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The state of prosecutorial control over execution of land legislation in foreign countries

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Abstract: This article examines the distribution of land resources in foreign countries, general issues of state regulation of land relations in certain developed countries and CIS states, as well as different approaches to monitoring compliance with land legislation in the United States, Europe, and the CIS. It explores the role of prosecutor's offices in overseeing land law enforcement abroad, the organizational structures of prosecutorial bodies established for land oversight, and their respective functions and responsibilities. The article also presents relevant statistical data, analyzes the classification of foreign prosecutor's offices into those responsible for criminal prosecution and those tasked with legal oversight, and highlights theoretical aspects of the topic. Scientific perspectives, expert opinions, and ongoing scholarly debates are also considered. Furthermore, the article includes proposals for improving the legislation of the Republic of Uzbekistan based on advanced international practices in the state regulation of land relations, along with the author's personal conclusions related to the topic.

Keywords: Prosecutor's office, prosecutorial supervision, land, land reform, agricultural land, irrigated land, foreign countries, civil relations, illegal and unauthorized use of land, liability.

Introduction: Traditionally, land has been regarded as one of the most critical factors of production, serving as a foundation for infrastructure development and the provision of various public services. The effective utilization of land resources has a significant impact on the socio-economic development of any nation, influencing levels of hunger, poverty, and the overall well-being of the population.

The structure of the global land fund is constantly changing under the influence of two opposing processes. The first process reflects humanity's efforts to expand the area of land suitable for habitation and agricultural activities by enhancing soil fertility, implementing land reclamation, drainage, irrigation, and developing coastal zones. The second process involves the withdrawal of land from agricultural use as a result of erosion, desertification, industrial and transport development, open-pit mining, waterlogging, and soil salinization. Notably, the second process is developing at a faster rate. Consequently, the primary challenge facing the global land fund today is the degradation of agricultural land, leading to a significant reduction in arable land area per capita [1, pp. 88–92].

It is well known that the total area of the global land fund is approximately 13.4 billion hectares. On average, each person accounts for 1.7 hectares of land. However, the distribution of land resources across regions and countries is highly uneven.

The largest shares of land resources are concentrated in Africa (30.3 million km²) and Asia (27.7 million km²). Meanwhile, the greatest per capita land area is found in Australia and Oceania—averaging 33 hectares per person.

Currently, the countries with the largest land areas are Russia (17.1 million km²), Canada (10 million km²), China (9.6 million km²), the United States (9.5 million km²), Brazil (8.5 million km²), and Australia (7.7 million km²).

An analysis of the global land fund structure reveals that 37% of its total area is allocated for agricultural use, with only 11% consisting of arable land, while the remaining 26% comprises natural pastures and meadows. Lands not used for agricultural purposes constitute 63% of the global land fund, with the majority represented by forests (32%) and barren territories (28%), including deserts and rocky areas [2, p. 1].

Additionally, according to data from the Organisation for Economic Co-operation and Development (OECD), the combined value of land and buildings in member countries totals USD 249 trillion. The gradual increase in land value worldwide has contributed to the development of corruption schemes aimed at acquiring land ownership rights and exploiting land for personal gain [3, pp. 1–2]. This situation underscores the necessity of enhancing the activities of government authorities to ensure the rule of law in land governance, prevent violations, and strengthen the legal order.

In the current context, the analysis of international experience in the rational and targeted use of land resources, as well as the incorporation of its advanced practices into national legislation and prosecutorial oversight activities, is acquiring particular relevance.

It should be noted that in the majority of foreign countries, especially in developed nations, the state and society view the creation of favorable conditions for the rational and targeted use of land, along with the protection of land users' rights and interests, as one of their most important objectives.

METHODS

In the process of managing, utilizing, and protecting land resources, both economically developed and developing countries prioritize agricultural land, with a particular emphasis on fertile agricultural areas. It is impossible to examine the international experience of prosecutorial oversight in this field without briefly addressing the characteristics of land relations development and the legal foundations governing them in foreign countries.

It should be noted that in our country, the issues of prosecutorial oversight over the enforcement of land legislation abroad have not yet been comprehensively and systematically studied from a scientific perspective. The works of Uzbek scholars such as B.Pulatov, F.Rakhimov, Z.Ibragimov, T.Mirzaev, O.Madaliev, T.Umarov, I.Juraev, A.Komilov, A.A.Makhmudov, and F.Samigjonov have touched upon only certain general aspects of prosecutorial oversight over the enforcement of legislation in several foreign states. The studies conducted by Y.Juraev, A.Nigmatov, M.Usmanov, N.Skripnikov, Sh.Faiziev, Zh.Kholmuminov, O.Narzullaev, B.Kalonov, U.Ayubov, Kh.Isanov, R.Ikramov, Kh.Khaitov, and U.Saidakhmedov have been mainly devoted to issues of land and environmental law.

Additionally, certain aspects of prosecutorial oversight over the enforcement of land legislation in the CIS countries have been examined in the scientific works of researchers such as Ya.G.Chervyakova, T.B.Ashitkova, O.V.Kalugina, A.D.Berenzon, V.G.Bessarabov, A.A.Chyortov, V.I.Baskov, I.S.Viktorov, A.Yu.Vinokurov, K.Yu.Vinokurov, A.Kh.Kazarin, S.V.Maslov, and others. At the same time, despite the significant contributions of Ya.G.Chervyakova [4, p. 221], T.B.Ashitkova [5, p. 222], and O.V.Kalugina [6, p. 274] to the study of this topic, issues related to ensuring prosecutorial oversight over the enforcement of land legislation in foreign countries have not been specifically addressed in their works.

It should be emphasized that in the CIS countries, prosecutorial oversight over the enforcement of land legislation is considered one of the areas of general prosecutorial supervision, which determines its

generalized treatment. As for foreign scholars such as J.A.McKenzie, B.MacFarlane, M.Dixon, Yu.Cook, and others, their scientific works have covered certain theoretical aspects related to land rights, land use, and land protection. However, comprehensive studies devoted specifically to the exercise of prosecutorial oversight in this field have not been conducted by them.

In view of the above, the present study employed methods such as systemic-structural and comparative-legal analysis of the land legislation of foreign countries and the practice of its enforcement, logical analysis, specific sociological research, comprehensive examination of scientific sources, analysis of empirical data and statistical information, scientific interpretation of normative acts, as well as the study of their application practices.

A comparative analysis was conducted, along with a review of the works of the aforementioned scholars and online sources containing land legislation of foreign countries, including nearly all CIS states, developed countries such as the United States, Japan, China, and the Republic of Korea, as well as all European nations.

RESULTS

Currently, based on the specific features of the development of land law in foreign countries, these states can be conditionally divided into two groups:

– countries with developed market economies, where a stable system of legal regulation of land relations has been established;

– developed countries in which land reform processes are still ongoing [7, pp. 40–41].

The group of countries with developed market economies and stable systems of land regulation includes the United States, the United Kingdom, the Netherlands, Italy, France, Spain, Germany, and other highly developed nations. In these countries, the principal institution of land law is the institution of property rights, which exerts a significant influence on the development of other institutions of land law and accordingly occupies a central position both in the land legislation and in the land law scholarship of these countries.

Developed countries where land reforms are ongoing can, in turn, be classified into four groups based on the nature of the transformations being undertaken.

In Eastern European countries—such as Bulgaria, Hungary, Germany, Poland, Romania, Slovakia, the Czech Republic, and Yugoslavia—the main directions of land reforms include: – the withdrawal of land from state ownership and its privatization; – the reorganization of state and cooperative agricultural enterprises; – the creation of peasant (family) farms.

The reform of land and agrarian relations in China and other Southeast Asian countries has its own distinct features. In particular, during the implementation of the people's commune system in China—based on the principles of complete equalization—a system of family contract farming emerged. This system involved transferring land use rights to peasant households, thereby ensuring employment for millions of rural workers and contributing significantly to the growth of industrial production in the so-called "rural industry," which subsequently gained wide recognition.

Agricultural and land reforms in Latin American countries also present considerable interest, as these reforms have prioritized the transition from collective (communal) ownership to a system of private ownership.

A distinctive feature of land relations regulation in African countries lies in the fact that for a long time these nations were under colonial dependency on developed states, resulting in a legal framework that closely intertwined with local land use customs. At present, the privatization of land plots is also being actively pursued in the majority of African countries.

In the United States of America, land ownership [8, pp. 1–3] constitutes one of the key sectors of the American legal system. Its foundations lie in common law, rooted in England’s feudal legal traditions and subsequently adapted to American conditions. In the United States, the majority of land—specifically, 98% of arable land intended for agricultural use—is held in private ownership. Although the federal government controls significant land areas, these territories are predominantly located in desert and tundra zones, as well as in sparsely populated regions of the western United States and Alaska, including pastures and forest lands.

In the U.S., land ownership represents a complex system of interrelated rights, part of which is exercised by the landowner, while another part remains vested in the state, which grants the right of ownership. The government refrains from interfering in the economic activities of landowners, limiting its role primarily to the collection of taxes. Property taxes are considered an effective tool for influencing land use, employing specific methods of taxation and tax rate adjustments.

The rights to subsoil use and the extraction of natural resources remain under federal jurisdiction. Meanwhile, federal authorities are increasingly seeking to strengthen their influence over land use practices. Under legislation passed by the U.S. House of Representatives, landowners have been granted the

right to appeal directly to federal courts, bypassing state-level trial and appellate courts [9, p. 162].

Distinctive features of land law can also be observed in Eastern European countries. Despite widespread privatization of agricultural lands in the region, the sale of such land to foreign citizens remains prohibited.

For instance, under Bulgaria's Land Act of 1992, particular emphasis was placed on the free formation of a land market. This law stipulated the restitution of 50% of agricultural land to former owners [10, pp. 11–33].

According to Romania's Land Fund Act of 1991, each rural family was entitled to receive a land plot free of charge, with an area of up to 10 hectares (at least 0.5 hectares per individual), but not exceeding 100 hectares per family overall [11, pp. 1–3].

The modern land use system in Italy emerged under the influence of land reforms initiated in the 1950s. These reforms aimed to establish new peasant farms, overcome the socio-economic crisis, strengthen the bond between producers and land, and foster a sense of ownership. Italy's land reforms were implemented in two stages. The first stage involved the expropriation (forced seizure) of privately owned land from individual owners.

At the second stage, agricultural plots were transferred to users based on special agreements. Under the terms of land sales, the purchase price was to be paid in annual installments over a period of 30 years, and purchasers were prohibited from selling the land within that same period [12, pp. 108–127].

The foundations of the contemporary land use system in France trace back to agrarian reforms of 1945. Amendments introduced to land legislation in 1946 guaranteed land users the right to stable, long-term possession of land plots, autonomy in farm management, and protection of their rights in case of disputes with landowners. Currently, France recognizes collective, individual (private), and mixed forms of land ownership. Agricultural lands are granted exclusively to citizens historically residing in the relevant regions [13, pp. 65–74].

In Germany, despite the existence of all forms of land ownership, more than 90% of land is privately owned. According to German land legislation, the turnover of agricultural and forest lands is strictly regulated: fragmentation and changes in land use designation are prohibited. Primary attention is given to the rational use of land, the prevention of excessive restrictions on land turnover, and the enforcement of land users' legal obligations, including the payment of taxes. To support these objectives, Germany has established specialized agricultural courts [14, p. 1].

Oversight in this area is also coordinated by the Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection [15, p. 1].

In the United Kingdom, a system of state agencies exists with powers over environmental protection and natural resource management, coordinated by the Department for Environment, Food and Rural Affairs. The Ministry primarily performs coordination functions and provides general political leadership [16, pp. 120–131].

In many foreign countries, land redistribution is conducted through restitution (from the Latin restitutio—restoration). In the global practice of land law, restitution refers to the complete or partial return of land plots to individuals and legal entities from whom they were previously expropriated or seized. This process was particularly prominent after World War II, when land occupied by Nazi Germany was returned to its rightful owners. Examples of countries where restitution became the primary method of land reform include Estonia, Latvia, Lithuania, Slovakia, East Germany, Romania, Bulgaria, Slovenia, Croatia, Serbia, Montenegro, and Macedonia.

Following the collapse of the Soviet Union in the 1990s, privatization of agricultural lands began in Russia, Ukraine, Moldova, and Azerbaijan. In a number of Eastern European countries such as Armenia, Georgia, Azerbaijan, Moldova, and Ukraine, complete privatization of agricultural land was accomplished by the late 1990s to early 2000s through the distribution of small land plots [17, pp. 92–96].

Currently, in most CIS countries, despite full or partial privatization of land, there are still states where land remains entirely under public ownership. For example, Article 13 of the Constitution of Tajikistan recognizes land and other natural resources as the exclusive property of the state [18, p. 2].

At present, in many foreign countries where land is privately owned, the concept of state control over land use and protection does not formally exist. In the United States and most European countries, disputes regarding the unlawful use of land plots are adjudicated by the courts based on complaints submitted by local government authorities.

Meanwhile, in several CIS countries, prosecutors have been entrusted with supervising compliance with laws, including land legislation. Therefore, prosecutorial oversight of compliance with land use laws is explicitly addressed in the relevant normative legal acts of these states.

It is worth noting that the tasks of prosecution bodies in the area of land use and protection are determined

based on the legal status of the prosecution service in each particular country.

An analysis of legal scholarship reveals a range of perspectives among legal scholars and practitioners regarding this issue. For instance, H.Zaytun [19, pp. 75–81] advocates for the necessity of ensuring prosecutorial independence and objectivity, emphasizing that incorporating prosecution bodies into the structure of the executive branch could hinder their impartiality. We fully support this view.

The directions and functions of prosecutorial bodies are closely linked to their role within the system of state institutions. In particular, A.Allamuratov classifies states according to the legal status of their prosecution services into four groups: where the prosecution service is incorporated into the executive, judicial, or justice branches of government, or functions as an independent body not affiliated with any branch of power [20, pp. 8–9]. A similar classification is also proposed by Z.Ibragimov [21, pp. 66–76] and D.Khamdamova [22, pp. 42–43].

In our view, under modern conditions, incorporating prosecutorial bodies into any branch of state power, especially the executive, is inappropriate. It is well known that international practice today distinguishes two models for the organization of prosecution services, based on the directions of their activities and functional tasks.

The classification of a prosecution service under one model or another depends on the legal system and governmental structure of the respective country. Under the first model, the prosecution service primarily functions as a body responsible for criminal prosecution and accusation; under the second model, it acts as a body exercising oversight over the observance of legislation.

For example, the activities of the U.S. prosecution service are primarily oriented towards combating crime and preventing criminal offenses. The main task of American prosecutors (attorneys) is to represent the prosecution in court [23, pp. 216–223].

In France, the prosecution service is part of the Ministry of Justice, and its senior officials are classified according to the level of judicial proceedings: Attorney General in courts of cassation, prosecutors of the republic, and prosecutors of various jurisdictions.

In Germany, the prosecution service is also part of the Ministry of Justice and is considered an element of the executive branch. The main functions of German prosecutors are the conduct of criminal prosecutions and participation in court proceedings.

In the United Kingdom, the Crown Prosecution Service operates with the primary responsibility of maintaining the state's prosecution in court regarding criminal cases investigated by the police.

In Japanese law, prosecutors are empowered to initiate or terminate criminal proceedings, conduct preliminary investigations, demand enforcement of relevant laws in court, and oversee and control the execution of court decisions [24, p. 34].

In this regard, many scholars have put forward their scientific perspectives. For example, according to Yu.Knyazeva, in Western countries, prosecution services primarily function as accusatory bodies and do not exercise "general oversight"; moreover, in most countries, they are not independent systems but rather constitute components of the judiciary or executive authorities [25, pp. 98–101].

Similar positions are expressed by S.Abdrakhmanova and A.Kanatov [26, pp. 26–31], who emphasize that prosecutorial bodies operate within the framework of the executive branch (e.g., in the United States, Estonia, and other countries) or the judicial branch (e.g., in Spain, Latvia, Georgia, and others).

F.Malikov and B.Boymatov also note that in the United States, France, Germany, and Italy, the primary function of prosecutorial bodies is to conduct criminal prosecution [27, p. 50].

Under the second model, the primary function of the prosecution service is the supervision of law enforcement.

In particular, in most CIS countries (Russia, Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Turkmenistan, and others), prosecutors exercise oversight over the enforcement of laws. Nevertheless, after gaining independence, some CIS countries abandoned the function of "general oversight" when reorganizing the tasks and functions of their prosecutorial bodies.

Thus, in Azerbaijan, Armenia, Georgia, and Moldova, the "general oversight" function was excluded from the activities of prosecution bodies, and consequently, their prosecution services are currently classified under the first model.

According to legal scholar M.Zaprudskaya, "the first model implies the cessation of the 'general oversight' function (i.e., supervision of the enforcement of legislation) by prosecutorial bodies. Since in the prosecution services of Russia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, and Turkmenistan, the supervision of the enforcement of legislation remains a primary task, these institutions correspond to the second model of prosecution services" [28, pp. 135–139].

According to Spain’s Law No. 50/1981 "On the

Prosecution Service" dated December 30, 1981, the structure of the Office of the Attorney General of Spain provides for the creation of special prosecutors for matters related to land use, the protection of historical heritage, the fight against economic crimes, and forest fires. The primary tasks of these prosecutors include conducting inspections related to offenses in the areas of land use, the protection of historical sites, nature, and the environment, safeguarding flora, fauna, and domestic animals, as well as participating in judicial proceedings concerning these matters [29, pp. 1–10].

Thus, although the Spanish prosecution service is formally classified under the first model—with its main emphasis on criminal prosecution and maintaining charges in court—the introduction of a special supervisory function in specific areas of law suggests that categorizing it exclusively under a single model would be methodologically incorrect.

Analysis of Research Results

Overall, based on the tasks and functions of prosecution authorities in developed foreign countries, it appears appropriate to classify their activities into three models:

The first model includes states where the primary function of prosecutors is to maintain public prosecution in court, such as the United States, France, and the United Kingdom;

The second model encompasses states where the prosecution authorities not only conduct criminal prosecution at both the preliminary investigation and trial stages but also participate in civil and administrative proceedings, and perform supervisory functions over judicial processes, as seen in Germany, Italy, Denmark, and Japan;

The third model refers to states where one of the main functions of the prosecution authorities is the supervision of the enforcement of legislation, including Russia, Belarus, Ukraine, Uzbekistan, Kazakhstan, Tajikistan, Kyrgyzstan, and Turkmenistan.

An analysis of international experience demonstrates that, during the gradual privatization of land plots in most countries, the degree of state control over the targeted and rational use of land was significantly reduced, and related issues began to be resolved within the framework of civil legal relations.

In our opinion, resolving land disputes exclusively through judicial procedures, along with predominantly applying financial sanctions for violations of the law, are appropriate measures. Undoubtedly, the reforms currently underway in our country may eventually lead to the introduction of similar processes in our Republic.

It should be noted that prosecutorial supervision over the enforcement of land legislation is a relatively new phenomenon for the majority of foreign countries. As mentioned above, in countries where the prosecution authorities are tasked with supervising the enforcement of legislation (such as Russia, Belarus, Ukraine, Kazakhstan, Kyrgyzstan, and Turkmenistan), the supervision of compliance with land legislation is conducted within the framework of general prosecutorial supervision, alongside the enforcement of other normative acts.

However, in the Republic of Tajikistan, prosecutorial supervision over the enforcement of land legislation has been singled out as a separate area. In particular, pursuant to the Decree of the President of the Republic of Tajikistan No. 1172 dated January 4, 2019, the Main Department for Supervision of the Enforcement of Land Legislation and its territorial divisions were established within the General Prosecutor's Office of the Republic of Tajikistan. These structures are directly responsible for supervising compliance with legislation in the sphere of land relations.

A similar practice has been introduced into the legislation of our Republic as well. Thus, by Presidential Decree of the Republic of Uzbekistan No. PQ–138 dated February 21, 2022, "On Measures to Improve the Efficiency of State Control in the Field of Land Use," and in order to ensure the effective implementation of additional tasks assigned to prosecution bodies, the Main Department for the Prevention of Land Resource Misappropriation was established within the structure of the General Prosecutor’s Office, comprising 8 staff units, along with similar subdivisions within the Prosecutor’s Offices of the Republic of Karakalpakstan, regions, and the city of Tashkent, with a total of 56 staff units.

Considering the current transitional stage, as well as the limited size of land resources in our country, especially agricultural lands, it seems appropriate to maintain prosecutorial supervision in this area through specialized structural subdivisions until the complete zoning organization of land plots and the establishment of their real owners is achieved, following the example of the United States and European countries.

However, based on the study of certain aspects of international experience, it should be noted that in cases of violations of land legislation, particularly in the allocation, use, or withdrawal of land plots into the state reserve, such matters should be resolved through judicial proceedings by filing the appropriate legal claims.

In the long term, as the full privatization of land plots, especially agricultural lands, is completed, state control, including prosecutorial supervision in this area, will

gradually give way to the regulation of relations through civil law mechanisms.

CONCLUSION

First, the analysis of international practice regarding the enforcement of land legislation reveals that in Western countries, the activities of prosecution bodies are primarily focused on ensuring prosecutorial participation in judicial proceedings and implementing state policy in the field of criminal law. At the same time, the function of prosecutorial supervision over the enforcement of legislation remains a leading task in most CIS member states.

Second, in economically developed countries (such as the United States, Germany, France, Italy, and England), prosecution authorities do not exercise functions related to the supervision of the enforcement of laws. The absence of a need for prosecutorial supervision in these countries is explained by their longstanding traditions of statehood and legal systems, a high level of respect for the law, strong public trust in the judiciary, the existence of a robust institution of advocacy and legal services, and the effective operation of public oversight mechanisms.

Third, in certain economically developed countries, the need for prosecutorial supervision arises in matters related to environmental protection and land use, which has led to the establishment of specialized prosecution bodies. For instance, according to Spain's Law No. 50/1981 "On the Prosecution Service," dated December 30, 1981, special prosecutors for land use, the protection of historical heritage, economic crimes, and forest fires have been established within the structure of the General Prosecutor's Office of Spain. However, the role of these prosecution bodies is not to supervise the enforcement of legislation per se, but rather to oversee the investigation of crimes in these specific areas and to maintain public prosecution in courts.

Fourth, in countries such as the United States, England, the Netherlands, Italy, France, Spain, Germany, and other developed states, sustainable systems of legal regulation of land relations have been formed under conditions of a developed market economy. Since land has historically been an object of private ownership in these countries, land disputes are currently resolved predominantly through civil judicial proceedings. In this regard, it appears advisable in the future to consider the possibility of transferring land into private ownership and addressing cases of unlawful or inappropriate land use primarily through the application of financial and tax sanctions.

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