

Legislation on Private Property Rights to Land in the Republic of Uzbekistan: Main Stages of Development

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Abstract: The first stage is the ancient period, characterized by the period of the emergence of the first state formations before the spread of Islam in the territory of Central Asia. An outstanding monument of this period is considered to be “Avesto” - the sacred book of Zoroastrianism, which regulated the socio-religious and moral norms of that time. The second stage in the development of property rights begins with the conquest of the Arab Caliphate (8th century) until the arrival of Soviet power (until the 1920 y.), where civil law relations were regulated by the norms of Muslim law. The third stage includes the period of Russian rule in Central Asia (1860-1991) until Uzbekistan gained independence. The fourth stage includes the years of independence of the Republic of Uzbekistan (1991 to the present). The chosen new path of transition to a market economy required the implementation of property reforms and a fundamental transformation of land ownership relations. The trend of changing the content of private ownership of land is not reflected in the current Civil Code, Article 170 of which is limited to referring the regulation of issues of ownership of land and other natural resources to other laws.

Keywords: Private ownership of land, stages of development of private ownership of land, Roman law, Islamic law, National law and private ownership of land, Constitutional foundations of private property, reform of civil legislation.

Introduction

It should be noted that the study of the problems of development and improvement of civil and land legislation, the formation of property relations in the field of land use of the society, we consider it necessary to begin with an analysis of the history of formation and the main stages of the formation of land ownership, taking into account the socio-historical, socio-economic, climatic and legal prerequisites for the development of our state.

Materials and methods

The research used methods of comparative legal analysis, system-structural, historical, formal-logical, comprehensive research of scientific sources, induction and deduction, analysis of empirical materials, statistical data and others.

The results of the research

A number of works are devoted to general issues of formation and the main periods of development of ecological and legal relations in legal, socio-ecological and other specialized literature. In these works, the issues of the formation of civil law relations are studied at various stages and in various periods of development of the right of private ownership of land.

Exploring the essence of the right of private property in civil law, Sukhanov E.A. noted that appropriation is an attitude towards material goods as one's own, thereby alienating from other persons, i.e. this material good is one's own for someone, and someone else's [1, p. 7].

Initially, the sources of property as a set of goods satisfying personal interests could be either the occupation of "finished" goods, such as natural objects that do not need to be processed, or the process of creative labor within the framework of social production. Ownership as the actual state of the property (initially in relation to land) ensured the use and extraction of fruits, and provided the real domination of the owner over the land granted to him. Due to this, it is emphasized that the prescription of ownership and productive labor were the first ways to acquire ownership rights. However, if "actual domination" could be justified and protected only by the fact of the physical location (possession) of property in a person, then for the complete elimination of all other persons, as well as for their admission to the appropriated property (land), a stronger (already social) right became necessary – this is the right of private property [2, p. 15-16].

On the territory of modern Uzbekistan, land ownership relations have a long history, which can be divided into several stages.

The first stage - the ancient period, characterized by the period of the appearance of the first state formations before the spread of Islam in Central Asia.

The "Eastern way" of the emergence of states based on the so-called Asian mode of production is characterized by the fact that the basis of the economy was irrigation agriculture; land and irrigation facilities were the property of the state; the primary unit of society was the agricultural community [6, p. 27].

The Avesto, the holy book of Zoroastrianism, which regulated the socio-social, religious, and moral norms of that time, is considered an outstanding monument of this period.

The texts of "Avesto" also embody issues of property relations. The Avestan "Videvdat" mentions three types of property – personal, collective and state, although it is the legal norms regarding personal property that are developed in the most detail. In the fourth chapter of the "Videvdat", various types of collateral are considered (including the pledge of a sheep, bull, man and field).

In addition, earth, air, fire and water were considered sacred and norms of careful treatment and protection of them by farmers were defined. Studying the features of the legal norms set out in the Avesta, scientists specifically classify crimes against the forces of nature: against the earth, water, fire and flora, especially against pollution of the earth.

The second stage in the development of property rights begins with the conquest of the Arab Caliphate (VIII century.) before the advent of Soviet power (until the 20s of the twentieth century), where civil law relations were regulated by the norms of Muslim law in the prism of religious dogmas and postulates.

Property issues, as a rule, did not occupy an independent place in traditional treatises on Sharia, but were considered by Muslim lawyers along the way in connection with the development of other issues, such as ghanima (war booty), zakat (mandatory donation), inheritance division, some types of contracts [7]. The main concepts were considered to be "mulk" (property) and "mal" (property.) [8]. The definition of "property" is based on a religious interpretation, according to which all property belongs to Allah¹.

The land was considered the property of Allah, which no one can acquire except by inheritance from Allah². When people turn to property, they act as the vicegerents of Allah, acting as if on his behalf

¹ Пояснение: В сурах Корана говорится: «Ему принадлежит то, что на небесах и на земле, и то, что находится между ними и под землей» (20:6), «Аллаху принадлежит власть над небесами и землей и тем, что находится между ними, и Он над всем сущим властен» (5:120)

² Пояснение: «Ведь земля принадлежит Аллаху, Он дает ее в наследие, кому пожелает из свих рабов» (7:127)

[9]: Therefore, almost all non-refundable lands were considered the "common property" of Muslims, and the supreme owner of the land was the head of state [10, C. 68].

The methods of acquiring ownership rights were classified into initial and derivative ones. The initial beginning of the acquisition of ownership is permission: a person who has taken possession of property that does not have an owner and is permitted by Sharia acquires primary ownership of it, i.e. by virtue of actual possession. This principle is clearly manifested in such an institution characteristic of Muslim law as the "revival of the dead earth," as the Prophet Muhammad said: "The one who has cultivated land that does not belong to anyone has the greatest rights to acquire ownership of it" [11]. However, if a person did not use the "animated land" for three years, then the ownership right was terminated and transferred to the one who actually mastered it. It follows from this that Muslim law did not know the statute of limitations.

According to Muslim law, the owner owned the right of possession (kabz), the right of use (manfaat), the right to receive income (tam'lik) and the right to dispose of property [12, p. 13-14].

Also, the "Rules of Temur" also reflected property relations, where it says that "if someone forcibly took away another's property, let them take away the property of the offended from the villain and return it to its true owner" [13, p. 93].

In the feudal period, the basis of the economic production of the Central Asian region was considered to be a kind of feudal ownership of land, expressed in the following three forms of ownership:

- state lands (mulki amlyak, podsholik, mamlyak), which could be provided to dehkans for indefinite hereditary use and were taxed according to harvest (hirozh) and land size (tanop), as well as noble ("dead") lands. These lands could not be the object of civil law transactions, except by order of the ruler himself, the emir or the khan.
- waqf lands (lands under the administration of mosques and madrassas), which included land plots bequeathed by officials in favor of religious institutions for certain good purposes: construction of mosques, madrassas, libraries, assistance to the poor, etc. Such lands were withdrawn from civil circulation, but the manager of the waqf could provide land for rent.
- private lands (mulk lands) that belonged to private individuals: feudal lords, large officials – "mulki hurri kholis" (lands exempt from state taxes and duties) and small peasants, dehkans – "mulki ushri" and "mulki hiraj" (paying the treasury a tenth of the income).

The third stage includes the period of Russian rule in Central Asia (1860-1991) before the independence of Uzbekistan. The conquest of the region by Tsarist Russia led to the introduction of imperial laws in the regulation of property relations, along with the norms of Muslim law, imperial civil laws began to operate. Thus, according to the Regulation on the Administration of the Turkestan Territory of 1886, all lands were divided into public and private lands. Lands purchased by peasants and acquired under other legal acts, the lands of mulki hurri kholis, lands not belonging to the Tsarist government, and all other lands were established as state property were classified as private property.

Capitalist relations of production and industrialization gradually began to spread in economic circulation: industrial enterprises, partnerships, companies, and banks were organized.

The revolution of 1917 played a negative role in the political, socio-economic development of the country, the establishment of Soviet power, socialism based on the command and administrative system on the territory of the three khanates, led to the abolition of capitalism, the total abolition of private property, its nationalization and requisition and the establishment of the hegemony of absolute state ownership in relation to land, natural resources, transport and basic means of production. "Land cannot be sold, bought, leased, or pledged, or alienated in any other way," as well as transferred free of charge to workers for use.

However, as Rakhmonkulov Kh. notes, some discrepancies about property rights were contained in the Constitutions of the republics at the initial stage of their formation, i.e. before the formation of the USSR in 1924, then they were consistently nullified [15, p. 10]. Thus, in the first Constitution of the Khorezm People's Soviet Republic, adopted on April 30, 1920, private ownership of tools and means of production, including land, was preserved. Subsequently, this provision was changed, the lands of the khan and major khan officials confiscated by the government of the KHNSR were excluded from private ownership of land, all confiscated lands were subject to free distribution between landless and small-land dehkans.

The Constitution, while preserving private ownership of land, at the same time established certain restrictions on its ownership: when distributing land, the labor norm was taken into account, determined by the number of able-bodied family members in the household, such a distribution principle created favorable conditions for the rational use of land [16, C. 10]. In addition, Article 35 legislatively establishes the transfer of ownership, primarily land, to the ownership of the people. In the second Constitution of the USSR, adopted in 1923, private ownership of land was abolished, and the entire land fund was declared public property.

The elimination of the right of private ownership of land was equated with the elimination of all other forms of land ownership that existed before, and its transfer to the "national heritage", which formed the "unified state fund". Thus, State ownership was actually considered as nationwide [17, p. 62].

These provisions were reflected in the consistently adopted acts of the revolutionary period, as well as in the Constitutions of the USSR of 1924, 1936, 1977, and codified laws throughout the existence of the Soviet state.

Based on the above-mentioned problems, there is a need for a radical reform of property relations in the country, which found its embodiment on the eve of the independence of our country.

- On August 15, 1989, on the initiative of the First President of the Republic of Uzbekistan Islam Karimov, a resolution was adopted by the Central Committee of the Communist Party, the Presidium of the Supreme Council of the Council of Ministers of the Uz SSR "On the further development of personal subsidiary farms of collective farmers, state farm workers, citizens and individual housing construction", on the basis of which up to 0.25 hectares of household plots were allocated to citizens who do not have land plots.
- On June 20, 1990, the Law "On Land" was adopted, which regulated land relations until the adoption of the Land Code of the Republic of Uzbekistan. Citizens had the opportunity to receive land plots in lifelong inherited ownership
- On October 31, 1990, the Law "On Property of the Republic of Uzbekistan" was adopted, which is one of the first legislative acts regulating legal property relations, where property is declared inviolable, private property was established for the first time in the form of one of the forms of ownership of citizens, and subsequently as an independent type of ownership forms.

The fourth stage includes the years of independence of the Republic of Uzbekistan (1991 to the present century). The chosen new path of transition to a market economy required property reforms, a radical transformation of property relations, a new understanding of the essence and significance of private property in the economy through the formation of a new class of owners, since private property is the basis of market relations, it is impossible to completely switch to market relations without establishing the right of private ownership of land.

During the period of economic reform, it was impossible to make a sharp transition from public to private [19, pp. 48-49]. Socio-economic conditions were necessary for this. Without a legal mechanism for implementation, the reform of property in the Republic could not have been carried out. Therefore,

in the Law "On Denationalization and Privatization" adopted on November 19, 1991, land and other natural resources were not denationalized and privatized.

Analysis of research results

An important milestone in the formation of market reforms was the adoption of the Constitution of the Republic of Uzbekistan on December 8, 1992, according to which the basis of the economy of Uzbekistan, aimed at the development of market relations, is property in its various forms. The State guarantees freedom of economic activity, entrepreneurship and labor, taking into account the priority of consumer rights, equality and legal protection of all forms of ownership (Article 53). Land and other natural resources are declared national wealth, subject to rational use and protected by the state (Article 55). This was based on the "natural idea" of the socialization of land and other natural resources, meaning that natural resources, being a natural object, are not the result of human labor and therefore, in fairness, should not be anyone's specific property. The meaning of this idea is that in the absence of a specific, legal owner of the land (because the "people" as a whole cannot be recognized as a subject of property relations), public authorities and management receive certain competence to dispose of land and other natural resources, and individual organizations and citizens receive property rights for conducting economic and other activities the rights to use them, but not the right of ownership [20, C. 29-30]. Thus, the Constitution of the Republic of Uzbekistan and acts of civil legislation depart from the Soviet concept of exclusive state ownership of land.

Thus, the first act that consolidated the sale of land to private ownership and served in the implementation of the 1st stage of privatization in the country was a Presidential Decree dated 01/21/1994, according to which trade and service facilities, as well as the land plots on which they are located, were provided on a competitive basis to private ownership to individuals and legal entities, including including foreign ones.

And also, the Presidential Decree of 11/24/1994 secured the granting of real rights to land, i.e. the khokimiyats were allowed to allocate land plots within 0.04 hectares for individual housing construction and 0.06 hectares for personal subsidiary farming on an auction basis for lifelong inherited possession of citizens.

To implement these decrees, a Regulation is being developed on the procedure for the sale of trade and service facilities to private ownership, together with the land plots on which they are located, and land plots for lifelong inherited ownership, according to which the sale of land to private ownership is carried out by competition or auctions in accordance with the established procedure for denationalization and privatization of state property.

The adoption of the Civil Code of the Republic of Uzbekistan in 1995-1996 and the Land Code of the Republic of Uzbekistan in 1998, which contributed to the development and systematization of legal regulation of land ownership relations, where the foundations of civil law and land law regulation of lands were laid. Thus, the Civil Code provides for the regulation of land ownership on the basis of general provisions, but contains only a reference rule: "The right of ownership of citizens and legal entities to land plots arises in cases, in accordance with the procedure and conditions provided for by law (Article 188)." The procedure for granting land is provided for in the Land Code and other various acts legislation. In this regard, we believe that the issue of legal consolidation of land ownership is not stable, and therefore land legislation has been changed dozens of times during the years of independence, which indicates insufficient regulation of the material and procedural foundations of land ownership.

Starting in 2017. At the initiative of the President of the Republic of Uzbekistan, Sh. Mirziyoyev, a new stage of institutional economic reforms has begun, aimed at liberalizing the economy, reducing

the state's presence in the private sector, further strengthening the rights and priority role of private property, and improving the investment climate in the country.

The main breakthrough that set the further direction of reforms in the field of establishing private ownership of land was the Presidential Decree of 10.01.2019. No. UP-5623 "On measures to radically improve the processes of urbanization", which secured the right of privatization to citizens and legal entities of land plots belonging to them on the basis of the right of permanent use (ownership), lease or lifelong inherited ownership, as well as privatized land plots are private property and objects of civil turnover, private property rights in relation to they are inviolable and protected by the State in accordance with the Law "On the Protection of Private Property and Guarantees of the Rights of Owners".

Decree of the President of the Republic of Uzbekistan No. UP-6243 dated June 8, 2021 "On measures to ensure equality and transparency in land relations, reliable protection of land rights and turning them into a market asset" changed the grounds for the acquisition of land plots to individuals and improved the procedure for their provision. Now legal entities can have land plots on the right of ownership, permanent use and lease, and individuals – on the right of ownership and lease in accordance with the Land Code and other legislative acts. And also, the procedure for allocating land plots on the right of lifelong inherited possession, permanent possession, temporary use is canceled, while these rights to previously allocated land plots are retained by their owners in accordance with the current procedure.

The adoption of the Law of the Republic of Uzbekistan on 04/15/2021 "On the privatization of non-agricultural land plots" served to improve the trend of granting land to private ownership, now individuals and legal entities can privatize land by buying out land plots that they have the right of permanent use (ownership), lease or lifelong inherited ownership and purchase of land plots through an electronic online auction.

It should be especially noted that the adoption of the Constitution of the Republic of Uzbekistan in a new version dated April 30, 2023 became fundamental in consolidating and guaranteeing the further development of the right of private ownership of land in our country.

Article 68 of the Constitution of the Republic of Uzbekistan states: "Land, its subsoil, waters, flora and fauna and other natural resources are national wealth, subject to rational use and protected by the State.

Land may be privately owned on the terms and in the manner prescribed by law and ensuring its rational use and protection as a national wealth."

The significance of this constitutional norm lies in the fact that, firstly, land and other natural resources are national wealth, i.e. the property of the state, secondly, it establishes a requirement for the rational use and protection of land by all individuals and legal entities, thirdly, norms are fixed at the constitutional level that enshrine the right of private ownership of land on conditions ensuring its rational use and protection as a national wealth.

As H.R. Rakhmankulov notes, the Civil Code does not clearly and definitively solve the problems of private ownership of land and other resources. The norms of the Code in terms of transactions with land plots are applied to the extent that their turnover is allowed by land legislation.

We believe that in the draft of the new Civil Code of the Republic of Uzbekistan it is necessary to specifically define the legal regime of land (land plot) as an object of ownership, as well as the contractual and legal mechanism for the acquisition of land, specifically define the contracts that are the grounds for land turnover.

Conclusion

To date, in accordance with the Decree of the President of the Republic of Uzbekistan R-5464 dated April 5, 2019, normative work is underway to develop a draft Civil Code in a new edition that will meet the requirements of a real market economy and international standards. According to this document, the following priorities of this project have been identified:

- systematization and unification of the norms of civil legislation, their harmonization with the best foreign practices, as well as the implementation of advanced international standards in this area;
- establishment of effective civil law mechanisms to ensure the inviolability of private property, protection of the rights and legitimate interests of individuals and legal entities, especially entrepreneurs;
- a clear distinction between the norms of public and civil law, the exclusion of outdated, obsolete provisions based on command and administrative principles of economic management;
- legal regulation of modern civil law institutions and forms of economic relations, such as public-private partnerships, cluster production, e-commerce, crypto currency turnover, land privatization and shared-equity construction.

According to this Decree, the Concept of improving civil legislation was approved. According to the concept, the new version of the Civil Code will exclude or improve norms that allow for different interpretations, reduce references, introduce new principles of civil law relations taking into account moral principles and moral norms of society, improve the law of obligations, the institution of transactions and others.

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