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PECULIARITIES OF THE LEGAL POSITION OF THE EARTH AND LAND PLOTS IN THE STATE PUBLICITY

ОСОБЕННОСТИ ПРАВОВОГО ПОЛОЖЕНИЯ ЗЕМЛИ И ЗЕМЕЛЬНЫХ УЧАСТКОВ В ГОСУДАРСТВЕННОЙ СОБСТВЕННОСТИ

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Abstract. This article examines the problem of defining the concepts of “land” and “land plot”, as well as the issue of the peculiarities of the legal status of objects in state ownership, in particular, land and land.

Аннотация. Данная статья рассматривает проблему определения понятий «земля» и «земельный участок», а также вопрос об особенностях правового положения объектов, находящихся в государственной собственности, в частности, о земле и земельных участках.

Keywords: land, land plots, land use, public ownership.

Ключевые слова: земля, земельные участки, землепользование, государственная собственность.

The Republic of Kazakhstan as a subject of civil and land relations has a certain specificity. Thus, the Republic of Kazakhstan is considered in two ways: as a regulator of land relations with respect to all lands under its jurisdiction and as an owner of land plots [1, p. 8]. In this regard, it is interesting to consider the issue of the peculiarities of the legal status of objects in state ownership, in particular, land and land plot.

As land relations objects, the Land Code of the Republic of Kazakhstan defines not only land plots and parts of land plots, but also land as a natural object and a natural resource. Is land the object of ownership? This issue is relevant for all subjects of land rights, but especially for such an owner as the state. The state ownership right to land is considered in the context of its close relationship with the right of territorial supremacy. Sometimes the concepts of “land” and “territory” are used as having the same meaning. We believe that it is impossible to put an equal sign between these concepts completely. As O. I. Krassov, the right of territorial supremacy concerns the sphere of international relations, and not the relations of ownership of land and other natural resources. Therefore, the right of territorial supremacy is not connected with the right of state ownership of natural resources, including land [2, p. 121].

Currently, there is widespread recognition that the rules relating to the right of ownership constitute a comprehensive legal education. The norms on the right of ownership can be found in laws and other legal acts of the most diverse industry — the Constitution of the Republic of

Kazakhstan, the Civil Code of the Republic of Kazakhstan, the Environmental Code of the Republic of Kazakhstan and many others. According to Yu. K. Tolstoi, the right of state property is realized in legal relations of the most diverse branch belonging [3, p. 399]. The normatively fixed position that land is an object of land relations is not shared by all specialists of land law. O. I. Krassov expresses the opinion that the land as a natural object, as a natural resource can not be either an object of land relations, no property relations, no other relations. The object of land relations is always some legal category, reflecting the most characteristic legally significant signs of the corresponding object of nature. The object of relations is an individualized part of the land, that is, a specific land plot [4].

Analysis of civil and land legislation allows us to identify several meanings of the concept of "land". In general, the concepts of "land" and "land" are used as synonyms. Article 3 of the Land Code of the Republic of Kazakhstan is called "Ownership of land", in the very same article the term "land plots" is used. As an object, "land" is defined as state property, whereas "private land" may also be in private ownership. The Civil Code of the Russian Federation (art. 139) is even more inconsistent in this respect, uses the concept of "land": the land is state property and may also be privately owned on the grounds, conditions and within the limits established by legislative acts.

In this case, it is impossible to single out the criterion by which this or that concept is used. It can be assumed that in these cases the land is a certain set of land plots.

The second meaning of the concept of "land" is contained in the Ecological Code of the Republic of Kazakhstan, where it is noted that land, as well as mineral wealth, water, flora and fauna, is a natural object of consumer value (art. Based on the literal meaning of this rule, the land acts as an object as a natural object and a natural resource, but also as an object of real estate and an object of ownership. This provision is consistent with the norms of the Land Code. For example, as principles of legal regulation of land relations it is established: conservation of land as a natural resource, the basis of life and activity of the people of the Republic of Kazakhstan; protection and rational use of land; targeted use of land. Thus, the inseparability of ideas about the earth as a natural resource, a natural object and an immovable object is fixed. And "land" and "land plots" are a natural resource, a natural object and real estate at the same time. In connection with the use of land as an immovable object and object of law, the land does not cease to be a natural object and vice versa.

Currently, in accordance with the RoK Law No. 310-III of July 26, 2007 "On State Registration of Rights to Immovable Property", state registration in the legal cadastre is subject to the emergence, modification and termination of rights (encumbrance of rights) for real estate, as well as legal claims . That is, there should be no unregistered land. All the land within our state as a collection of land plots.

It can be assumed that the land fund of Kazakhstan includes, in addition to land plots as objects of property rights, and certain lands that are exclusively a natural object and a natural resource, the emergence of ownership rights to which is impossible. The matter is, most likely, about the lands withdrawn from circulation. Is it possible that ownership of such lands will arise? Based on the definition of the land only as a natural resource and a natural object, it is "land" that is not the object of property right and it is they who are withdrawn from circulation.

In the scientific literature on the issue of the possibility of the emergence of the right to own land, not granted to ownership or land use, different opinions are expressed. O. N. Syrodoev writes that "the land plots occupied by state–owned following objects have been removed from circulation ...". This allows us to conclude that among these land can only be land, which are in state ownership [5, p. 30]. Thus, the answer to the question of whether the ownership of these land plots can arise is positive.

According to another point of view, the state can not be the owner of such property as the public domain, to which, in particular, it is possible to include land plots not granted to the ownership or land use. Recognition of the category of the public domain means, in fact, recognition of the dual structure of state property, generally recognized abroad. In countries borrowing the ideas of the Code of Napoleon, state ownership is divided into two types: public–law (domaine public d'Etat) and private–law (domaine prive d'Etat) [6, p. 28]. The first variety, in essence, is a category of public domain, in particular, belong to the common property (les biens d'utilite publique). These are objects that, due to their natural properties, that is, according to objective characteristics, were not initially in any private property, since they could only be in general public use (air, sun, running water, the sea, public communication routes, P.). The fundamental feature of common property is that, because of their "physical nature" and consumer qualities, they lose the properties of subject–individual appropriation. Therefore it was believed that such property could not be owned by ownership not only to private individuals, but also to the Roman state itself [7, p. 91].

S. A. Sosna notes that in the modern era (in many constitutional, civil–law and other norms), the list of common property includes, among other things, land for defense, the needs of government and government, national parks, reserves, zakazniks, squares, Public parks and public recreational areas and other facilities. The main provisions of the legal status of such objects are determined exclusively by a public purpose, which does not allow them to be withdrawn from the sphere of common use, and, consequently, the inability to establish ownership of them [6, p. 29].

According to V. A. Agafonov, the form and content of legal relations of property to many of the objects of nature turn out to be fictitious. According to the German jurist T. Haas, "only that right which represents unlimited domination over a thing, including perpetual authority over: the management of a thing, is the right of ownership" [8].

The necessity of having an economic and legal content of property relations attracted the attention of V. P. Shkredov: "Land ownership in a society where there is a state and law is characterized by both objective economic and strong–willed legal relations: Law as the state will of a politically dominant class built into law does not create any landed property.It only gives the actually existing form of ownership of land the kind of relationship settled by the state according to the interests of the ruling class: Outside the process of reproduction, land ownership is economically and only in the actual process of production, distribution and exchange of the products of labor, landed property becomes a real form of expressing objective production relations, thereby acquiring a definite economic content" [9]. Thus, it can be concluded that property arises on land plots that are objects of economic relations, which is not observed in land plots withdrawn from circulation. As a justification for the impossibility of applying to the objects that are not granted ownership or land use, the categories of property in its civil–law sense, O. Yu. Uskov leads the lack of possibility for the owner to dispose of these objects, until their very purpose is changed. Property is impossible outside the turnover, he argues, and the instructions of the legislative acts can not bring to life the property relations where they are actually absent. The imperfection of legislation in this sphere generates uncertainty both in the content of the ownership right and in the understanding of the content of the right that the state possesses with respect to objects withdrawn from civil circulation [10, p. 91–93]. Therefore, the possibility of the emergence of the right of ownership of the Republic of Kazakhstan to objects not provided for ownership or land use is questioned. This problem is supplemented by the need to clarify the list of land plots not granted to the ownership or land use, as defined in art. 137 of the Land Code of the Republic of Kazakhstan.

It can be concluded that the legislation regulating relations in the field of the turnover of land is in need of improvement. In close connection with this issue is the problem of clarifying the concept of "land". On the one hand, the legislator excludes this object from the objects of ownership, on the other — establishes the need for the emergence of her ownership rights in the

process of delineation of state property. We believe that the issue of including land in the list of objects of land relations needs further discussion.

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