



THE IMPROVEMENT OF THE CONSTITUTIONAL AND LEGAL REGULATION OF PROPERTY RIGHTS IN UZBEKISTAN

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Abstract

The article considers the issues of constitutional-legal regulation of the institution of private property, improvement of the norms of property rights of the Constitution of the Republic of Uzbekistan, strengthening the protection of private property and guarantees of the rights of owners.

Keywords: The Constitution, constitutional reform, private property, human rights, guarantee of the rights of owners, privatization of land plots, fair compensation, the principle of inviolability and protection of private property.

Introduction

Within the framework of the Strategy of Actions on five priority areas of development of the Republic of Uzbekistan in 2017-2021, about 300 laws and over 4,000 decisions of the President of the Republic of Uzbekistan have been adopted over the past period, aimed at cardinally reforming all spheres of life of the state and society.

In the direction of reforming the national economy, effective measures have been taken to liberalize foreign trade, tax and financial policies, support entrepreneurship and guarantee the inviolability of private property.

Nowadays in Uzbekistan, the protection of human and civil rights and freedoms enshrined in the Constitution of the country, that is in the first place in the system of values on which the state is based.

On January 28, 2022, The Decree of the President of the Republic of Uzbekistan approved the Strategy for the development of New Uzbekistan for 2022-2026, which aims to identify priority areas of reforms aimed, inter alia, at accelerated development of entrepreneurship and unconditional provision of human rights and interests based on the principle of "Everything in the name of human honor and dignity".





One of the seven priority directions of the Strategy for the development is "the transformation of the principles of justice and the rule of law into a fundamental and necessary condition for the development of the country." The primary goal of the state in this direction is "reliable protection of the inviolability of property rights and restriction of illegal interference of state bodies in property relations."

This goal is an urgent problem of citizens and entrepreneurs, because of the authority of a state body, the inviolable property right of a private person, who is in a more vulnerable position in public legal relations, is often violated.

The right of ownership occupies one of the most important places in the totality of human rights, representing one of the foundations of its legal status. At the same time, property, as a multidimensional and substantial category, is of lasting importance for the state as a whole, forming the economic basis of production, providing the basis for the implementation of civil turnover.

From a legal point of view, the right of ownership is considered as a natural inalienable right of an individual (property right in the subjective sense) and as a set of legal norms that consolidate the content of this right (property right in the objective sense). The content of the property right includes the rights of the owner to own, use and dispose of property objects; other powers (the right of consumption, modification, management, protection and protection, etc.) are included in the scope of these three powers.

The right of ownership is enshrined in Articles 36, 53 and 54 of the Constitution of the Republic of Uzbekistan, and its recognition and guarantees of security constitute one of the foundations of the constitutional system. The right to private property is one of the fundamental human rights in Uzbekistan.

According to Article 36 of the Basic Law of Uzbekistan, everyone has the right to property. Article 53 stipulates that private property, along with other forms of ownership, is inviolable and protected by the State. The owner may be deprived of it only in cases and in accordance with the procedure provided for by law.

The Constitution of independent Uzbekistan for the first time at a high constitutional level introduced into circulation such important institutions and principles for the country and its economic development as "market relations", "equality of all forms of ownership", "private property", "freedom of economic activity", which form the constitutional foundations of the state's economy in inseparable unity.

Thus, it is difficult to overestimate the importance of property protection as an essential element of economic, political, and legal relations. The protection of the property rights of citizens and organizations is an integral responsibility of the State.





Accordingly, it must provide a full-fledged legal framework, create adequate, effective mechanisms and institutions, and develop the activities of existing institutions.

Creating the legal foundations of a multi-layered economy, the Basic Law determined that the economy of Uzbekistan is based on property in its various forms. The Civil Code of the Republic of Uzbekistan reveals in detail the concept of "diversity of forms of ownership". According to Article 167 of the mentioned Code, property in the Republic of Uzbekistan acts as the private and public form. Private property is the right of private ownership, use and disposal of one's property. Public property is state property consisting of republican property and the property of administrative-territorial entities (municipal property).

The adopted laws aimed at increasing the importance of private property, further improving the business environment and business conditions, in particular the laws "On Property in the Republic of Uzbekistan", "On the protection of private property and guarantees of the rights of owners", "On guarantees of freedom of entrepreneurial activity", "On licensing, licensing and notification procedures", "On competition", "On family entrepreneurship", "On privatization of non-agricultural land plots" served as the legal basis for the formation of Uzbekistan as a business country. Constant attention is paid to the need to reduce the share and participation of the state in the national economy to a strategically and economically justified level. It is crucial for us to remove all barriers of private property and private entrepreneurship, which are a priority for a market-based economy.

The revival of this legal institution in Uzbekistan began with the adoption of the Law of the Republic of Uzbekistan on October 31, 1990 "On property in the Republic of Uzbekistan". The Law of the Republic of Uzbekistan of September 24, 2012 LRU - 336 "On the protection of private property and guarantees of the rights of owners", created an integral system of legal guarantees of owners: private property that has arisen in the process of privatization of state property, it is inviolable. The results of privatization are not subject to revision and cancellation. It is prohibited to initiate issues on the revision and cancellation of the results of privatization, including the results of the valuation of objects by state, including regulatory, law enforcement agencies and courts. To date, the current trend of protecting the rights of owners requires the adoption of this Law in a new edition.

The second part of Article 53 of the Constitution of Uzbekistan proclaims the inviolability of property, which is an important element, because all the instructions on the powers of the owner, all the rules governing property relations, will be of negligible importance if there is no idea of the inviolability of property.





It is important, not only to proclaim the existence of state and private property, but also to grant everyone equal rights to carry out economic and other activities, to guarantee equal protection and equal conditions for the development of all forms of ownership. This means the equality of all subjects of property rights before the law and the court, the right to the same support from the state. For example, in matters of obtaining a bank loan, the use of benefits and preferences for the development of small businesses and private entrepreneurship.

The above mentioned are fully consistent with article 17 of the Universal Declaration of Human Rights (adopted by the UN General Assembly on December 10, 1948), which enshrines the provisions that everyone has the right to own property both individually and jointly with others. At the same time, no one should be arbitrarily deprived of their property.

For information, the first document of constitutional significance in history that enshrines the guarantees of private property is the French Declaration of Human and Civil Rights and Freedoms of 1789. Private property is represented by a natural and inalienable, sacred and inviolable right in the scope of this Declaration. Private property and the right to it are recognized as the highest value along with freedom and security and they are an inalienable human right. At the same time, Article 17 of the Declaration proclaims that "since property is an inviolable and sacred right, no one can be deprived of it except in the case of an undoubted social necessity established by law and subject to justice and prior compensation." This declaration was included in the preamble of the French Constitutions of 1946 and 1958.

In this situation, I would like to draw attention to the fact that the right of ownership is the right of a person to own, use and dispose of the property belonging to him at his discretion and in his own interests, as well as demand the elimination of any violations of his property rights, from whomever they come (Article 164 of the Civil Code of the Republic of Uzbekistan). At the same time, private property is inviolable and is protected by the state. This is stated in Article 53 of the Constitution. The state also creates all the necessary conditions to ensure the safety of private property and its increase (Article 2 of the Law "On the Protection of Private Property and guarantees of the Rights of Owners").

In this regard, the principle of priority of the owner's rights applies in the relationship of the owner with state bodies, according to which all irremediable contradictions and ambiguities of legislation arising in connection with the exercise of the right of private property are interpreted in favour of the owner. In addition, an act of an administrative body that does not comply with the law and violates the right of private property is recognized by the administrative court as invalid.





Article 53 of the Basic Law established another of the most important constitutional and legal principles - the guarantee of the return of damage to the owner for the seizure of property and property rights. For example, in the case of the adoption of an act of legislation terminating the right of ownership, the losses caused to the business entity – the owner of the property as a result of the adoption of this act, including the value of the property, are reimbursed by the state (Article 23 of the Law "On Guarantees of Freedom of Entrepreneurial Activity"). Seizure of privately owned property in cases of nationalization and requisitions are carried out only on condition of full compensation to the owner of its market value, as well as losses caused to the owner in connection with such withdrawal, unless otherwise provided by law (Article 1 of the Law "On Guarantees of Freedom of Entrepreneurial Activity").

On June 29, 2022, the Law of the Republic of Uzbekistan "On procedures for the seizure of land plots for public needs with compensation" was adopted, as well as amendments to a number of legislative acts "in connection with improving the system of ensuring equality and transparency in land relations, reliable protection of land rights and turning them into a market asset". The new law established procedures for the seizure of a land plot or part of it belonging to individuals for public needs and legal entities on the right of ownership, permanent use or temporary use, and providing compensation to the right holders of this land plot and real estate objects located on it. The list of circumstances on the basis of which the seizure is made has been fixed, and a ban has been introduced to interpret the seizure of land plots for any other purposes as seizure for public needs.

The above-mentioned provisions of national legislation comply with article 1 of Protocol No. 1 of the Convention on the Protection of Human Rights and fundamental freedoms (Paris, March 20, 1952), according to which "Every individual or legal entity has the right to respect for their property. No one may be deprived of his property except in the interests of society and under the conditions provided for by law and the general principles of international law."

Article 19 of the Constitution of the Republic of Uzbekistan proclaims that the rights and freedoms of citizens enshrined in the Constitution are inviolable, and no one has the right to deprive or restrict them without a court. According to article 10 of the Civil Code of the Republic of Uzbekistan, the protection of civil rights is carried out in accordance with the jurisdiction of cases established by procedural legislation or contract, court, economic court or arbitration court. This provision also applies to the protection of property rights. The most effective means of protection are those that provide for judicial protection provided to the subject of civil relations as a result of applying to the court with a claim for the protection of his violated or disputed





property rights. It should be noted that the protection of property rights is covered by the broader concept of "protection of property rights".

The protection of private property should be understood as ensuring the restoration of the violated right by the competent authorities or by the owner himself. Hence, the protection of property rights covers the whole set of measures related to ensuring its proper implementation before the violation of this right of the owner, and protection is the measures applied after the violation of property rights in order to restore the violated right.

The protection of property rights is carried out on the basis of civil law norms that establish the ownership of material goods to subjects of civil legal relations and determine the degree of their property isolation, provide owners with conditions for the exercise of their rights within certain limits, establish adverse consequences for persons who have violated the rights of owners. The protection of property rights is connected with the state regulation of the distribution of property between subjects of civil law, as well as with the state permission to own and dispose of property within certain limits. The protection and protection of property rights are closely related to each other, since proper civil protection can be carried out only within the protected rights of the owner.

It should be emphasized that land is a strategic resource and should belong to the state. This opinion has dominated in Uzbekistan for a long time. But a market economy cannot develop without private property. Article 55 of the Constitution of the Republic of Uzbekistan states: land and other natural resources are national wealth. According to Article 214 of the Civil Code of the Republic of Uzbekistan, Article 19 of the law "On property in the Republic of Uzbekistan" the land is located in republican ownership.

In recent years, Uzbekistan has taken measures aimed at introducing a transparent, market-based and equal procedure for allocating land plots, ensuring stability in property and legal relations in the field of land use, land protection, guaranteeing the property rights of landowners, as well as introducing them into free circulation as an object of civil law relations by determination of the economic value of land.

In 2021, the Law "On Privatization of non-agricultural land plots" was adopted, which allows citizens and entrepreneurs to privatize their land plot or buy a new one immediately into ownership.

As part of the implementation of this goal, it will be advisable to adopt a law providing for the establishment of an order according to which an administrative act concerning property rights, including and in relation to the land plot, it can be canceled or invalidated only in court. In economic courts, a regressive scale (decreasing) will be



established to increase access to justice for entrepreneurs the rates of state duty on claims related to property rights.

In addition, certain important aspects of private property rights are insufficiently regulated in the current legislation. For example, the termination of property rights and fair compensation in case of its seizure, the responsibility of state bodies for encroachment on private property, the procedure for the seizure of immovable property for public and state needs, etc. The absence of mechanisms for the implementation of certain provisions of legislation, the presence of contradictions and reference norms in it are fertile ground for intradepartmental rulemaking, a corruption factor.

In this regard, the principle of priority of the owner's rights should apply in the relationship of the owner with state bodies.

At the same time, the Constitution is the legal and legislative basis for approving the priority of private property in a multi-layered market economy and providing guarantees for its protection.

Constitutional reform is currently underway in Uzbekistan. On May 20, 2022, at a joint meeting of the Senate and the Legislative Chamber of the Parliament, a Constitutional Commission was established to form proposals for amendments and additions to the Constitution and the implementation of organizational measures, its composition and tasks were determined.

As world practice shows, constitutional reforms were implemented in many states during the period of cardinal changes. Constitutional reforms are a requirement of the time. It is a necessary legal prerequisite for current and future sustainable development. Changes aimed at improving the quality and efficiency of governance contribute to the stability of the political system, which in turn benefits the economy, creates stable conditions for investment and development.

President Shavkat Mirziyoyev emphasizes: "... there is a deep sense of life in the words of the outstanding statesman and politician Winston Churchill that "To become better means to change, to be the best of the best means to change constantly."

Indeed, the current rapidly changing reality requires us to act and change in accordance with it in order to have a Constitution that meets the requirements of the time.

In recent years, significant efforts have been made in Uzbekistan to encourage entrepreneurial initiative and attract investment. Most of the normative legal acts adopted in this direction are based on international experience. Genuine market institutions are being introduced, such as public-private partnerships and private ownership of land, as well as new regulatory principles: the presence of the state in





the market of basic resources is being reduced, conditions for fair competition are being created, and investment conditions are being facilitated.

Property is important because it is a guarantee of the individual's existence. In our opinion, the improvement of the constitutional protection of property rights should become one of the main directions of the constitutional reform of Uzbekistan. In this connection, it is necessary to consider the issue of improving the Basic Law of Uzbekistan, having studied and carefully considered the world constitutional experience.

At the same time, priority attention in the course of constitutional reforms should be given to the following issues:

- **Implementation of the principles of inviolability and protection of private property**, including land and minerals as the most important and necessary conditions for ensuring the welfare of the population, the development of the national economy and economic human rights. Based on the priority of private property, special attention should be paid to the development of constitutional and legal foundations and the creation of conditions under which it will be impossible to violate the rights of persons acquiring property, trusting the information of government departments;
- **Creating a system in which the court, restoring the rights of citizens and entrepreneurs, will stand for the protection of private property**, obliging executive bodies to act within the law, which contributes to the development of society and its economic relations. *For information, only in 2021 in Uzbekistan the rights of more than 6.5 thousand citizens and entrepreneurs were regained;*
- **The constitutional and legal content of private property**. Recognition by the majority of constitutions of foreign states of the right private property as one of the constitutional human rights and private property is explained by the fact that it is important not only in itself as a source of material well-being and stability of life of a person and his family, but also serves as the basis for the realization of many other constitutional rights and freedoms of a citizen: to a decent standard of living, to freely engage in entrepreneurial activity, housing, health care, education, cultural development, freedom of movement, etc. At the same time, taking into account the special importance of the right of private property, modern constitutions, in addition to fixing the right itself, specify mechanisms, that is, objects, subjects of the right of private property, the limits of its implementation and the possibility of its limitations, its guarantees and methods of protection;
- not only the subjective right of a citizen, enshrined in the constitutions of different countries to private property, but also the most important characteristics of private



property as an institution of objective law, first of all — its relationship with other forms of ownership, the social nature of private property. The constitutional institutionalization of private property is due to its enormous role as an extremely important factor of social significance, in particular, for establishing a balance of constitutional values of a legal and democratic state on the one hand and a social state on the other.

At the same time, the most important modern trends in the development of private property law and its constitutional and legal regulation should include:

- Strengthening the social function of private property;
- Weakening of constitutional and legal guarantees of private property;
- The weakening of individual private property and the growth of corporate private property, which has a huge impact on society and state power;
- Expansion of the range of objects of the constitutional right of private property, including the consolidation of information at the constitutional level as an object of private property right;
- Combination of integration and differentiation of constitutional and legal regulation of private property.

Taking into account the above and in order to further optimize the problems of private property issues, it is proposed to state the first part of Article 36 of the Constitution of Uzbekistan in the following wording: "Everyone has the right to property, **which is protected by law.**"

It seems appropriate to supplement Article 53 of the Constitution with the following norms: "Private property is inviolable and protected by the state. The state provides a favourable business and investment climate, conditions for the development of entrepreneurship. Entrepreneurs have the right to carry out any activity not prohibited by law, independently choose the directions of their activities, and receive income from entrepreneurship in an unlimited amount. In the Republic of Uzbekistan, the free movement of goods, services, labour and financial resources is guaranteed. The results of denationalization and privatization are not subject to revision and cancellation."

It is also proposed to introduce the following rule into the Constitution: "No person can be deprived of his property except by a court decision. Compulsory alienation of property for public needs can be carried out only by a court decision — in cases provided for by law, and after preliminary, fair and equivalent compensation, provided that these needs cannot be met in any other way", this will be the most important demonstration of the country's commitment to the real protection of property, and will also create grounds for transfer disputes on public alienation are





within the exclusive competence of the courts. This will serve as an important incentive signal for investors.

In addition, the above confirms the need to introduce the following rule into the Constitution: "land may also be privately owned on the terms and in the manner prescribed by law. Agricultural and forest lands belong to the state and are allocated to business entities on the basis of lease agreements."

Of all the inputs into housing production, land can be the most challenging to source. Land rights may include a wide range of rights to use, own and/or transfer land, as well as enforce rules and exclude outsiders. Strengthening of land rights can take a variety of forms, from documenting customary uses to formalising individual rights. Some forms may engage directly with the rights holder, for example through land titling. Other forms of strengthening rights may be enacted at the national level, for example constitutional reforms to recognise customary land rights.

The regulation in the Constitution of the legal norm ensuring the right, protection and protection of private property, the creation of conditions for the actual implementation of guarantees of its inviolability will allow resolving existing legal conflicts and will become a stimulating impulse for the further development of small business.

Therefore, the constitutional norms need to regulate a whole range of issues related to the termination of property rights. In particular, the list of grounds provides for the seizure of objects of private property rights for state and public needs.

In accordance with the norms of legislation, objects of private property rights can be seized solely for the purpose of implementing projects that serve the public good, and only if it cannot be achieved in any other way, to the extent necessary for the purpose of seizure, that is, if part of the property is sufficient, then the seizure should be limited by this.

In addition, when withdrawing a part of the integral property, the owner has the right to demand that the withdrawal be extended to the remaining part, since it cannot be used in the previous or other acceptable form. It is also necessary to determine the consequences of termination of ownership, in particular, compensation by the state in full for losses caused to the owner, including the market value of the property.

Thus, the proposals on the regulation of guarantees for the protection of private property are aimed at creating the fundamental legal foundations of private property. Its regulation will eventually contribute to the creation of legal guarantees of the property rights of individuals in relations with state bodies.





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