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of L.N.Gumilyov Eurasian
National University

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Improvement of the sphere of state registration rights to real estate

Abstract. Based on a comparative analysis of legal acts on state registration of rights to immovable property of two countries, the Republic of Kazakhstan and the Russian Federation, an attempt to identify problematic aspects of Kazakhstan's legislation was made. In the introduction of the article, the value of real estate in public circulation is disclosed, the need for mandatory state registration of rights to real estate is substantiated.

The introduction of digital technologies has seriously affected the form of registration procedures, which today may affect the protection of property rights of civil legal entities. The article contains a number of recommendations for the improvement of civil legislation on the registration of rights to real estate.

Key words: Civil law, civil rights objects, real estate, state registration, the moment of occurrence of the right of ownership of the acquirer, registration procedure, terms and forms of appeal.

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The formation of new economic relations in the Republic of Kazakhstan after a long period of domination of a fundamentally different economic system and property turnover could not but cause various kinds of problems, including legal ones, the resolution of which required new legal means and approaches. There is no exception and the sphere of formation of the real estate market, which led to the need for state registration of real rights to it.

Taking into account the importance of real estate in civil circulation, the need for a special procedure for restricting, arising, transfer and termination of real rights to real estate, the Kazakhstani legislator determined the mandatory state registration of rights to real estate. The system of state registration of rights to real estate is aimed at ensuring the legal purity of the grounds on which real property rights are transferred. The task of state registration of rights to immovable property is the protection of the rights and legitimate interests of citizens and legal entities acting as owners, guaranteeing the accuracy of information about immovable property, which is generally in the interests of the whole society and the state.

Civil Code of the Republic of Kazakhstan is the fundamental legal act regulating the issues of securing rights to immovable property. So, Art. 238 «The moment of occurrence of the right of ownership of the acquirer under the contract» of the Civil Code of the Republic of Kazakhstan states: «1. The right of ownership of the acquirer of property under the contract arises from the moment of transfer of the thing, unless otherwise provided by legislative acts or the contract. 1-1. If the property right of the acquirer under the contract is subject to state registration, and then the property right of the purchaser arises from the time of such registration, unless otherwise provided by legislative acts. 2. If an agreement on the alienation of property is subject to state registration or notarization, the acquirer's ownership right arises from the moment of registration or notarization, and, if necessary, both notarization and state registration of the agreement from the time of its registration» [1].

This article of the Civil Code of the Republic of Kazakhstan received further specification in a special legal act. The Law of the Republic of Kazakhstan «On State Registration of Rights to Real Estate» dated July 26, 2007 No. 310 (as amended and added as of July 04, 2018) regulates the legal significance and the general procedure for registration of rights to real estate in Kazakhstan [2].

The specified norms of the Civil Code of the Republic of Kazakhstan and a special law establish that the state registration of rights to real estate is a legal act of recognition and confirmation by the state of the occurrence, restriction (encumbrance), transfer or termination of rights to real estate. Consequently, state registration is the only evidence of the existence of a registered right, and the registered right to real estate can only be challenged in a court of law.

In modern conditions, the legally established and regulated system of registration of real estate and transactions with it is one of the most important conditions for the effective management of real estate not only as a physical object of ownership, but also as an object of other real rights. It is the state registration that gives the subjects of property relations the title of the owner, that is, the legal right to real estate, which regulates the rights and obligations of its title holder.

In recent years, due to the increasing contacts of Kazakhstan with other countries, the strengthening of foreign trade relations, the creation of the EAEU and the development of private law relations between Kazakhstani and foreign individuals and legal entities, issues related to the acquisition of property rights to real estate and the registration of relevant rights have become even more urgent, arising from these transactions.

In this context, Kazakhstani rule-making and law-enforcement practice, as well as civil law science, acquires foreign experience in registering real estate rights, generalizing the methods of resolving practical issues that are necessary to ensure the reliability of certifying the legitimacy of claims of real estate market participants on its objects. Acquaintance with similar acts of a number of CIS countries and some foreign countries suggests that the electronic form of implementation of procedures in the field of state registration of rights to real estate does not preclude work with documents on paper. In many countries, despite the high level of development of economic relations, there is a rather attentive approach to traditional paper workflow.

The State Program «Digital Kazakhstan» was approved by the Decree of the Government of the Republic of Kazakhstan No.827 on December 12, 2017, one of the tasks of which was to «digitize the internal activity of state bodies» [3]. Today in Kazakhstan, the market for electronic services is developing quite quickly and effectively, including government services provided in electronic form. This form of registration procedures should cause only positive feedback; it seems to save time, and less corruption. However, there are issues that cause some concern of the society, first of all, of the legal community. In this regard, this article attempts to identify some problematic aspects of the issues of state registration of rights to real estate, a brief comparative analysis of the legal regulation of state registration of rights to real estate under the laws of the Republic of Kazakhstan and the Russian Federation.

Art. 223 of the Civil Code of the Russian Federation «The moment of occurrence of the right of ownership of the acquirer under the contract states that the right of ownership of the acquirer of the thing under the contract arises from the moment of its transfer, unless otherwise provided by law or the contract. 2. In cases when the alienation of property is subject to state registration, the right of ownership of the acquirer arises from the time of such registration, unless otherwise provided by law ...» (extraction) [4]. Art. 223 of the Civil Code of the Russian Federation received further specification in a special legal act. According to the provisions of the Federal Law of July 13, 2015 No. 218-FL «On State Registration of Real Estate» (amendments and additions entered into force on September 1, 2018), state registration must be made according to a single record system for each object in the Unified State Register of Real Estate (hereinafter - USRRE) [5].

As in Kazakhstan, such registration cannot be challenged in court; it is the only evidence of the existence of a registered right for all interested parties. This information is public. In all other cases (except for privatization transactions made prior to the entry into force of the Law on Registration of Rights to Real Estate), the absence of registration entails the nullity of the transaction. The rights of all forms of ownership, including state, municipal, private, common and others are subject to state registration in the Russian Federation.

According to the aforementioned Law, cadastral registration of real estate and state registration of rights are carried out by the authorized body - the rights registration body (Federal Agency for State Registration, Cadastre and Cartography) (see Art. 3 of Federal Law) and its territorial bodies. These powers cannot be transferred to subordinate institutions.

The USSRRE is in electronic form. The Art.7 «The composition and rules for maintaining the Unified State Register of Real Estate» of the Federal Law «On State Registration of Real Estate» establishes: «... Registries of the Unified State Register of Real Estate, cadastral maps and record books are kept in electronic form. Register cases are stored in electronic form and (or) on paper» (extract) [5].

The exceptions are registry files. They contain on paper the statements drawn up in simple written form and submitted in paper form, as well as documents whose originals are not found in other state authorities, local governments and archives.

According to the Art. 33 of the Federal Law «On State Registration of Real Estate» an interested person has the right, in accordance with the procedure established for submitting an application for cadastral registration and (or) state registration of rights, to apply to the authorized body for registration of rights to real estate with an application for entering relevant information in the USSRRE the requirements for filling out and for the format in electronic form of which are established by the regulatory authority.

The authority for registration of rights within three working days from the date of receipt of the application independently requests documents (information contained in them) in the state authorities and local governments. State authorities and local governments send documents to the registration authority (the information contained in them). The rights registration authority refuses to submit information to the USSRRE in the order of interdepartmental information interaction at the request of the interested person if the state authorities and local governments notify about the absence of documents (information contained in them) necessary for entering information into the USSRRE in the order of interdepartmental information interaction. The rights registration authority shall, within three working days from the date of receipt of this notification, send the applicant a corresponding refusal in accordance with the procedure established by the authorized regulatory body. The authority for registration of rights within five working days from the date of entering information into the USSRRE in the order of interdepartmental information interaction upon the application of the interested person sends such a person a notification about entering information into the USSRRE in the manner established by federal legislation [5].

A comparative analysis of legal acts on the state registration of rights to immovable property of two countries - the Republic of Kazakhstan and the Russian Federation - revealed the following. At first glance, it seems that the legal meaning of the legal norms governing the functioning of the cadastral registration system and the state registration of immovable property of the two countries is not fundamentally different in content. However, a more detailed analysis reveals the significant shortcomings of Kazakhstan law, which can affect the guarantees and the quality of protection of the rights and legally protected interests of the owners.

1) In terms and form of application. In the Russian law, the registration deadlines are provided for all cases of registration of rights on paper and electronic media and vary from one to ten days, with a deadline of one day for requests in electronic form (Paragraph 9, Part 1, Article 16 of the Federal Law: «... in the case of receipt of such applications and documents in electronic form - within one working day following the day of receipt of the relevant documents» (extract) [5]. Thus, the Russian legislator provided for taking into account the possibilities of the entire population, including those subjects, mostly governmental citizens, who do not have the capacity to carry out the application in electronic form. In Kazakhstan, the timing of state registration of rights to real estate is regulated by Art. 23 of the Law of the Republic of Kazakhstan «On State Registration of Rights to Real Estate» No. 310 of July 26, 2007, which establishes the registration

period from one day (for electronic applications) to three days (for cases of filing an application for registration on a form) [2]. Unfortunately, in the pursuit of simplifying the registration procedure, the law does not provide for rules on the form of the application. If there are rules on electronic registration that does not require submission of an application, there are apparently cases of filing an application on paper. In this case, there is a need to indicate in the legal act the application form (this does not refer to part 10 of Article 22 of the Law of the Republic of Kazakhstan regarding the standard form and content of the application for registration of the right to immovable property and other objects of registration, which are determined by the authorized body).

In addition, the Kazakhstan law defines the concept of «electronic registration» as «state registration of rights to real estate, carried out on the basis of an electronic copy of a title document that enters the information system of the legal cadastre from a single notary information system automatically after notarization of the transaction» (Paragraph 31 of Art. 1 of the Law of the Republic of Kazakhstan) [2]. This begs the question if there is an «electronic registration», apparently there is still some kind of registration, but which one? Kazakhstan law does not specify the types of registration as such.

2) The structure of the law. The Russian law contains a set of rules for making records and features of accounting and registration of rights to real estate, which is supposed to be convenient in the law enforcement process.

A similar Kazakhstan law is very compact and the rules for the implementation of procedures for recording and registering rights are regulated in by-laws (e.g.: Order from the Minister of Justice of the Republic of Kazakhstan dated February 24, 2015 No. 110 «On Approving Rules for the Systematic Registration of Rights to Real Estate in the Legal Cadastre») [6]. Whether it facilitates enforcement issues is not difficult to guess.

3) About guarantees and liability. This is a very important issue. In the Russian act, the responsibility of the registering authority for the improper performance of its authority to maintain the USSRRE (Art. 66 of the Federal Law) is fully reflected. The norms of the same article fix a detailed mechanism for the compensation of damages caused to a person as a result of improper execution by the registration authority of the rights of its powers.

Art. 61 of the Russian law also provides for liability in the case of technical errors (slip, typographical error, grammatical or arithmetic error or similar error) made by the rights registration authority when performing state cadastral registration and (or) state rights registration and resulting in discrepancies in the information contained in the USSRRE [5].

Art. 32 of the Kazakhstan law also provides for the settlement of relations in the event of mistakes, however, there are no rules on the responsibility of the authorized state body. We would like to note that there is no mention of technical errors in the text of the law, although most of the technical errors are related to the human factor, which just requires more responsibility for the improper performance of the registrar's functional duties.

In the Kazakhstan law, the new amendment (Article 7-1), introduced by the Law of the Republic of Kazakhstan dated May 24, 2018 No. 156-VI, is so brief that, apart from the mention of state guarantees for «the accuracy of the information issued on registered rights and restrictions regarding immovable property» and liability for «damages caused by violation of the registration procedure, the introduction of incorrect registration data, the issuance of information, distortion of the content of information, shall be reimbursed in court», no other rules are contained [7].

Moreover, Art. 7-1 of the Law of the Republic of Kazakhstan does not even define the range of entities that may cause damage to the rights and legitimate interests of owners by their actions, and are also obligated to be responsible for the unfair execution of accounting and registration procedures, which is a serious gap in the registration of rights to real estate.

Conclusions and recommendations. We believe that the above gaps and shortcomings of the Law of the Republic of Kazakhstan «On State Registration of Rights to Real Estate» of July

26, 2007 No. 310 seriously reduce the level of protection of rights and legally protected interests of civil legal entities. In particular, it is recommended to draw the attention of the Kazakhstan legislator to the following questions:

1) to include in the text of the Law of the Republic of Kazakhstan «On State Registration of Rights to Real Estate» of July 26, 2007 No. 310, the rules specifying the application form to apply to the registering authority (e.g., written, on paper, etc.); It should be noted that the universal comprehensive electronic form of circulation is not yet acceptable for Kazakhstan, there are remote rural settlements where the Internet and computer technologies are not yet fully accessible and there is a threat of violation of the rights of this particular part of the population of the country (trips to the regions of Kazakhstan over the past three years give the opportunity to assert this);

2) the absence in the Law of the Republic of Kazakhstan «On State Registration of Rights to Real Estate» of July 26, 2007 No. 310 of the provisions on the responsibility of the registering body for the improper performance of its authority to maintain the Legal Cadastre excludes those guarantees that are laid down in Article 7-1 of this law. Such a provision in the law turns the provision of Part 1 of Article 7-1, where it is written: «The state guarantees the accuracy of the information issued on registered rights and restrictions on real estate» into an unwritten declaration, which directly leads to a deterioration of the position of subjects of property relations;

3) It is also necessary to develop and include in the text of the aforementioned Kazakhstan law norms containing a clear legal mechanism for damages for improper performance of the powers of the registering authority;

4) It is recommended to pay attention to the structure of the legal act, not to disperse the range of regulated issues into numerous bylaws, which complicates law enforcement practice in regulating relations in the field of state registration of rights to real estate.

The level and quality of the electronic form of documentation and the accounting system of rights (encumbrances) greatly simplify the actions of subjects of property relations, save time and money, but do not always determine the degree of protection of the rights and legitimate interests of citizens and organizations.

Considering the essential importance of real estate in civil circulation, the need of both subjects of civil legal relations, and the state in effective registration of real estate rights, recognizing the need to improve the scope of registration of real estate rights, it is recommended to pay attention to the quality of norms in the Law of the Republic of Kazakhstan «On State Registration of Rights to Real Estate» dated July 26, 2007 No. 310, and not to «fashion trends» dictated by modern technologies.

The «Digital Kazakhstan» program does not imply a reduction in the level of protection of the rights of citizens and legal entities, but rather requires transparency, honesty, efficiency and literacy in resolving property issues in society and the state.

The system of state registration of rights to real estate is aimed at ensuring the legal purity of the grounds on which real property rights are transferred, therefore, it is necessary to increase the responsibility of state bodies for possible legal consequences. Electronic registration does not exclude the responsibility of the registering authority for the improper performance of those powers that are assigned to it by law.

The task of state registration of rights to immovable property is the protection of the rights and legitimate interests of citizens and legal entities acting as owners, which means that a guarantee of accuracy of information about immovable property exists only where there is responsibility for the result.

Әдебиеттер тізімі

- 1 Гражданский кодекс Республики Казахстан от 27 декабря 1994 года № 268-ХІІІ. Часть Общая. [Электронный ресурс] - URL: http://adilet.zan.kz/rus/docs/K940001000_ (дата обращения 19.12.2018).
- 2 Закон Республики Казахстан «О государственной регистрации прав на недвижимое имущество» от 26 июля 2007 года № 310. [Электронный ресурс] - URL: https://online.zakon.kz/Document/?doc_id=30118294#pos (дата обращения 19.12.2018).
- 3 Постановление Правительства Республики Казахстан «Об утверждении Государственной программы «Цифровой Казахстан» от 12 декабря 2017 года № 827. [Электронный ресурс] - URL: https://online.zakon.kz/Document/?doc_id=37168057# (дата обращения 19.12.2018).
- 4 Гражданский кодекс Российской Федерации. Часть первая от 30 ноября 1994 года № 51-ФЗ (с изменениями и дополнениями по состоянию на 03.08.2018 г.). [Электронный ресурс] - URL: http://online.zakon.kz/document/?doc_id=30396612#pos=2210;-49 (дата обращения 19.12.2018).
- 5 Федеральный закон «О государственной регистрации недвижимости» от 13 июля 2015 года № 218-ФЗ. [Электронный ресурс] - URL: http://online.zakon.kz/Document///?doc_id=37590085#pos=1;-99; [Электронный ресурс] - URL: <https://www.zakonrf.info/doc-33319249/gl2-st7/> (дата обращения 19.12.2018).
- 6 Приказ Министра юстиции Республики Казахстан от 24 февраля 2015 года № 110 «Об утверждении Правил проведения систематической регистрации прав на недвижимое имущество в правовом кадастре». [Электронный ресурс] - URL: https://online.zakon.kz/Document/?doc_id=36899382#pos (дата обращения 19.12.2018).
- 7 Закон РК «О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам совершенствования регулирования предпринимательской деятельности» от 24 мая 2018 года № 156-VI. [Электронный ресурс] - URL: <http://adilet.zan.kz/rus/docs/Z1800000156> (дата обращения 19.12.2018).

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Жылжымайтын мүлікке құқықтарды мемлекеттік тіркеу саласын жетілдіру

Аңдатпа. Екі мемлекеттің - Қазақстан Республикасы мен Ресей Федерациясының жылжымайтын мүлікке құқықтарды мемлекеттік тіркеу туралы құқықтық актілерін салыстыру негізінде қазақстандық заңнаманың өзекті мәселелерін анықтау бойынша әрекет жасалды. Мақалаға кіріспеден жылжымайтын мүліктің азаматтық айналымда маңызы анықталып, жылжымайтын мүлікке құқықтарды мемлекеттік тіркеудің қажеттілігі негізделді.

Цифрлық технологияларды енгізу тіркеу процедураларын жүзеге асырудың нысанына айтарлықтай әсер етті, бүгінде осы өзгерістер азаматтық құқықтық қатынастардың субъектілерінің мүліктік құқықтарын қорғауға әсерін тигізуі мүмкін. Мақалада жылжымайтын мүлікке құқықтарды мемлекеттік тіркеу туралы азаматтық заңнаманы жетілдіруге бағытталған бірқатар ұсыныстар берілген.

Түйін сөздер: Азаматтық заңнама, азаматтық құқықтардың объектілері, жылжымайтын мүлік, мемлекеттік тіркеу, мүлік алушының меншік құқығы пайда болатын кез, тіркеу процедурасы, өтінішпен жүгіну мерзімдері мен нысандары.

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Совершенствование сферы государственной регистрации прав на недвижимое имущество

Аннотация. На основе сравнительного анализа правовых актов о государственной регистрации прав на недвижимое имущество двух стран, Республики Казахстан и Российской Федерации, была предпринята попытка выявить проблемные аспекты казахстанского законодательства. Во введении к статье раскрыто значение недвижимости в гражданском обороте, обоснована потребность в обязательной государственной регистрации прав на недвижимое имущество.

Внедрение цифровых технологий серьезно повлияло на форму осуществления регистрационных процедур, что сегодня может отразиться на защите имущественных прав субъектов гражданских правоотношений. Статья содержит ряд рекомендаций по совершенствованию гражданского законодательства о регистрации прав на недвижимое имущество.

Ключевые слова: Гражданское законодательство, объекты гражданских прав, недвижимость, государственная регистрация, момент возникновения права собственности у приобретателя, процедура регистрации, сроки и формы обращения.

References

- 1 Grazhdanskij kodeks Respubliki Kazahstan ot 27 dekabrja 1994 goda № 268-XIII. Част' Obshhaja [Civil Code of the Republic of Kazakhstan dated December 27, 1994 No.268-XIII. General Part]. Available at: http://adilet.zan.kz/rus/docs/K940001000_ (Accessed: 19.12.2018). [in Russian]
- 2 Zakon Respubliki Kazahstan «O gosudarstvennoj registracii prav na nedvizhimoe imushhestvo» ot 26 ijulja 2007 goda № 310 [Law of the Republic of Kazakhstan «On State Registration of Rights to Real Estate» dated July 26, 2007 No.310]. Available at: https://online.zakon.kz/Document/?doc_id=30118294#pos (Accessed: 19.12.2018). [in Russian]
- 3 Postanovlenie Pravitel'stva Respubliki Kazahstan «Ob utverzhdenii Gosudarstvennoj programmy «Cifrovoj Kazahstan» ot 12 dekabrja 2017 goda № 827 [Decree of the Government of the Republic of Kazakhstan «On approval of the State Program «Digital Kazakhstan» dated December 12, 2017 No.827]. Available at: https://online.zakon.kz/Document/?doc_id=37168057# (Accessed: 19.12.2018). [in Russian]
- 4 Grazhdanskij kodeks Rossijskoj Federacii. Chast' pervaja ot 30 nojabrja 1994 goda № 51-FZ (s izmenenijami i dopolnenijami po sostojaniju na 03.08.2018 g.) [Civil Code of the Russian Federation. Part One of November 30, 1994 No.51-FL (with amendments and additions as of 03.08.2018)]. Available at: http://online.zakon.kz/document/?doc_id=30396612#pos=2210;-49 (Accessed: 19.12.2018). [in Russian]
- 5 Federal'nyj zakon «O gosudarstvennoj registracii nedvizhimosti» ot 13 ijulja 2015 goda № 218 – FZ [Federal Law «On State Registration of Real Estate» dated July 13, 2015 No. 218 - FL]. Available at: http://online.zakon.kz/Document///?doc_id=37590085#pos=1;-99; <https://www.zakonrf.info/doc-33319249/gl2-st7/> (Accessed: 19.12.2018). [in Russian]
- 6 Prikaz Ministra justicii RK ot 24 fevralja 2015 goda № 110 «Ob utverzhdenii Pravil provedenija sistematicheskoy registracii prav na nedvizhimoe imushhestvo v pravovom kadastre» [Order of the Minister of Justice of the Republic of Kazakhstan dated February 24, 2015 No.110 «On approval of the Rules for the systematic registration of rights to real estate in the legal Cadastre»]. Available at: https://online.zakon.kz/Document/?doc_id=36899382#pos (Accessed: 19.12.2018). [in Russian]

7 Zakon RK «O vnesenii izmenenij i dopolnenij v nekotorye zakonodatel'nye akty Respubliki Kazahstan po voprosam sovershenstvovaniya regulirovaniya predprinimatel'skoj dejatel'nosti» ot 24 maja 2018 goda № 156-VI [Law of the Republic of Kazakhstan «On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan concerning the improvement of business regulation» dated May 24, 2018 No. 156-VI]. Available at: <http://adilet.zan.kz/rus/docs/Z1800000156> (Accessed: 19.12.2018). [in Russian]

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Жаркенова С.Б. – Заң ғылымдарының кандидаты, профессор м.а., азаматтық және экологиялық құқық кафедрасының профессоры, Л.Н. Гумилев атындағы Еуразия ұлттық университеті, Сәтпаев көш. 2, Астана, Қазақстан.

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