

Trends in Development Private Ownership of land and land Parcels in Uzbekistan: Scientific and Theoretical Analysis

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Abstract: *the article analyzes the stages of privatization of non-agricultural land and the stages of their development. It also analyzed the theoretical aspects and studied the peculiarities of developed countries Peru, Poland, France and the United States in the area of land privatization. In the article recommendations and conclusions on the development of existing legislation were developed based on foreign and domestic experience in land privatization.*

Keywords: *land plots, privatization of land plots, land of industrial, commercial and service points, auction sale, sale of private property.*

I. INTRODUCTION

The relevance of the topic.

Reforms in Uzbekistan today have encompassed various areas and consequently land relations are not exception. In particular, the changing attitudes towards property with the land along with the definition of different ways to protect this right without violating the legal protection are directly related to the use of the parcels, and also form the class of land owners. It is likely that formation of private ownership of land can lead to the development of businesses that use land in the country; however, it can also lead to cause problems in the governing legislations of the area which overall leads to changes and improvement.

To predict the upcoming situations and reach to right conclusions, we provide following possible general trends that have been identified globally with regards to the privatization of land:

- cases of denying land ownership due to non-sale or co-ownership state land;
- increase of the state registration level for property rights by individuals and legal entities;
- increase in the number of regulations for identification, registration and management of private property;
- circumstances requiring to understand that the registration of property rights in the laws governing the

registration or denial of state-owned property does not mean to create real property but only legalization;

- the cases related to the establishment of a state body that registers the land parcels as private property.

It is obvious that private ownership of land parcels represent privatization of non-agricultural land, while maintaining state ownership over agricultural land, which is the main source of food for the state and society.

Certainly, the privatization of non-agricultural land sets a number of tasks such as developing a separate mechanism for the process, organizing a list of lands given for private property with documenting them and implementing land protection.

II. USED METHODS:

To cover the subject problem-chronological, comparative-analytical and theoretical research methods were used.

III. THE MAIN PART:

As the main benefit, privatization of land parcels changes land users' attitudes towards the property and expands their income. In addition, it increases foreign and domestic investors' involvement as a motive to construct industrial enterprises because it could be granting of a guaranteed land rights.

However, the current land legislation and other laws related to its privatization do not grant foreign investors the right to privatize land parcels. Each country independently chooses the form of land ownership based on its history of national statehood, economic development, and political regimes, natural and climatic conditions. For example in other countries such as Russia, Kazakhstan and Kyrgyzstan, land is the subject of private property [1]. Similarly, in the Republic of Uzbekistan today, there are many scholars [2] who advocate the introduction of private ownership of land. They claim that the effective use of land and agricultural economic growth are closely linked to private land use and the introduction of the new policy.

In the Republic, the right to privatize land is currently granted to local authorities who can decide who to give the land, buildings or structures located under their control. These kinds of land are listed as non-agricultural land. In the list of non-agricultural land areas, there are primarily industrial, commercial and service outlets, as well as the areas permanently given to households.

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However, if we compare the situation with other developed countries, we can see that even the agricultural lands are taken as the objects of private property of legal entities and individuals. Despite the gradual implementation of land privatization in our country in recent years, it is hard to see any normative or even theoretical ideas on privatization of this type of land [3].

In modern land law of foreign countries, the theory of the "social function" of property, especially land ownership is widespread and legally established justifying the need for state intervention in property relations and limiting the scope of landowner's rights due to the public interest. In our opinion, the same aspects are reflected in the legislation of Uzbekistan. The theory of the "social function" of private ownership of land is also enshrined in the legislation of Latin American countries. For example, the Peruvian Civil Code (CC) defines property rights as a set of legal powers relating to the possession, use, disposal, and vindication of property. According to Article 923 of the Peruvian FC, property rights must be exercised in the public interest and within the law. Legal restrictions imposed in terms of social necessity and need may not be amended or revoked by means of agreements (Article 925).

The legislation of Latin American countries defines the social function of property, social interest, public benefit and payment as the principles of expropriation of land owned on the basis of private property. As part of the compulsory withdrawal of private property for public benefit or interest, private needs are to give way to the public interest [4].

In particular, land privatization exists in a number of developed European countries, including Poland, where private property rights to land and the land market are legally enshrined in laws passed by the Sejm. Poland's agrarian policy is aimed at supporting large land users and farmer who produce great amount of goods and food.

In 1990, Poland amended the Law on the Seizure of Land and Agricultural Property, according to which land became a commodity that could be freely traded in auctions for foreigners and subject to certain conditions for all Polish citizens [5].

Another example is France. The foundations of the modern land use system in the country go back to the agrarian reforms of 1945. Based on the amendments to the land legislation of 1946, it has become the right of each land user to have: stable and long-term use of the land plot, autonomy of economic management, protection of his rights in the event of a dispute with the owner is guaranteed [6].

In France, collective, individual (private) and mixed forms of ownership apply to land. Agricultural land will be given only to citizens who have lived in the area in the past.

The French experience shows that the organization of protection of areas in need of ecological, aesthetic or cultural protection is mainly the responsibility of the landowner.

One of the most developed countries in terms of private ownership of land is the United States. In this sense, property law in the country is one of the most important branches of the American legal system, based on customary law, which has its roots in British feudal law and adapted to U.S. conditions.

In the Anglo-Saxon legal system, too, the concept of movable and immovable property is generalized, and the concept of "movable property" applies to land and all related objects.

In the United States, a large portion of land, particularly 98% of arable land that is given to agricultural use is privately

owned. Although the federal government owned a large portion of the land, they mainly covered desert and tundra zones, as well as pastures and forests in sparsely populated areas in the western United States and Alaska. Agricultural land in these areas is in short supply.

In the United States, property rights to land consist of a set of interrelated powers, some of which belong to the owners and some to the state that grants the right to the owners. The state is entitled to collect taxes, including from landowners. Land tax is an effective tool for influencing land use by determining the specific methods of taxation and the amount of taxes [5].

There has been done some efforts in the norms of the law aimed at regulating private property relations in regarding to land plots in our country and the law of the Republic of Uzbekistan "On privatization of non-agricultural land" adopted on August 13, 2019 [7] was a serious impetus for the further development of the relationship in the country.

Here, natural questions arise. Have the land plots not used for agriculture so far and given for industrial purposes, not been given as private property along with buildings and structures located on the lands allocated for commercial and service outlets? Or were there no normative legal acts regulating them?

The answers, unfortunately, could be found going back to the early 20th century when after the October Revolution, the former Soviet Union Government established state ownership of land in the regulations. Even in the former khanates of Central Asia, private ownership of land was abolished and all land was turned into state property [8, P.76].

A group of scientists who analyzed land relations in Turkestan before the October Revolution of 1917, based on in-depth scientific findings, put forward the idea that there had been a private property right to land, - said M.B.Usmanov. In this regard, I.J. Jalilov said, "Shariah generally knows the right to private property and the institution of private property rights to land, in particular, the owner of land had rights to sell a land plot for temporary use, lease, gift, as well as pledged for a certain period of time to secure his obligations" [9].

The chronology of events shows that in the "Fundamentals of Land Legislation" of the USSR and the Allied Republics of 1968 (Article 50) and the Land Code of the USSR of 1970 (Article 198) leaving, gifting, renting, arbitrarily exchanging was not real. "Such agreements were considered actions that violated the state's right to own land [8, P. 81]. Unfortunately, these cases lasted a long time and are still largely preserved to this day.

According to Article 55 of the Constitution of the Republic of Uzbekistan, land, subsoil resources, water, flora and fauna and other natural resources are national wealth, which must be used wisely and are under state protection. Land Code of the Republic of Uzbekistan. According to Article 16, land is state property - a national treasure, which must be used wisely, it is protected by the state and is not traded, exchanged, donated, mortgaged, except as provided by the laws of the Republic of Uzbekistan. Indeed, the Constitution of the Republic of Uzbekistan and the Land Code establish the exclusive property rights of the state in relation to land, as well as property rights of citizens and legal entities in relation to land [10]. It should be noted that land ownership is a criterion that determines the entire economy of Uzbekistan.



For this reason, it is advisable to leave the land in the form of state property at the present time [11]. Although much has been said and written about this before, the questions if the land should still be left as state property remains a topical issue on the agenda today. In a developed market economy, land privatization plays an important role in free economic relations.

Indeed, the preservation of the state's monopoly on land prevents the rapid development of land-related relations. At this point, taking the experience of the state's absolute property rights over land in the former Soviet era could be sufficient example.

Of course, the country has adopted a number of normative documents related to the privatization of land from the first years of state independence. For instance, based on the Decrees of the President of the Republic of Uzbekistan dated January 21, 1994 "On measures to further deepen economic reforms, protection of private property interests and development of entrepreneurship" [12] and March 15, 1994, "On priorities for further development of the process of denationalization and privatization of property in the Republic of Uzbekistan" [13] which was approved by the Cabinet of Ministers of the Republic of Uzbekistan with № 341 the provisional Regulation "On the procedure for the sale of objects of commercial and service points as private property with located land plots" [14] acquisition of objects of commercial and service points with the located land plots to private individuals and legal entities, including foreign individuals and legal entities, declaration of sources of funds is not required to purchase privatized objects and decommissioning and privatization should be carried out in accordance with the established procedure and above mentioned Regulations.

Also, it is ordered and regulated that the prices of land plots in the regions are set based on each region of the country and the number of population and the sales of land plots is carried out only by auction in accordance with the requirements of the regulation [15].

Besides that, as a result of reforms in this area, a number of changes have been made in the sale of land to businesses as private property. In particular, in the Decree of the President of the Republic of Uzbekistan dated 24 November, 1994 registered with № PF-1009 "On increasing the efficiency of land use" [16] and to support the President's Decree the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan № 126 of 11 April 1995 "On the procedure for the sale of the objects of commercial and service points with the land they are located as private property for lifelong possession on the condition of inheritance" [17] the procedure for the sale of land as private property for lifelong possession is allowed provided that it is inherited by citizens on the basis of the charter. It stipulates that the land will be sold at auction for 0.04 hectares for individual housing construction and 0.06 hectares for personal auxiliary farming and home improvement.

In the Republic of Karakalpakstan, as a practice, lands not used in the national economy, as well as lands of loss-making and low-profit agricultural enterprises are auctioned as private property for lifelong ownership on the condition of inheritance to citizens, and another order of sale frame is set for sale of irrigated lands up to 3 hectares and non-irrigated land up to 15 hectares.

It is appointed that in the Republic of Karakalpakstan, the starting price of unused land which is sold at auction and on a competitive basis, as well as land for sale for lifetime ownership on the condition of inheritance of loss-making and low-profit agricultural enterprises, taking into account the determined demand and supply on the basis of the results of the assessment is determined by the Council of Ministers of the Republic of Karakalpakstan [17]. Also, in accordance with this Regulation, foreign legal entities and individuals - employees of the diplomatic corps, the press representatives registered in the Republic of Uzbekistan, employees of permanent representations, firms, companies and international organizations, persons working on a permanent basis in joint ventures, as well as people with a permanent residence and residence permit in the Republic could be eligible to take part in the auctions.

However, it should be noted that there was no kind of document confirming that the land plot was private property or no procedure was set with a separate norm for obtaining such permits when citizens or foreign citizens bought land plots at auction as private property with the right to inherit. This, in turn, means that as a separate mechanism for the privatization of land plots has not been introduced, when individuals and legal entities purchase a plot of land as private property with the right of lifelong use, this was not registered properly and with the absence of documents confirming its ownership, as well as the relevant permit, even if the buildings and structures located on such lands have been recognized as private property, they could still be defined as state owned property.

Irrespective of the adoption of these normative documents in order to recognize private ownership of land plots, it is established that the real ownership of the land plot is still given to the state and it is regulated according to the Land Code of the Republic of Uzbekistan Legal entities specified in Article 17 [18] which entitles the state to the ownership even if land possession is given for permanent (and temporary) use, lease and ownership of land plots as well as inheritance of individuals should be regulated with the Land Code and other legislation. Therefore, regardless of the type of land use specified in this norm, a mechanism was developed to register it as private property or to issue it with a separate permit, but there was no document confirming that the land allocated to them is private property. For this reason, state ownership has been preserved for land plots sold as private property by auction. This situation also means that the land can be confiscated at any time for payment of state and public needs without any compensation regardless of the right of the owners to the land plot. The only example of this is by the decision of the President of the Republic of Uzbekistan to privatize land Decree № PF-3780 of July 24, 2006 "On privatization of land plots occupied by buildings and structures of legal entities and citizens", it was allowed from January 1, 2007 for legal entities - residents of the Republic of Uzbekistan will have the right to privatize as much land as necessary to carry out production activities on the basis of property rights taking into account the technological processes applied to the land plots adjacent to these facilities, the norms and rules of urban planning [19].

Also, according to this document, from January 1, 2008 citizens-residents of the Republic of Uzbekistan was considered to be given the right to privatize land plots allocated for individual housing construction and maintenance of residential buildings. At the same time, the privatization of land plots allocated for individual housing construction and maintenance of residential buildings was provided in the following order:

- on a voluntary basis by citizens who have plots with the right of permanent use or lifelong inheritance, within the limits and in the amount established by the cadastral documents, which were in practice at the time of issuance of this Decree and issued in the prescribed manner;
- the subsequent state registration of the right of ownership in accordance with the established procedure in case of sale of the parcels of land for individual housing construction on the basis of the auction in the amounts established by the legislation;
- the parties - by agreement of the person alienating or buying (accepting) real estate in case of sale or gift of individual housing (except for close relatives) provided for compulsory privatization [19] and development of mechanisms for its implementation.

Even though right kind of mechanisms have been developed in our country, no special attention has been paid to the privatization of land plots and no clear procedures for its implementation have been established even until today. Most importantly, we have to admit that in the manner prescribed by law the privatization of land plots was based on the market value, and carried out on a voluntary basis, with the registration of property rights. Unfortunately, the implementation of this document was not successful and this was the main root of the problems.

Therefore, there were a number of problematic issues related to land privatization:

Firstly, neither landowners nor non-owners were equally protected from unilateral seizure (repurchase) of land for state and public needs. That means, the status of being the owner did not guarantee the preservation of the parcel of land. The legislation also did not contain a clear list of cases when land plots could be confiscated for state and public needs. In practice, there have been cases of land being confiscated from one entrepreneur to another.

Secondly, landowners, owners, users, and tenants used to pay the same land tax. Thus, from an economic point of view, there was no point in buying land for both legal entities and individuals.

However, according to Article 10 of the Law of the Republic of Uzbekistan "On privatization of non-agricultural land" adopted today, the privatization of land is determined in the following areas:

- ✓ land plots owned by legal entities on the basis of property rights or privatized by them, land plots where production infrastructure facilities are located, as well as adjacent land plots of the size necessary for the implementation of production activities;
- ✓ plots of land allocated to citizens of the Republic of Uzbekistan for individual housing construction and improving in the appearance;
- ✓ vacant land plots;
- ✓ privatization of land plots allocated to the Urbanization Development Fund (hereinafter referred to as the

Urbanization Development Fund) under the Ministry of Economy and Industry of the Republic of Uzbekistan.

In addition, Article 11 of the law defines non-privatized land plots:

- land plots located in areas without approved and published planning schemes;
- land plots with non-privatized mineral deposits, state-owned areas with strategic facilities or the list of places which is determined in accordance with the legislation;
- land plots included in the lands intended for nature protection, health, recreation and historical-cultural purposes, as well as lands of forest and water resources, certain places in cities and towns in common use (squares, streets, narrow streets, roads, shores, squares, alleys);
- land plots contaminated with hazardous substances and subject to biogenic poisoning;
- land plots given to participants of free economic and small industrial zones [7].

Here, of course, the reader may have a natural question: if these lands are not included in the category of non-agricultural lands, they are not privatized, and why? This is due to the fact that these land plots are lands of strategic importance to the state, and in most cases such lands are used by enterprises of the state natural monopoly, and therefore, state ownership of them is preserved in accordance with the land legislation.

The law also provides that the privatization of vacant land plots which are unused and transferred to the Urbanization Fund is organized only through an electronic online auction. The starting price of the land plots is set as equal to their market value at the time of the auction.

In addition, the right of ownership of privatized land plots is under state protection and this has been strengthened with the law of the Republic of Uzbekistan issued on 24 September, 2012 about the Protection of Private Property and Guarantees of the Rights of Owners [20].

IV. AS A RESULT:

We have come to the conclusion based on the study that the state should relinquish its ownership rights over the land. The introduction of private ownership of land is a gradual and evolutionary process, and in the future it will have a positive impact on the economic development of the country. In this case, justice, purpose and efficiency must be taken into account in the acquisition of property rights to land. As noted in the German privatization practices, when justice was chosen over efficiency in determining property rights attempts were made to return the property to its owners (or their descendants) as much as possible. In Germany, the restitution scheme resulted in bureaucratic irregularities that resulted in many new legal and administrative problems.

Recommendations: In order to develop and improve private land relations in our country, we recommend the following three suggestions based on the experience of developed and developing countries of the world, which have a special experience in this area:



First, the introduction of state guarantees for the protection and preservation of privatized land plots and the development of its specific mechanisms. In this case, all the details whether the land is privatized by the state, and how to protect the rights of the landowner in the event of its seizure or transfer to other persons, and others should reflect in the legislation and ensure the presumption of ownership;

Second, the introduction of clear mechanisms for the state to collect taxes from privatized land plots and non-privatized land plots;

Third, to develop certain procedures for the sale of vacant land plots on the basis of auction with the right of privatization.

V. CONCLUSION:

The introduction of clear procedures for the privatization of land in the country and the implementation by the state of guaranteeing the right of landowners to private property will not only make private landowners feel like real property owners, but also change their attitude towards land. We think it is necessary to make appropriate amendments and additions to the Constitution and laws of the Republic of Uzbekistan (Civil Code, Land Code) based on the purpose and content of the recently adopted normative legal acts.

APPENDIX

It is optional. Appendixes, if needed, appear before the acknowledgment.

ACKNOWLEDGMENT

It is optional. The preferred spelling of the word "acknowledgment" in American English is without an "e" after the "g." Use the singular heading even if you have many acknowledgments. Avoid expressions such as "One of us (S.B.A.) would like to thank" Instead, write "F. A. Author thanks" *Sponsor and financial support acknowledgments are placed in the unnumbered footnote on the first page.*

REFERENCES

- G. O. Young, "Synthetic structure of industrial plastics (Book style with paper title and editor)," in *Plastics*, 2nd ed. vol. 3, J. Peters, Ed. New York: McGraw-Hill, 1964, pp. 15–64.
- W.-K. Chen, *Linear Networks and Systems* (Book style). Belmont, CA: Wadsworth, 1993, pp. 123–135.
- H. Poor, *An Introduction to Signal Detection and Estimation*. New York: Springer-Verlag, 1985, ch. 4.
- B. Smith, "An approach to graphs of linear forms (Unpublished work style)," unpublished.
- E. H. Miller, "A note on reflector arrays (Periodical style—Accepted for publication)," *IEEE Trans. Antennas Propagat.*, to be published.
- J. Wang, "Fundamentals of erbium-doped fiber amplifiers arrays (Periodical style—Submitted for publication)," *IEEE J. Quantum Electron.*, submitted for publication.
- C. J. Kaufman, Rocky Mountain Research Lab., Boulder, CO, private communication, May 1995.
- Y. Yorozu, M. Hirano, K. Oka, and Y. Tagawa, "Electron spectroscopy studies on magneto-optical media and plastic substrate interfaces(Translation Journals style)," *IEEE Transl. J. Magn.Jpn.*, vol. 2, Aug. 1987, pp. 740–741 [*Dig. 9th Annu. Conf. Magnetism Japan*, 1982, p. 301].
- M. Young, *The Technical Writers Handbook*. Mill Valley, CA: University Science, 1989.
- (Basic Book/Monograph Online Sources) J. K. Author. (year, month, day). *Title* (edition) [Type of medium]. Volume(issue). Available: [http://www.\(URL\)](http://www.(URL))

- J. Jones. (1991, May 10). *Networks* (2nd ed.) [Online]. Available: <http://www.atm.com>
- Shagayda N.I. The turnover of agricultural land in Russia: the transformation of institutions and practice // *Scientific works № 142 p.* –M., In-t. Gaidara, 2010. – 332 P. ; Sitkova O.N. Private property right to agricultural land plots and problems of its protection: dissertation of cand. legal sciences. –Krasnodar: 2007. – 28 p.
- Issues of development and improvement of land legislation of the Republic of Uzbekistan: a set of issues of the Republican scientific-practical conference. –Tashkent: Tashkent State University of Law, 2019. – 373 p.
- Amelina N.E. Free privatization of land plots from the lands of settlements and problems of recognition of ownership of them by citizens: Abstract diss. ... cand. legal sciences. –Krasnodar: 2007. – 27 P.; Tyapkina E.A. Legal problems of privatization of state enterprises: Author. diss. ... cand. legal sciences. –M., 2003. – 27 p.
- Bezbach V.V. Private land ownership in Latin America (legal regulation): Doctor of Law dissertation 12.00.03. –M., 1997. –17 p.
- Kholmuminov J.T. Natural resource law in foreign countries: comparative analysis and improvement of legislation. Monograph. –Tashkent: Tashkent State University of Law, 2012 –P.44-45.
- Kresnikova N. Regulation of land use in foreign countries and Russia // *International Agricultural Journal*. 2005. –№2. –P.43-46.
- National Database of Legislation (LexUZ), dated 13.08.2019, № 03/19/552/3541.
- Usmonov M.B. Renting in agriculture. –Tashkent: Tashkent State University of Law 2005. – 76 p.
- Jalilov I.D. The emergence and development of Soviet land law in Uzbekistan. –Tashkent: Sci., 1970. – 29 p.
- According to Article 17 of the Land Code, legal entities must have land plots on the basis of permanent possession, permanent use, term (temporary) use, lease and property rights, and individuals (citizens) must have the right for land plots to inherit, lifelong possession, permanent use, temporary (temporary) use, lease and ownership.
- Usmonov M.B., Jo'raev Y.O., Rustamboev M.X. and others. Land law. –Tashkent: Tashkent State University of Law, 2002. – 58 p. (The author of this chapter is U.Bozorov).
- Collection of Legislation of the Republic of Uzbekistan, 2005, № 28-29, Article 204.
- National Database of Legislation (LexUz), 04.05.2018, № 06/18/5428/1158. <http://lex.uz/docs/767394>.
- This resolution repealed according to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan from April 11, 1995 of № 126 "About the procedure for sale of objects of commercial and service pointss with the lands where they are located and on private property // Collection of Resolutions of the Government of the Republic of Uzbekistan, 1995, № 4, Article 15.
- Bulletin of the Supreme Council of the Republic of Uzbekistan, 1994, № 11-12, Article 301.
- Collection of Resolutions of the Government of the Republic of Uzbekistan, 1995, № 4, Article 15.
- National Database of Legislation, 05.01.2018, № 03/18/456/0512.
- Collection of Legislation of the Republic of Uzbekistan, 2006, № 30, Article 288.
- Collection of Legislation of the Republic of Uzbekistan, 2012, № 39, Article 446.

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