

Teisės aktualijos

FUNDAMENTAL PRINCIPLES OF THE LAND LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

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The article deals with analysis of the principles of the land legislation of the Republic of Kazakhstan. Particular attention is given to the study of existing legislation in this area, revealing its gaps and development of recommendations and proposals aimed at improving the existing land laws.

As you know, one of the main features of any branch of law that distinguish it from related industries is the legal system of its principles. Although the principles of law are not primary features as an object, the method of regulation for the legal industry, but perform no less important, an essential role in the separation of the industry, identifying its essence and meaning in the law.

Under the legal principles we understand the basic ideas, start position, expressing the essence of a particular branch of law and enshrined in its rules. Normative establishment is obligatory indication of the legal principle, because the existence and justification of certain ideas, provisions of law regarding the substance without regulatory consolidation is merely a scientific

abstraction, the opinion of scholars or different segments of the population regarding the content of this or that branch of law, and only their reflection in sources of law system of law makes a truly fundamental principles of law provisions of the industry. Thus the system of fundamental principles of the industry is an expression of the holistic nature and the functional independence of branches of law [1, p. 27].

The guiding principle in the legal system is the principles of legal regulation [2, p. 27]. From this it follows that, under the principles of land law understood the basic beginnings, guiding ideas that characterize the content of the land law, its essence and purpose in society, on the basis of which public land relations that occur in everyday

life are constructed. The principles of land law determine ways to improve the law, acting as ideas for the legislator. They are the link between the basic patterns of development and operation of land relations and the legal system. Due to the principles, legal system adapts to the most important interests and development of land reform.

Principles of land use – scientifically based, rational use and protection of land resources, various forms of ownership – are enshrined in the Constitution.

O. I. Krassov, considering the principles of modern land law distinguishes several major groups: the first group includes principles that provide a balance of public and private interests in the regulation of land relations, the second group of principles of land law – principles that ensure the public's economic interests in the regulation of land relations; to third group is defining the scope of the principle of land law and land law, respectively, as an independent branch of law [3, p. 42].

As noted by A. H. Hajiyeu, in the formation of this branch of law, undoubtedly, involved general legal principles and interbranch: the priority of international law, democracy, humanism, social justice, legality, supremacy of law, a combination of public and private interests, the unity of the legal rights and duties, etc. However, the nature and characteristics of the land law are the most clearly appear in the legal regulation of such principles, which are mainly or exclusively inherent characteristic of this sector [4, p. 33].

As rightly underlines, A. H. Hajiyeu, the system of principles of land law has a number of the regulatory – the functional qualities:

- 1) Directly regulates land relations;
- 2) Is a means of overcoming the gaps and contradictions in the regulation of a specific legal ground;
- 3) Determines the main directions, serves as a reference for the rule-making and improving law enforcement;
- 4) Provides a systematic land – legal regulation;
- 5) Serves as an indicator of compliance with legal land policy of socio – economic interests of the subjects of land relations [5, p. 36].

Under the conditions of formation of the land legislation of the transition period set forth in the land laws principles for the preservation of land as a natural resource, basic life and work, environmental safety of the people of the republic, land use management, the priority of agricultural land are objectively determined beginnings which should correspond to the legal regulation of relations ownership, land use rights and other rights in land.

One cannot but agree with Z. H. Kossanov that at the same time in the national legislation does not adequately reflect the relationship, the hierarchy of the principles of land law, which is of great importance for the understanding of the legal regulation of land and property rights to land [6, p. 82].

The legislator in Article 4 of the Land Code of the RK identifies the following principles of land law:

- Integrity, the inviolability and inalienability of the Republic of Kazakhstan;
- Saving the earth as a natural resource, base of life and work of the people of the Republic of Kazakhstan;
- Protection and rational use of land;

- Targeted use of land;
- The priority of agricultural land;
- Providing information on the condition of land and its availability;
- Public support for the use and protection of land;
- Prevention of damage to land or eliminating its consequences;
- Chargeable land use [7].

Chargeable land use was identified as a fundamental principle of reform and regulation of land relations in the formation and development of market economy. This principle is reproduced in the LC (Land Codex), among important principles of land law (Article 4 Section 10 LC). In order to concretization and implement a series of regulatory rules is dedicated to management issues of payment for the land. This principle was introduced by normative legal acts on land reform the early 90-years of last century.

Thus, in the land law system is fixed certain payments for land.

S. A. Bogolyubova opinion May be noted, who considered the concept of “economic mechanism of land use” [8, p. 104]. By understanding the economic mechanism as a mediated process, the right to regulate land relations through a series of economic and legal instruments (fees, taxes, benefits, prices, subsidies, etc.) highlights the regulatory functions of the economic mechanism, of the land relations participants (through economic sanctions and economic incentives) [9, p. 19].

Guided by the principles of the economic mechanism of land relations regulation, the following principles can distinguished:

1) the principle of chargeable land use;

- 2) principle of the possibility of transfer of land and land rights into civil circulation;
- 3) scientific validity;
- 4) priority to the use of measures of economic responsibility;
- 5) principle of equal preservation of private and public property, and their equivalence;
- 6) government regulation of land market;
- 7) the principle of integrity, the inviolability and inalienability of the territory of Kazakhstan;
- 8) principle of preservation of land as a natural resource, base of life and work of the people of the Republic of Kazakhstan;
- 9) the principle of promoting the rational use of land and prevention of damage to the land;
- 10) priority to agricultural land;
- 11) The State support for the use and protection of land.

With the global development of market economy payment for use of the land is a basic principle. Gratuitous use of the land did not stimulate the rational use of land, has led to a deterioration in ecological status of land resources of our country. At the core of principle of payment is economic value, that is the price. The monetary value of the land will provide an opportunity to justify the expense caused by unsustainable use of land, in comparison to other resources.

Of Art. 9 paragraph 1 of LC says that “Land owned, permanent or primary land-use without compensation, are subject to the land tax. For the land granted by the state for temporary compensatory land use (rent), will be charged for the use of land”. Thus, provides for two types of payments for the possession and use of the land: a) the land tax, and b) the rent.

But the starting position prior to the emergence of ownership (or land use rights), acts as the acquisition of the right itself. Ability to acquire land rights in the legislation specifies a number of conditions. Including in LC secured gratuitous and onerous form of acquisition of land rights, as well as a list of instances of their application.

At the same time is clearly visible that the onerous procedure defined the main method of granting land rights. On this basis, provided payment for the compensatory granting of the right of private ownership of land or land rights temporarily compensated. In LC, it is defined as a payment for the land when it is providing to private ownership, the state and the surrender of state land for lease. In addition to the LC highlighted fee for selling the right to lease land.

Consequently, the system of payments covers the acquisition, ownership and land use (land use right). According to the LC, the system of payments for the land consists of: a) The fee for the provision of compensatory land (right of land use), and b) the fee for the sale of lease rights to land, c) the fee for use of the land (rent), d) charges for possession of and use of land (land tax). From this list of payments to the Tax Code provides only for a) the land tax, and b) the fee for the use of land.

Already these regulations is enough to doubt the accuracy of the principle of payment for the use of land, full compliance with the content of the onerous land relations, as it embraces not fully reflect the full range of appropriately enough, and the spectrum of relations connected with the payments for the land. Indeed, as seen from the law, paid (reimbursable) basis is

not only the possession and use of land. For compensation acts, especially the provision of land (land rights). Compensatory beginning is also the procedure of registration of land rights, as provided for payment for performance of any legal action necessary to acquire land rights. In particular, the determination of the appraised value of land, edge detection and removal of the land, obtaining extracts from the record sheet of the inventory of legal encumbrances and restrictions on land, etc. At the same payments for the services specified in the order together form a fairly significant amount.

At this convinces the LC analysis of the content and the corresponding regulations. In this case the content of the legislation is clearly visible principle compensated solely for the purpose of providing land a commodity agricultural production. Thus, correct and accurate in fact be talking about the principle of retribution delivery (acquisition) and the use of land (land rights). Here we must pay attention to the following feature manifestations of this principle. Making land rights is always, in all cases is compensated. In contrast, the law allows an exception from the general order of repayable allocation of land plots (land rights).

The above principles are industry-wide and most of them run through the whole sphere of land relations. Despite the overall picture, we have tried to analyze the specific principles of disclosing payment for the use of land.

As already noted, the chargeable use of land has been allocated as a fundamental principle of reform and regulation of land relations in the formation and development of market economy. Proof of this is

to include it in the list of basic principles in Article 4 of the Land Code of the Republic of Kazakhstan.

The set appropriate legal rules and their interaction to ensure their level of legal relations of mediation fees for the land, the specificity and significance of the specified range of public relations says about the formation of the legal institution of payment for the land, as the rules governing the homogeneous species or whole community of social relations are combined into a single legal institution.

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Analysis of current legislation sets before science a number of problematic issues, both theoretical and applied nature: for example, the nature of the interaction and relationship between LC standards and rules of Civil Code, tax and financial legislation as part of the Institute of payment for land, industrial affiliation, structural components, and the last etc. Here we mainly restrict ourselves by legal analysis of the regulatory board of the Institute for the land, an assessment of their social and regulatory capabilities.

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