensuring the protection and rational use of land, payment for the land. We are guided by the traditional system, the corresponding theory and the spirit of national legal authorities. This legislative, executive and judicial bodies. The 1993 Constitution was first adopted the division of state power into legislative, executive and judicial branches, as one of the foundations of the constitutional system. To date, adoption of the law of constitutional norms was getting rid of the organization of the totalitarian state, built on the basis of the unity of the party and class ideology. On the other hand, the separation of powers is objectively justified by public regulation of socialist social relations. In Kazakhstan, the separation of powers is not simply the separation of powers of state bodies. Each branch of the government in the industry has a high state leadership and independence [7].

In our opinion, ordering state agencies and their functions is the guarantor and the guarantee of successful development among them land and legal relations. Let us consider these features.

The first place is occupied by the legislative bodies, which play an important role in the state-legal mechanism of the system.

The adoption of the Land Code of the Republic of Kazakhstan marked the stabilization of the legal framework of land relations, has opened a new stage of land reform on the basis of state and private ownership of land. The presence in the Land Code of the whole system of norms that perpetuate the social function of land ownership, shows the potential of the new codified act on transformation of land relations, without the costs of a social nature.

Also, the President of the Republic of Kazakhstan Nursultan Nazarbayev in his message to the Nation «Improving the well-being of citizens of Kazakhstan – the main goal of state policy» set the strategic goal of entering our country in the top fifty most competitive countries of the world, social modernization and innovative development of the economy, the growth of the welfare of all citizens countries.

However, we can agree with A.H. Hadzhiev's opinion, who emphasizes the lack of authority of the Agency for the implementation of its functions to implement the land policy. The powers curtailed in favor of the local executive bodies. This assures a comparative analysis of the norms of item 14 of LC, the Regulation of the Agency of 14 January 2005, on the one hand, and item 14-1, 16 LL – other.

Also, the lack of a unified inventory, which includes land and property records, creates certain difficulties in the formation of a unified state information resources for the projects of land-property complex, creating an environment of introducing a single tax on real estate and simplifying the procedure of state registration of real estate [8].

At the moment there are no legal acts regulating the planning and organization of the territory, the development of which would contribute to the rational use and protection of land resources potential and allow to streamline the implementation of land transactions (purchase and sale, lease, mortgage, and so on.) That respectively, would improve the level of state regulation of the land market.

At the same time for the scan points to the poor state of work on the monitoring of land in the country. Geographically-zonal network of stationary observation points are not fully established, and does not cover all types of soil. The observations are carried out regularly, violated the requirements for the frequency of observations are not always carried out the entire complex of necessary work. Virtually

no maintenance monitoring of natural fodder lands of the country.

Without a unified system of monitoring of land appeared information about the status of land obtained in the conduct of monitoring by other agencies, particularly the Ministry of Agriculture of the Republic of Kazakhstan and the Ministry of Environment of the Republic of Kazakhstan.

In addition, in accordance with environmental legislation in the country carried out production monitoring land. This kind of monitoring is carried out by legal entities – of natural resources, that the findings are not submitted to the Agency for the maintenance of a single land monitoring.

Provide a scientific basis of the principles, objectives, structure and content of the legal, fiscal and multipurpose cadastre were provided in the concept of the development of scientific and methodological foundations of the monitoring and management of land resources, but the Agency in accordance with the legislation is not approved and not coordinated with other relevant government bodies.

The lack of a unified inventory, which includes land and property records, makes it difficult to form a unified state information resource for the projects of land-property complex.

Improving the quality of the level of state regulation of the land market to a large extent depends on the establishment of all kinds of payments for the land depending on its cadastral value, which should ensure the optimization of tax and rent, to improve and simplify the system of mortgage operations and improve the effectiveness of state regulation of the land.

To sum up, it should be noted that the current land legislation has tended to repel the specificity of land relations. Land – is not only real estate, but also an important natural resource that must be used with great caution, which makes both possible limitations of land turnover and its subordination to certain rules, and the establishment of stringent rules governing the use of this type of property [9].

The terms of the state bodies, which are the subjects of management relations in the land sector is not limited to the above authorities. You can agree with A.H.Hadzhiev's: «In a broad sense, the subjects of management of land relations are the all organs of the state, vested with legislative, executive and administrative, supervisory, regulatory and enforcement powers. The extent and forms of their participation in the management of land fund vary significantly, directly depend on the nature and the specific aspects of the regulation of land relations».

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