

## **SOME ASPECTS OF THE COMPARATIVE ANALYSIS OF LAND LEGISLATION ON FORCED WITHDRAWAL OF THE LAND FOR PUBLIC NEEDS.**

(Based on the countries' legislation the EEU )

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Since the collapse of the Soviet Union, its former republics in the 25 years of independence have passed their specific way, the Baltic republics have become part of the European Union, while others have formed the CIS. In connection with the pursuit of a number of the CIS countries for closer economic relations among them various integration schemes was "born and stopped".

This movement is objectively stemmed from a common historical past of these countries and the economic realities.

Since January 1, 2015 came into force an agreement on the formation of the Eurasian Economic Union (hereinafter the EEU), which included Russian Federation, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Armenia (01.02.2015), the Kyrgyz Republic (12.08.2015).<sup>1</sup>

Economic Union formed its supranational bodies.

EEU- is an international organization of regional economic integration, which has international legal personality, established for the purpose of comprehensive modernization, co-operation and enhance the competitiveness of national economies and create conditions for development in order to improve the living standards of the populations of Union membership.<sup>2</sup>

Of course, each country included in the economic union, has peculiar only to it a way of economic development, the experience of lawmaking, including in the field of regulation of land relations

This experience requires its own research, in particular, is of certain interest in rulemaking in these countries in the field of forced withdrawal of land for public needs.

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<sup>1</sup> The Treaty on the Eurasian Economic Union in Astana 2014.

<sup>2</sup> Yana Nefedova "Formation and development of the Eurasian Union: legal and cultural aspects" Report on the round table in the OSU 24 March 2016 in Orenburg city.

Protection of land rights, and especially property rights, based on the constitutional provisions that one can not be otherwise, as the court decision (Part 3 of Article 26 of the Constitution of the Republic of Kazakhstan).

State in accordance with the law is intended to implement security of tenure at withdrawal of land, resulting in the need for further discussion and definition of the state space in building the rule of law of the land.<sup>31</sup>

However, in a strictly defined by law permitted the termination of ownership of land or land use rights.

Land relations in the Republic of Kazakhstan are regulated by the Land Code dated 20 June 2003 (hereinafterL RK) and taken on its basis of normative legal acts of the Republic of Kazakhstan.

The regulation of forced withdrawal of land for public use in the L RKdevoted 6 articles.

It was found that the withdrawal of land from the owner and land-use rights from the land user is not allowed without their consent, except as expressly set forth in article 81 of the Land Code of Kazakhstan, in particular:

- Expropriation of land for public use (n \ n 2 paragraph 2).

The legislation for the first time identified and systematized the general provisions and principles of the expropriation of land for public needs.

Since Article 84 Land Code of RK established that, the land can be forcibly expropriated for state needs **in exceptional cases** when it is impossible any other way to meet those needs and provided equal compensation to the property owner's consent, or non-state land user, or by a court decision.

Code clearly defines the list of exceptional circumstances.

These, in accordance with the Code are:

- International obligations arising from international treaties ratified by the Republic of Kazakhstan;

- providing land for the needs of defense and national security, especially protected natural territories, health, recreational and historical - cultural purposes, the establishment and functioning of special economic zones;

- Discover and development of mineral deposits;

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<sup>3</sup> Land Law of Russia and Kazakhstan: problems of development and implementation of procedural forms-Abdraimov B.J., Bogolyubov S.A. IG "Jurist" monograph Moscow 2006, p. 380

- Is the construction (reconstruction) of roads and railways, construction (reconstruction) of airports, aerodromes, air navigation facilities and air-technical centers, facilities of train transportation, bridges, subways, tunnels, objects of power systems and power lines, communication lines, facilities providing space activities, main pipelines, engineering and communication networks, facilities of oil refinery production referred to the strategic targets, the implementation of concession projects, public facilities settlements;

- Execution of general plans of settlements in terms of the construction of the facilities subject to the above mentioned list of exceptional cases, as well as the construction of facilities provided by the state planning Systems documents of the Republic of Kazakhstan, due to budgetary funds.

Of course, some exceptional cases, mentioned in the article are not indisputable. Some of them have ordinary character.<sup>4</sup>

However, the Land Code, it is only on exceptional occasions of withdrawal of land for public use, thereby avoiding any broad interpretation and administrative arbitrariness in this matter. This clearly itemized terms of withdrawal of land plots and the procedure for compensation of losses to the owners and land users.

Russian Federation Land legislation has a number of features.

Therefore, Chapter VII of the Land Code RF (the LC RF) provides that compulsory withdrawal of land allowed for state or municipal needs.

This, of course, is primarily due to the federal structure of the Russian Federation.

Thus, under the state needs the Russian Federation land legislation refers to federal needs, the needs of the Russian Federation refers to regional needs and a the municipal need to understand is the needs of public territorial unit.

Differences in land laws on the matter due to the fact that the Republic of Kazakhstan, in contrast to the Russian Federation, is a unitary state and the forced withdrawal of land provided for public use only.

In matters of exclusivity forced withdrawal reason for the needs of the state legislation of the Russian Federation and Kazakhstan have a similar character. In particular, Article 49 of

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<sup>4</sup> Serebbaev EK Legal regulation of land acquisition in the Republic of Kazakhstan Diss ... kan .jurid. science,Almaty 2010.

the RF Land Code also provides for withdrawal of land plots for state or municipal needs only in exceptional cases.

Procedure for withdrawal of land plots for state or municipal needs discussed in chapter VII of the Code, entered into force December 31, 2014.

According to what a great work has been done to systematize the law it is clear that the issues of forced withdrawal of land for public use in the Russian Federation paid a lot of attention.

I consider it necessary to dwell on this chapter in more detail.

So in the article 56.2 of the LC RF specified decision makers about the withdrawal of land plots for state or municipal needs.

Article 56.3 of the RF Land Code regulates the conditions for the withdrawal of land plots state or municipal needs.

Article 56.4 of the LC RF stated about the direction of the application for withdrawal of land for state or municipal needs.

Article 56.5 of the LC RF provides the procedure for the identification of persons, land and (or) located on them real estate objects which are subject to withdrawal for state or municipal needs.

Article 56.6 of the LC RF stated about the decision on withdrawal of land plots for state or municipal needs.

Article 56.7 of the LC RF regulates the preparation of an agreement on withdrawal of land plots and (or) located thereon of real property for public use.

Article 56.8 of the LC RF reveals peculiarities determining the amount of compensation in connection with withdrawal of land for state or municipal needs.

Article 56.9 of the RF Land Code outlines the requirements for an agreement on the withdrawal of property for state or municipal needs.

Article 56.10 of the RF Land Code refers to the agreement on the withdrawal of property for state or municipal needs.

Article 56.11 of the RF Land Code regulates the termination and transfer of rights to a land plot and (or) placed thereon immovable property due to their withdrawal for state or municipal needs.

Thus, the Land Code of the Russian Federation recounts all the stages of compulsory withdrawal of land from the initial to the final phase, and it can be argued that the foregoing

contributes to the high level of regulation of land relations and prevent conflicts between subjects of land relations.

By Land Code developed by a comment that indicates sufficient scientific support study of the issue of land relations in the Russian Federation, including the issue of forced withdrawal of land plots for state or municipal needs.<sup>5</sup>

The experience of the Russian Federation it is interesting and useful, and the Republic of Kazakhstan to create preconditions for a more detailed disclosure of the matter.

Land Code of the Republic of Belarus of July 23, 2008 as amended, as of July 18, 2016 also allows the removal of land for public needs. However, any specific title or chapter devoted to compulsory withdrawal of land for public needs Code does not contain.

Although the Code (Article 1) discloses the concept of public service as the needs related to national security, the environment and the historical and cultural heritage, placing and maintenance of social, industrial, transport, engineering and defense infrastructure, development of mineral deposits, the implementation of international RB contracts, investment contracts between investors and the Republic of Belarus registered in the public register of investment contracts, concession contracts, public scheme of complex territorial organization of the Republic of Belarus, schemes of complex territorial organization of areas of urban detailed planning projects, schemes of land management areas, approved in accordance with the law, as well as the placement of real estate, construction of which is provided by decisions of the President, the Council of Ministers or programs approved by the President or the CM.

In the Republic of Armenia and the Kyrgyz Republic are its own peculiarities of the land legislation, taking into account the fact that these countries are of territorial located in a mountainous area and have limited land fund.

Apparently, the light of these circumstances and with the level of the economy of these countries is not yet necessary, detailed legislative regulation of the issues of forced withdrawal of land for state needs.

Thus, the Land Code of the Republic of Armenia, dated 2 May 2002 (Article 104) states that the grounds for the decision to withdraw the citizens and legal entities of land for State and community needs are the scheme usage and land zoning, general plans settlements.

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<sup>5</sup> Commentary to the Land Code of RK edited Bogolyubova S.A. Moscow, 7th edition, Prospect, with ext. and rev., 2011.

Land Code of the Kyrgyz Republic on June 2, 1999, as amended and supplemented as of July 30, 2016 (Article 66) states that allowed the withdrawal (redemption) of land for state and public needs.

Thus, under state and public needs to understand the needs related to national security, the environment and objects of historical and cultural heritage, placing and maintenance of social, industrial, transport, energy, engineering, architectural and construction documentation of mineral deposits, the implementation of international treaties of the Kyrgyz Republic.

The order of withdrawal (redemption) of land for state and public needs is regulated only by Article 68 of the Land Code of the Kyrgyz Republic.

Conclusions:

- The most interesting for EAEC countries experience in the regulation of land relations of the Russian Federation, occupying the 9th place on the territory and the development of the legislative provisions of land relations;

- Category for state and public needs (Kyrgyz Republic) for state and municipal needs (Armenia) carries a wider spectrum than the withdrawal of land for state needs that in a revitalization of local government institution in the interests of not only the state, but and society as a whole;

- The development of regulation of compulsory withdrawal of land for public use in the Russian Federation and the Republic of Kazakhstan due to the fact that these countries are in a favorable market conditions experienced economic growth and a construction boom, and therefore required its legislative support the interests of all subjects of land relations;

- According to the legal burden on the level of regulation of land relations in the countries of the EAEC has a different level from the general provisions to detailed regulation;

- Forced seizure of land for state needs requires a clear legislative disclosure RK Code, namely, on the subject of a separate chapter on the example of the LC RF.

## **References**

The Constitution of the Republic of Kazakhstan

Land Code of the Republic of Kazakhstan dated June 20, 2003. 442-II SAM amended. andSub-practical guide. Almaty: LTD publishing house "Norma-K" 2016.

Land Code of the Russian Federation from October 25, 2001 136-FZ

Land Code of the Republic of Belarus of July 23, 2008 as amended. and ext. (Link:<http://www.gomeloblzem.by/normativno-pravovye-akty-v-oblasti-zemelnyh-otnoshenij/97-kodeks-respubliki-belarus-o-zemle>).

Land Code of the Republic of Armenia from 4 June 2001 (reference: <http://www.parliament.am/legislation.php?sel=show&ID=1361&lang=rus>).

Land Code of the Kyrgyz Republic on June 2, 1999, as amended. and ext. (Link: [http://online.zakon.kz/Document/?doc\\_id=30241294](http://online.zakon.kz/Document/?doc_id=30241294)).

Comments to the Land Code, ed. Bogolyubov S.A. Moscow, 7th edition, Prospect, with ext. and rev., 2011.

Land law in Russia and Kazakhstan: problems of development and implementation of procedural forms-Abdraimov B.J., Bogolyubov S.A. IG "Jurist" monograph Moscow 2006 g.s.380

"Formation and development of the Eurasian Union: legal and cultural aspects" Ya.Nefedova report at the round table in the OSU 24 March 2016 in Orenburg