

Legal regulation of agriculture in Kazakhstan: problems and prospects

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Abstract: The problem of food security is the top priority of the economic policy strategy of any state, the effectiveness of this solution influences social, political, and ethnic stability in society. Food security, as an integral part of national security depends considerably on public resources aimed at preventing imbalance in the market, production and social environment of the country. Formation of public resources for all types of food, public grains resources and other strategically important agricultural products in the right quantities, depending on the needs of the population, is able to provide food security. The global financial crisis that affected the agricultural sector and the economy, created a real threat to global food security, and this in turn requires a reform of existing mechanisms and development of new ones to ensure food security at the international and national levels. Economic, political, and social security in the modern world is based on three aspects of security - food, energy and finance. According to the UN, more than 925 million people around the world suffer from hunger. This represents 12.5 percent of the world population (every eighth person). Of these, the vast majority - 852 million people - live in developing countries, where 14.9 percent of the population is starving. The number of hungry people in the world remains unacceptably high. Given the current rate of the population growth, global food production must increase by 70% by 2050, while the population of the world to this time should reach 9 billion people.

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Introduction

In addition to improving the timeliness and accuracy of the hunger estimates, there is a need to address the fact that malnutrition is more than merely a caloric food deficit. There is a growing recognition that hunger is a complex phenomenon that requires a multifaceted concept for its measurement and a whole suite of indicators that can capture the multiple symptoms and consequences of malnutrition.

Largely unstable position of world food markets is due to the fact that the system of world food production is not only dependent on the global and local weather and climatic factors, but also on the imperfect world financial system.

The ongoing recovery of agriculture is under very difficult conditions. It is very strongly influenced by changes in the legal field, on the basis of which the legislation of Kazakhstan should be improved, in particular, regulatory issues in land law, veterinary and phytosanitary, and ensuring food security This is primarily due to the formation of the Customs Union and the adoption of the relevant framework agreements [1].

Subject of the law - one of the major categories of legal science and practice. Without subjects no relations. In our opinion, the subjects of agrarian relations may be, above all, individuals and legal entities engaged in agricultural activities. According

to considers document of agricultural production recognized set of economic activities on the cultivation, production and processing of agricultural products, respectively, raw materials and food, including the provision of related services. This definition shows that the position of the Russian legislature is sufficiently broad understands the concept. In our opinion, the agricultural production is an activity closely related to the use of agricultural land for the production of agricultural products for its own and other needs. It is noteworthy that earlier in the conditions of a socialist form of management acted breakdown of the national economy and the agricultural and industrial products. In contrast to Kazakhstan, Russia has taken the path of adopting a special law "On the Development of Agriculture" from December 27, 2006, which regulates relations between the citizens and legal entities recognized by agricultural producers, other citizens, legal persons, public authorities in the development of agriculture [2].

It was convenient because it was possible for it to clearly define what kind of activities, products may include an activity or product, so the creation of such a document in market conditions also need. For instance, is fungi that grow in the forest or in agricultural fields related to agricultural products or not, and if they are grown specifically in order to

sale? Consequently, the development such document in the form of a catalog or qualifier has ripened. Especially such analogs exist, for example, the order of the Department of Food Resources of the Government of Moscow from 04.10.04 01-P-291/4 Qualifier introduced agricultural products, raw materials and food. It is said that the document was created in order to standardize the information companies wholesale food complex of goods movement of agricultural products, raw materials and food, linking indicators with national classification of products and organize the collection of data on the availability, supply, prices, and sales of food products in the city. According to G.E. Bystrov, "The key for determining number of participants of agrarian relations is the concept of agricultural activities". Current legislation focuses on the implementation of the agricultural commodity production. What signs are inherent in commercial agriculture and what it represents? The current legislation, including the Law "On state regulation of agriculture and rural development" does not give the answer, which in practice leads to misunderstandings and misinterpretations of legislative requirements.

In practice, the establishment of a legal entity or individual farms, already provides a basis to ascertain the existence of commodity production. Determination of the amount of land from which to judge the conduct of commodity production is important now, at a time when many farms has not been officially registered by the real estate.

Agricultural production characterized by such features as, first, the use of land as the main means of production, second, focus on agricultural production (crop, livestock, beekeeping). In order to determine the activity commodity or not, in our opinion, should be worked out a set of criteria based on determination of the presence of commercial production. These can include the following:

- Purpose and types of agricultural production. It must be conducted for profit. As for the types of production, for instance, in personal subsidiary (domestic) economy such products are created to meet their own needs.

- The size of the land used for the performance of agricultural production. This criterion is of great importance. For example, the Land Code provides that for ancillary (domestic) economy Kazakhstan citizens can be provided free of 0.25 ha and 0.15 ha of rainfed to irrigated land, and size limits are set by local representative and executive bodies [3]. For individual farms and legal persons engaged in commercial agriculture has limit (maximum) rate of land that may be in private ownership or land use, and the minimum is not set [4] by Government of the Republic of Kazakhstan. On approval of the limit

(maximum) size of agricultural land within a single administrative district (city), which may be on the private property of a citizen of the Republic of Kazakhstan for peasant (farmer's) economy, non-state legal entities of the Republic of Kazakhstan and its affiliates to maintain commercial farming, as well as on the right of temporary use of land by foreigners, stateless persons and foreign legal entities for conducting a commodity agricultural production.

- The legal form of the activity on the land. These include legal entities and individual entrepreneurs engaged in agricultural production conducted for profit. In this regard, we note that "the expansion of the agricultural legislation outside their land relations in the narrow sense has led to the inclusion in its orbit as the central legal institution in the regulation of agricultural activities, the institute of agricultural enterprise, so the problem of agricultural activity as a subject of legal regulation closely linked to the problem of agricultural enterprises as economic and legal category " [5, p. 177].

Determining whether commercial agricultural production is necessary in order to properly implement the norms of the Land Code of the country, which requires that the agricultural land available for private ownership or use of individual farms and private legal entities of Kazakhstan for conducting a commodity agricultural production. (article 24, 97). This means that not all types of agricultural activities, agricultural land can be given to private ownership. For example, if a business entity is engaged only in the processing or sale of agricultural products, it cannot be the owner of agricultural land, for his work in the land does not play the main role of the means of production, it serves as a spatial basis. Therefore, many studies have used the term "primary processing", "realization of their own production," which indicates that agricultural activities in the agro-legal aspect of the case when it comes to the close connection of the process of production, and only then on the next stages of its that is, processing and marketing of agricultural products.

In Art. 1 of the Law of RK "On agricultural associations and their associations (unions)," provides the following definition of agricultural commodity producers. This is a natural or legal person engaged in trade in agricultural products, which is defined as crop and animal production, which took a full technological cycle of production and comply with established standards. Unfortunately, such a lengthy and not a non-binding determination not benefited, and do not create legal leverage to lobby for the interests of agricultural producers.

Russian lawmaker is more consistent in this area. As agricultural producers, the law recognizes an

organization or individual entrepreneur engaged in the production of agricultural products, their initial and subsequent (industrial) processing (including leased vehicles) in accordance with the list approved by the Government of the Russian Federation, and the implementation of these products provided that the total income of agricultural producers share from the sale of these products is not less than seventy percent in the calendar year [6]. This provision allows the judge about the fact of commodity production. It takes place in the presence of 70% of sales of agricultural products of own production or processing of a calendar year. Do not quite understand the phrase "subsequent industrial" processing. In our view, this type of economic activity is not directly linked to the use of land as the main means of production, so the inclusion of the subjects of the right of private ownership of agricultural land is undesirable.

Progressive provisions of the Act, in our opinion, should be adopted and implemented in the national legislation.

Under the current land laws of RK subjects of rights to agricultural land can act both state and non-state entities. Thus, the subject of the right of permanent land use, according to Art. 34 Land Code may make public land users, asking for agricultural production, as well as research and development, pilot and training activities. As for non-state actors, the land law does not specify the characteristics of the legal regime of land of such entities, only stipulating that they can act actors such as temporary land use rights and the rights of private ownership of agricultural land.

Identification of species of entrepreneurship possible on several criteria, namely, by the fundamental principle of business-owners, and that it is, by definition of a business and its organizational - legal forms.

Findings

The main types of business in the division depending on the form of ownership in accordance with the current legislation on private and public enterprise. A legal forms of entrepreneurship can be identified primarily on the legal business entities - individuals and business entities.

Legal support of agrarian business individuals and businesses, with significant differences in relation to the specific definition of the mode of land as the main means of production used for this activity. These differences are manifested in the formation of the agricultural business subjects in the initial stages of the possibility of the state on the use of land for business activities, throughout the period of the activity itself. For the agricultural enterprise should

be to create a separate niche in the legislative design» [6, p. 76-77].

Among all agricultural producers a certain amount of agricultural production are agricultural organizations.

Under current legislation, there is no established definition of RK Concepts Agriculture Organization. In our view, we must distinguish the concept of "agricultural organization" and "agricultural commodity producer," to put an equal sign between them should not be. Why? Let us try to explain its position.

First, the agricultural organization has the status of a legal person, and as an agricultural commodity producer may be a natural person and. Second, not every organization is directly involved in agricultural production and primary processing of agricultural products. For example, agricultural partnership is created to provide various services, including the nature of the service to agricultural producers. For example, agricultural partnership is created to provide various services, including the nature of the service to agricultural producers. Fourth, agricultural organization must be recognized as the legal form of agrarian business, due to the fact that it is associated with agricultural activities, agricultural business, its implementation involves a profit or decision of any statutory objectives. To narrow the range of subjects of agrarian business, recognizing as such only agricultural producers, as it offers in our opinion, is not properly.

Currently, the government is interested in the development of various organizational and legal forms of agrarian business, so it creates the conditions for stimulating economic activity, as agricultural producers, as well as other economic entities in the agricultural business, for example, the activities of the rural consumer cooperatives, agricultural associations.

In this regard, there is an urgent need for legal separation concepts discussed above, in order to determine their legal personality. Automatic recognition of all the agricultural organizations of agricultural producers will, and in fact, it is the case in practice, to the "squandering" of agricultural land that unacceptable luxury. Land legislation is on the position that the agricultural land available for the conduct of agricultural production, so regulators should be armed with the specific requirements regulated by law that would reveal the existence of such proceedings to exercise effective control over the use of agricultural land, an assessment of their quality status. We focus not on all agricultural land, it is only about farmland.

The presence of these practical problems due to the fact that the current legislation does not provide a

clear understanding of the agricultural organization. This question is not answered in the agrarian and land law, although many scholars acknowledge the existence of an independent agrarian legal institution of "organizational and legal forms of agricultural organizations," which shows the contents of both foreign and domestic books on the agrarian law. Along with this there is a lack of comprehensive scientific development of agro-science of law in this area that needs to be addressed.

The law "On Bankruptcy" from January 21, 1997 number 67-I contains the following definition of the agricultural organization. It is an organization that produces agricultural products using the earth produces agricultural livestock, poultry (including breeding with the full cycle, from rearing), bee-keeping, if the income from the sale of these products, including recycled, more than fifty percent of the total annual income. In our view, this definition has some errors, due to the fact that equates the concept Agriculture Organization of the concept of an agricultural commodity producer. In our opinion, the law should distinguish between these concepts. Apart from the fact that the agricultural organization engaged in the production of agricultural products with the use of the land, it can be engaged and primary processing of these products, as well as its implementation. These aspects of the agricultural organizations are not taken into account in the above definition. We believe Agriculture Organization, an independent economic entity with legal personality, carrying out production of agricultural products, including activities in the field of storage, processing and marketing of agricultural products, the provision of various other services to serve the production activities of agricultural producers.

The first feature is the status of a legal person, Agriculture Organization should have a separate property by right of ownership, economic management or operational management of the separate property, and respond to these assets for its obligations, and secondly, on its own behalf to acquire and exercise property and personal non-property rights and obligations, sue and be sued. Along with this, the agricultural organization must have its own balance sheet or budget, seal with the name.

The current Civil Code of RK distinguishes between two types of entities: commercial and non-profit organizations.

This raises the question as to what the legal form can be created by agricultural organizations? Of existing laws, including civil and agrarian and land found that any restrictions in the creation of agricultural organization as a commercial or not-for-profit. Agricultural organizations may be established

as a state enterprise, agricultural production cooperative economic partnership, joint stock company, agricultural consumer cooperatives, agricultural associations.

In our view, the agricultural organization can be established both in the form of a commercial, as well as in the form of a non-profit organization. For these subjects the agricultural enterprise is not a criterion for delimiting character to distinguish them from the activities of other organizations. In other words, agricultural activities in the broadest sense of the word can be practiced both for profit and with different motivations.

Thus, according to Art. 4 of the Law of RK "On agricultural associations and their associations (unions)," agricultural co-created with a view: the socio-economic needs of agricultural producers through their voluntary association for marketing, storage and processing of agricultural products, the supply of material and technical resources, water supply and other service members of the partnership, in a profit themselves of agricultural producers in the functioning of associations at no profit, to create a competitive environment in the areas of marketing, storage, processing, production and supply of material and technical resources, providing direct supply of agricultural products from the producer to the consumer; facilitate the acquisition of on favorable terms by agricultural producers the necessary resources and access to financing their business activities.

Analysis of the goals of the agricultural associations shows that its activities are aimed at providing marketing, storage and processing of agricultural products, providing income of agricultural producers themselves. The question arises - is it possible not to recognize the agricultural partnership Agriculture Organization, in view of the fact that it is not directly involved in agricultural production and is not aimed at profiting from the activities. Definitely not, the provision of employment services to agricultural character shows the direction and scope of its activities. First of all, we are talking about a special area of existing activities on agricultural sector of the economy, and second, this activity helps (can help) achieve economies of agricultural production, in other words, these services make life easier for agricultural producers.

Up-market reforms in our country in the agricultural sector operated farms, that is, state-owned enterprises that have undergone privatization. Are currently in Kazakhstan created such organizational and legal structures in the agricultural sector? In Art. 2 of the Law of Kazakhstan "On State Enterprise" expressly states that the primary purpose

of business is to address the social and economic objectives defined by the needs of society and the state, including in the production of goods (works, services) of basic necessities in those areas and areas of public production, are not covered or insufficiently covered by the private sector of the economy [7].

Lawmaker list of goods (works, services) essential or spheres of social production does not directly indicate that, in practice, lead to the creation of various public enterprises republican and municipal levels. An example is the creation of a "Almatyzer." We believe that the list requires legislative adjustments. Recognize the nature of the mediation services between the developer and the owners (land users) of land provided "Almatyzer", in our view, is unacceptable and creates legal opportunities for public corruption.

Production of agricultural products and services in the area, respectively, of its storage, processing, can be attributed to essential services, in view of the fact that we are talking about the production of strategic resources on food. From the foregoing, it can be stated that the agricultural organization can be established in the form of a public company. In order to create a legal environment for the development of the agricultural enterprise state-owned enterprise, the legislator in Art. 34 Land Code specifies that for the performance of agricultural land granted by the right of permanent use. Moreover, the public land user has the right to obtain land at no cost, which also indicates the economic incentives for the state of entrepreneurship in rural areas. If the private owner of private land user of land for agricultural purposes the government sets limits in size [3], is that for the public land users are no legal restrictions, though initially, the purpose of land reform in the transition to a market economy was the elimination of the state monopoly in the field of land relationship. Of course, my opponents can see that for fear of the state monopoly in the sphere of land relations in the force who gained the land market. We believe that the state should create a level playing field for the development of both public and private forms of ownership.

In Kazakhstan, there is the creation of large national companies, including those in the field of agrarian business, the availability of legislative balances in the creation of the state of latifundia, in our opinion, not an extra measure. It is the JSC "national holding" KazAgro "to the authorized capital of which received the 100% state-owned shares of joint-stock companies as JSC" Food Contract Corporation ", " Agrarian Credit Corporation ", " KAF ", " Fund for Financial Support of Agriculture "guarantee Fund of the fulfillment of obligations by grain receipts ", " KazAgroMarketing " [8].

The purpose of the JSC "National Holding" KazAgro "is the realization of the state policy to stimulate the development of agriculture of the Republic of Kazakhstan, by ensuring effective investment management and corporate culture development of joint stock companies operating in the agro-industrial complex, the shares were transferred to him in payment for the shares. Its tasks include the concentration and direction of investment towards the priorities of agriculture, improving the efficiency of public investment in agriculture, the development of agricultural production and service infrastructure, promoting the formation and development of clusters in agriculture, the development of export agriculture, regulation and stabilization of internal food markets, improved corporate governance.

October 23, 2008 in Kazakhstan was organized and held the first International Agricultural Investment Forum, at which the head of the Government of the Republic of Kazakhstan called on its members to invest in the agrarian sector of the economy, in view of profitability of many of its industries and the need to solve the existing problems to overcome the food crisis. Necessary to support the ongoing activities of agricultural producers and processors of raw materials due to credit through a group of companies that are part of the national holding company "Kazagro" [9].

As you can see, the infusion of public investment in agricultural production goes through the national agricultural companies, which raises many questions. We agree with the opinion that "in the context of decentralization of central government is gradually transferred to the state of the non-core functions in the competitive environment, including state-owned enterprises, that is, economic entities, which indicates the change in the content of state regulation of land relations and the need to their delineation of their functions " [9].

Along with this, the question arises how justified granting of national agricultural companies imperious powers of state bodies?

For example, in accordance with the Rules of supporting agriculture with specialized organizations, approved by the Government of the Republic of Kazakhstan from July 7, 2006 [6], measures to support agriculture implemented by specialized organizations in areas stipulated by legislative acts of the Republic of Kazakhstan, at the expense of, provided from the state budget, as well as from its own funds and specialized organizations of funds raised by them from other sources not prohibited by the laws of the Republic of Kazakhstan.

Specialized organizations provide effective, efficient and targeted use of budget and other public funds.

These data include rules:

- 1) Joint-Stock Company "National Company" Food Contract Corporation";
- 2) Joint-Stock Company "KAF";
- 3) Joint Stock Company "Agrarian Credit Corporation";
- 4) Joint Stock Company "Fund for Financial Support of Agriculture";
- 5) Joint Stock Company "Mal Onimderi korparatsiyasy";
- 6) Joint-Stock Company "KazAgroMarketing";
- 7) Joint Stock Company "KazAgroGarant."

For example, the National Company "Food Contract Corporation" provides subsidies in the following areas:

- purchase of grain and industrial crops from domestic producers of agricultural, procurement services for the storage, transportation and processing of grain and industrial crops in the prescribed manner;
- funding for the production of competitive products processing plant and funding for infrastructure development of agriculture in the prescribed manner;
- financing of domestic agricultural producers for the spring sowing and harvesting operations through the provision of loans.

In our opinion, the establishment of national agricultural companies in order to transfer them to the power of government functions, it is not justified by the measure. These companies are for-profit organizations, have a serious production and financial resources. Their activities would be nice to send to the field of agricultural production, and other agricultural services. The agricultural enterprise of the national companies would contribute to the enlargement of the agricultural production, the creation of a competitive environment between agricultural producers of different forms of ownership.

Special attention is, in our opinion, should be paid to the activities of non-state joint-stock companies in the agricultural sector. According to the Law "On Joint Stock Companies", a joint-stock company is a legal entity that issues shares to raise funds for its activities. [8] In our country, before the market reforms, the agricultural sector was represented by large economic entities, namely the collective and state farms. Feature of the privatization of large state and collective farms was the creation on their basis of joint-stock companies, that is previously unknown in the country of the legal form of agricultural management. As the Kazakh scientist

and economist TA Esirkepov, the objective necessity of corporatization (corporatization) as the initial conditions for the privatization caused by the fact that it allows you to confirm the right of the state to the property converted enterprises. Corporatization as the first stage of privatization of medium and large enterprises at the same time makes it possible to speed up the sale of state property by the state for all or part of the shares of companies and individuals for a fee and charge [9, c. 140-141].

During the privatization of collective farms millionaires, large livestock farms, poultry farms have been transformed into joint-stock company, and wanted to keep the production cycle. Of those created at the time AO, now there were units. Many of them did not survive the challenges of the market, was not provided, and state support for the development of their activities.

The legal regime of AO, including the issuance and sale of its shares is governed by the law "On Joint Stock Companies". But at the same time raises the question of how to address the question of the fate of agricultural land for the transfer of shares of joint stock companies in the hands of foreign capital, under the action of the principle that agricultural land can not be privately owned by foreign entities. These problems due to crudity of many provisions of the Land Code of the Republic of Kazakhstan, resulting in a mismatch occurs between the land and the civil law in the Public Interest on agricultural land, which again speaks in favor of the need for a more detailed legislative support turnover of agricultural land, including entitling them to shares.

Cooperatives are a separate species of agricultural organizations. Of existing laws of RK distinguishes these types of cooperatives in agriculture as an agricultural production cooperative, rural consumers' cooperative, cooperative rural water users.

The activity of an agricultural cooperative is governed by the Law of RK dated October 5, 1995 "On the production cooperative".

According to him, production cooperative is a voluntary association of citizens on the basis of membership for joint business activities, based on their personal labor participation and integration of its members' property contributions (shares). With regard to the agrarian sector are the following features of the agricultural production cooperative. First, it is the main focus of its activities is the production of agricultural products. Secondly, it is created only by individuals, the number of which shall be at least two people. Third, to enter the agricultural cooperative individual must make property share (fee). In our view, since the land involved in the activities of the agricultural

production cooperative, you must by law provide for compulsory introduction of the land unit.

Thirdly, a member of the cooperative must take personal labor participation in its activities. In contrast to the agricultural production cooperative, rural consumers' cooperative is a non-profit organization. Its activities are governed by the law of the Republic of Kazakhstan dated 21 July 1999 "On the rural consumer cooperatives in the Republic of Kazakhstan". Under the current legislation of Kazakhstan, the rural consumer cooperative is a voluntary association of citizens on the basis of membership to meet the material and other needs of the members (shareholders), carried out by members of his association property (share) contributions. Based on this definition, we can say that this type of co-op created for the implementation of trade, procurement, marketing, processing, servicing, supply and other activities not prohibited by the legislation. [10] This activity is designed to meet the needs of material and other members (shareholders), as well as people living in rural areas, that is, it does not set itself the goal of making profits. At the same time, he can engage in all types of agricultural business activities that are not prohibited by law in order to achieve the statutory objectives [11-13]. Another feature of the rural consumer co-op is that its members can be both physical and legal persons.

Conclusion

At present, our country is interested in the development of this type of co-operation in the village. The law in question provides that state agencies and local governments are not entitled to interfere in the economic, financial and other activities of rural consumer cooperatives and their associations (unions), except in cases provided for by the legislation of the Republic of Kazakhstan. Rural consumer cooperatives and their associations (unions) to develop a plan of their own economic and social development.

Concluding, it should be noted that the development of the agricultural business in legal terms should be given more attention. We believe that the adoption of the Agrarian Code will contribute to solving the problems discussed above.

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