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## Research Article

# CRIMINAL LIABILITY FOR CRIMES RELATED TO THE USE AND PROTECTION OF LAND IN UZBEKISTAN

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Farkhod Mardanov

Independent Researcher Of Law Enforcement Academy Of The Republic Of Uzbekistan

## ABSTRACT

The article describes some considerations on the analysis of objective signs of crimes related to the use and protection of land by the author. Also, the author notes that today the land and its use are of strategic importance. Nevertheless, cases of violation of the procedure for the protection and rational use of land, which is our national wealth, by subjects, officials and citizens operating economic activities on the basis of various forms of ownership in a market economy, have appeared in practice in many cases. The main reason for this is the insufficient level of environmental legal consciousness and culture of the subjects of law, the absence of gaps in the relevant legislation, the formation of a mechanism for the implementation of existing legislation into life. This leads to various violations in the field of land use. In this respect, it is important to research objective signs of an act in determining the responsibility for this type of crime. The author investigated this topic, substantiating the appropriateness of the inclusion of a rule that states that a person who committed the crime of selling a right to a plot of land or part of it or illegally giving it to another person can be released from criminal liability if he confesses to his guilt, reconciles with the victim and eliminates the damage caused.

## KEYWORDS

Land, Land Resources, Land Fund, land plot, sale of the right to land, environmental legal consciousness, exemption from criminal liability.

## INTRODUCTION

The correct identification of the object to which criminal aggression is directed makes it possible to determine the nature of the crime, its legal nature, the degree of its social danger. The object of the crime is one of the important and complex issues of the theory of criminal judgment.

Based on the fact that the definition of the concept of the object of crime should be based on the issue of the nature and direction of harm caused or threatened by a criminal offense, scientists consider the object of the crime to be: social relations, human (people), human rights, a certain social (legal) benefit or Social Security [1].

Today, land and its use are of strategic importance. Nevertheless, cases of violation of the procedure for the protection and rational use of land, which is our national wealth, by subjects, officials and citizens operating economic activities on the basis of various forms of ownership in a market economy, have appeared in practice in many cases. This is due to gaps in legislation, the lack of formation of a mechanism for implementing existing legislation into life, insufficient environmental legal consciousness and culture of the subjects of law are the main reasons [2]. This leads to various violations in the field of land use.

Currently, large-scale reforms aimed at the effective and rational use of land have been carried out, although in recent years more than 30 legislative acts have been adopted on the reform of this sector, but there have been some shortcomings, corruption cases observed in the allocation and use of land. In recent years there have been 473 criminal cases involving land sales, extortion, and 543 people have been criminally prosecuted. During this period, 295 officials were prosecuted for committing crimes related to violations of land law, 119 or 40 percent of which were land cadastre employees [3].

There is a need to protect against the use of land plots and various illegal socially dangerous acts committed in relation to them.

In this article, we will consider the analysis of the objective signs of the following criminal compositions:

- violation of land use conditions or requirements for their protection (Article 197);
- failure to take action by the landowner/land user/tenant in order to prevent the arbitrary occupation of irrigated land, including informing the competent authorities about the fact that the land plot is arbitrarily occupied (Article 1971);
- violation of the procedure for granting land (Article 2294);
- illegal seizure of a plot of land (Article 2295);
- sale of the right to a plot of irrigated land or part of it, or illegal transfer to another person (Article 2296).

Accordingly, it can be said that in some literature, based on the nature of the object of aggression, crimes in the field of ecology are divided into two groups:

- crimes in the field of Environmental Protection. Including land pollution or degradation (Article 196);
- crimes in the field of the use of nature. In particular, violation of land use conditions or requirements for their protection (Article 197) [4].

Some of the crime content under study (articles 196, 197, 1971) is contained in Chapter XIV (Crimes in the field of Environmental Protection and the use of nature) of the fourth section of the criminal law called 'Crimes in the field of Ecology'. The second group of criminal formations was formed from Chapter XV (crimes against the order of administration) of the fourth section of the Criminal Code of the Republic of

Uzbekistan, which is called 'Crimes against the order of activity of the authorities, management and public associations'. However, in essence, the general object of the content of this crime is considered a single – a social relationship related to the natural environment, in particular, the protection of land resources.

The direct object of the crime, which is expressed in the pollution or destruction of lands provided for by Article 196 of the criminal code, is considered social relations in the field of protection of the surrounding natural environment, in particular the land. Other scholars explain that environmental safety is also a direct object in this crime [4]. It is also possible that the additional object of this crime is social relations that protect the life and health of a person.

From the objective side, this crime is expressed in the pollution or destruction of lands. Contamination or degradation of the Earth means a negative impact on its chemical, physical and biological properties. According to the nature of the objective side, this crime is considered a crime of material content. Because as a result of an act that is expressed in the pollution or destruction of lands, severe consequences must arise, or the person who committed this act must cause death.

The immediate object of the crime, expressed in violation of the terms of land use or the requirements for their protection provided for by Article 197 of the criminal code, is the established procedure for the use of land and their maintenance. Social relationships aimed at protecting human health and life can be an additional object [4].

On the objective side, this crime is expressed in the fact that severe consequences have arisen as a result of violation of the terms of land use or their protection requirements. Violation of these and other land use or

protection requirements constitutes a criminal act. The necessary sign of the objective side of the crime is explained by the fact that severe consequences have arisen as a result of the crime.

According to the nature of the objective side, this crime is considered a crime of material content. Because, as a result of an act expressed in violation of the terms of land use or the requirements for their protection, severe consequences are required.

It must be said that the following are examples of the severe consequences caused by land use or violation of their protection requirements: the morbidity of people through the harmful effects of mining production on the environment; a decrease in land productivity, etc.

The direct object of the crime expressed in the failure to take measures to prevent the arbitrary occupation of irrigated lands provided for by Article 197.1 of the criminal code is the established procedure for the use of irrigated lands and their non-arbitrary occupation. Social relationships aimed at protecting human health and life can be an additional object [4].

On the objective side, this crime is expressed in the absence of measures by the landowner, land user or tenant to prevent the arbitrary occupation of irrigated land, including informing the competent authorities about the fact that the land plot is arbitrarily occupied.

In some cases, there is a need to apply administrative prejudice in the implementation of criminal liability, in particular in the qualification of an act. Administrative prejudice is understood to mean that administrative punishment has been applied to a person who committed an act in order to make it a crime, for doing the same before, and is defined in the article of this condition relating to a special part of the criminal law. In this case, it should be noted that if a person who has

received administrative punishment in accordance with Article 37 of the code of administrative responsibility of the Republic of Uzbekistan has not committed a new administrative offense within a year from the date of expiration of this punishment, the person in question is not subject to administrative punishment [5]. In the process of applying the rule of administrative precedence, it will be necessary to take into account this rule [6].

It should be noted that according to the theory of National Criminal Law, the requirement that an act in criminal prosecution be committed after the administration of administrative punishment is considered a necessary sign of the objective side of the composition of this crime.

It is known that in accordance with the law on administrative responsibility, the person in question is considered not subject to administrative punishment if the person who received administrative punishment did not commit a new administrative offense within one year from the date of expiration of this sentence. From the moment of the decision on the application of an administrative penalty to a person, he is recognized as subject to administrative punishment. According to the content of Article 37 of the mjtk, if a person does not commit a new administrative offense, for a year from the day he begins to pass the penalty, he will be in a penalized state. This period is the end of the period of serving the administrative penalty. The period of loss of power in the event of a person committing a new administrative offense begins on the date of expiration of the penalty for a new offense. The one-year term for serving an administrative sentence is set for all administrative penalties, regardless of their type. The starting point of the one-year term for the completion of the administrative penalty is the date of completion of the appointed penalty. If the guilty

person is subject to basic and additional penalties, then the one-year period is considered in terms of time from the date of completion of the last served sentence. When administrative imprisonment or special disenfranchisement is applied, the expiration date of the sentence is actually consistent with the expiration of the term of administrative imprisonment or the expiration of the term in which a citizen is deprived of a special right. The end of the administrative penalty is not formalized by any special document. It begins after the passage of a one-year provision in the presence of certain conditions established by law, and in the event of the absence of a new administrative offense during this one-year period. In this sense, criminal law is to some extent related to administrative law. M.Usmanaliev explains that while administrative law regulates relations arising from an administrative offense, criminal law regulates relations arising from a violation of criminal law. In several articles of the special part of the Criminal Code, if a person who is administratively liable for a certain deed again commits such an act the act is considered to have grown into a crime, and the person is criminally liable [7].

The necessary sign of the objective aspect of the crime provided for by Article 1971 of the Criminal Code, which is being analyzed accordingly, is explained by the fact that a person must re-commit an act within a year after having previously been subjected to administrative punishment for the same act.

According to the nature of the objective side, this crime is considered a crime of formal composition. Because, as a result of an act expressed in the absence of measures to prevent the arbitrary occupation of irrigated lands in the norm, a certain consequence was not assigned.

If the above two acts are committed by action, the act expressed in the failure to take measures to prevent



the arbitrary occupation of irrigated lands is committed by inaction.

The Criminal Code also serves as an application of stimulating norms towards the individual for acts that are positively characterized, seriously reducing the social danger of an act [8]. In particular, the first time a person committed an act provided for by Article 1971, if he ensures the return of an arbitrarily occupied plot of land and eliminates the consequences of arbitrary occupation, the release from liability is entrenched.

It should be noted that for two of the content of the crime under study, an incentive norm is provided. One of them is the crime of not taking measures to prevent the arbitrary occupation of irrigated lands. Another composition of the crime is Article 2296 (sale of the right to a plot of irrigated land or part of it or illegal transfer to another person in a different way), which we will dwell on in more detail later.

In the case of social relations regulating management, the general object of the crime, which is expressed in violation of the procedure for granting land provided for by Article 2294 of the Criminal Code, its immediate object is the legally established procedure for granting land. This norm has a Blanquet character. That is, the procedure for granting land is decided in accordance with land legislation.

In particular, Article 23 of the Land Code of the Republic of Uzbekistan enshrines relations regarding the issuance (realization) of land plots. According to him, the transfer of land plots to property (realization), for permanent use, and the lease is carried out as a land allotment.

The issuance (realization) of land plots is carried out in the following order:

- making property (realization)-in accordance with the legislation on the privatization of land plots not intended for agriculture, including in the electronic online auction tool for the construction of individual housing and the implementation of housing improvement, entrepreneurial and urban planning activities;

- in cases where the issuance of permanent use is provided for by legislation, by the governors of the regions and the city of Tashkent;
- rental-by the Cabinet of Ministers of the Republic of Uzbekistan, as well as through open electronic selection and electronic online auction.

The assignment (realization) of a plot of land in possession, use, rental and property is carried out in the manner established by the law on land only after the seizure (purchase) of this plot of land in the prescribed manner and state registration as state property.

For the construction of industrial enterprises, railways and highways, lines of communication and power transmission, trunk pipelines, as well as other non-agricultural needs, non-agricultural land or land unsuitable for agriculture or poor agricultural quality land are given (realizable). The provision (realization) of land plots for these purposes from the land under the forest fund is carried out mainly at the expense of areas not covered with forest or areas covered with shrubs and cheap priceless Martingale-trees.

It is forbidden to own and use this land until the boundaries of a given (realized) land plot are established by the state Cadastral Chamber of the cadastral agency under the state tax committee of the Republic of Uzbekistan in nature (at the place itself) and documents confirming the right to a land plot are issued.

The procedure for making land plots property (realization), their permanent use and their rental is determined by the Cabinet of Ministers of the Republic of Uzbekistan [9]. The same norm should be clarified by the decree of the Cabinet of Ministers of the Republic of Uzbekistan dated August 27, 2021 'On approval of the administrative regulation of the allocation of land plots for permanent use for state and public needs' No. 543 'Administrative regulation of the allocation of land plots for permanent use for state and public needs [10]'. Therefore, the procedure for granting land provided for by Article 2294 of the Criminal Code and its violation are determined based on this regulation.

In addition, the procedure for allocating land plots to Citizens for farm operations is also carried out on the basis of the Law of the Republic of Uzbekistan 'On farms'[11] and 'The Administrative Regulation for renting land plots for farm operations[12]' approved by the decree of the Cabinet of Ministers of November 24, 2021 No. 709.

The Land Code also establishes the procedure for granting land to Inter-farm enterprises and organizations and enterprises, institutions and organizations of industrial, transport, communications, defense and other directions. According to it, agricultural land for enterprises and organizations specializing in agriculture is issued in the procedures and conditions established by the legislation according to the decision of the Agricultural Cooperative (Company Farm), the higher management body of another collective agricultural enterprise, the employer (administration) of other agricultural enterprises, institutions and organizations.

Land transfer (realization) to enterprises, institutions and organizations of industrial, transport, communications, defense and other directions is also

carried out in the procedure of Article 23 of the Land Code, which is noted above.

In the decree of the president of the Republic of Uzbekistan dated June 8, 2021 PD-6243 'On measures to ensure equality and transparency in land relations, reliable protection of rights to land and their transformation into a market asset', violation of the land grant procedure is explained as follows. That is, in all cases, land plots are separated only from vacant and reserved lands, with the same document or at the same time the seizure, reservation, allocation of a land plot to another person is considered a violation of the procedure for granting land and is the basis for liability in accordance with the law [13].

Accordingly, from the objective side, this crime is committed as follows:

- non-separation of land plots from vacant land;
- non-separation of land plots from reserved land;
- to withdraw a plot of land with the same document, Reserve, allocate to another person;
- at the same time to withdraw a plot of land, reserve, allocate to another person;
- it is expressed in acts such as non-compliance with the administrative regulation of the lease of land plots for the maintenance of the farm in the allocation of land for the maintenance of the farm.

According to the nature of the objective side, this crime is a crime of formal composition, and with a violation of the procedure for granting land, the act is completed.

The composition of the crime under further analysis is the crime of illegal seizure of a land plot provided for by Article 2295 of the Criminal Code, and if the general object of this crime is social relations regulating management, its immediate object is the procedure

established by law for the seizure of a land plot. This norm has a Blanquet character. That is, the procedure for withdrawing a plot of land is decided in accordance with land legislation. It is understood that there is a legal type of withdrawal of a land plot from the content of the norm. So, Article 38 of the Land Code establishes the procedure for the seizure of a land plot in case of violation of land legislation.

According to it, a submission is made about the seizure of a land plot in the following cases:

- when the land plot is used for purposes other than the one designated;
- when the land plot is not used wisely, it is expressed in the fact that the level of productivity for land intended for agriculture is lower than the normative (according to the cadastral estimate) for three years;
- in the event that the land plot is used by methods that lead to a decrease in soil fertility, its contamination with chemical and radioactive substances, deterioration of the environmental situation;
- when the land tax in the terms established by the legislation, as well as the rent in the terms established in the lease agreement, comes without regular payment;
- when the land plot given for agricultural needs is not used for one year and the land plot given for non-agricultural needs is not used for two years;
- when the land plot has not been used for two years after the purchase on the basis of the order auction, which gives the right to lifetime ownership, which is bequeathed;
- while the right to lifetime ownership, which is bequeathed to the land plot, is in the event of a pledge – when the pledge is not used for the duration of the contract [14].

In doing so, unused plots of land are taken away with the value paid by their previous owners compensated to these owners.

When the above-mentioned circumstances or other circumstances in which the land legislation is violated, the body carrying out state control over the use and protection of land issues a submission to the district, the mayor about the seizure of the land plot after the preliminary warning of the land owner or the land user. The district files a lawsuit against the court that the mayor will withdraw it within a month of the submission. The district, the mayor, is entitled, if necessary, to appoint an additional inspection of the condition of the land plot and the quality of the measures taken by the landowner or land user on the rational use of land and their protection.

According to Article 37 of the Land Code, in the manner provided for by law, individuals and legal entities can be withdrawn for public needs in exchange for compensation of land plots or parts belonging to them on the basis of inheritable life, permanent ownership, permanent use, term (temporary) use or rental rights, respectively. In this case, compensation is issued in accordance with the regulation [15] "on the procedure for granting compensation to the owners of real estate objects located on the plot of land that is being withdrawn and" approved by the decree of the Cabinet of Ministers of the Republic of Uzbekistan No. 911 of November 16, 2019. In accordance with this regulation, the seizure of land plots for state and public needs is allowed only for the following purposes:

- defense and state security, the needs of protected natural areas, the organization of Free Economic Zones and the granting of lands for their functioning;
- fulfillment of obligations arising from international agreements;



- identification and extraction of mineral deposits;
- construction (reconstruction) of highways and railways, airports, airfields, Aeronautical facilities and air engineering centers, railway transport facilities, bridges, Metropolitans, tunnels, energy system facilities and power transmission networks, communication networks, space activity facilities, main pipelines, engineering and communication networks;
- execution of the general plans of settlements as part of the construction of facilities at the expense of the state budget of the Republic of Uzbekistan, as well as other cases directly provided for by laws and decisions of the president of the Republic of Uzbekistan [15].

The crime of illegal seizure of a plot of land provided for in the first part of Article 2295 of the Criminal Code being analyzed is considered a crime of formal composition according to the nature of the objective side.

The Act provided for in the second part of this norm indicates that the illegal seizure of a land plot on the objective side of the premises on the plot of land, other buildings, structures or Martingale-trees or parts of them, the market value of this property, as well as the role of damage caused in connection with such a seizure of is expressed in the case of distortion.

The following can be indicated as types of compensation for buildings, other buildings, structures or Dow-trees on a plot of land that is being taken in accordance with the legislation, or parts of them, the market value of this property, as well as the replacement of damage caused to its owner in connection with such a seizure:

- monies;
- transfer of another real estate object to property;

- other types of compensation provided for by the agreement.

As a necessary sign of this norm towards the objective, the following can be noted:

- 1) that it was committed after the administration of administrative punishment for such actions;
- 2) the fact that there was a considerable amount of damage as a result of the act.

The signs of the objective side indicated in the disposition are determined by the general procedure for granting compensation to owners in connection with the demolition of real estate objects.

Under the legislation, the following are compensable:

- market value of real estate objects located on a plot of seized land;
- market value of the right to the seized land plot;
- expenses related to the temporary acquisition of another real estate object, including relocation;
- rich benefits of individuals and legal entities;
- other costs and losses provided for by legislation or by agreement between the parties.

It should be noted that the cost of arbitrarily built housing, production and other buildings and structures on the plot of land should also be covered.

If the general object of the crime of selling the right to an irrigated land plot or part of it provided for by Article 2296 of the Criminal Code or illegally giving it to another person in a different way is a social relationship regulating management, then its direct object can be called the normal activity of using a irrigated land plot.



In the legislation on land, irrigated land plots are of particular importance, the two types of which are distinguished:

- irrigated lands;
- fertile irrigated lands with special value.

According to the Land Code, land that is suitable for agricultural use and irrigation, with a permanent or temporary irrigation network, in which water resources are connected with an irrigation source that can provide irrigation for these lands, is included in the irrigated lands.

Irrigated land can only be used for the cultivation of agricultural crops, as well as for horticulture, viticulture and the cultivation of perennial Martens.

It is not allowed to allocate irrigated land for other purposes than agriculture, including for the construction of industrial and civil facilities (buildings and structures), as well as for the construction of greenhouses, where new methods of advanced technologies (hydroponics, etc.) are used, in which fertile soil is not required.

When growing agricultural crops on irrigated land, it is forbidden to treat them with methods in such a way as to lead to a decrease in soil fertility, or to use other methods that lead to their damage.

As fertile irrigated land of exceptional value, however, irrigated agricultural land of more than 20% of the average district bonitet score is recognized according to soil fertility. Fertile irrigated land of special value must be specially protected and their transfer to non-irrigated land is not allowed.

When analyzing the objective side of this crime, attention should be paid to the 'sale of the right to a

land plot or part of it'. Under civil law, under the contract of sale, one party (seller) undertakes to transfer the goods to another party (buyer) as property, and the buyer undertakes to accept this good and pay the amount (Price) established for it [16]. In addition, in order for the objects of civil rights to be freely transferred to other persons in the photo, they must be an object that has not been removed from circulation. That is, civil rights that are not allowed to be dealt with are not allowed to buy and sell objects. It is not allowed to buy and sell civil rights objects (objects whose circulation is limited) that can only be owned by the participants of a particular treatment or are allowed to be treated with a special permit [17].

In addition, according to the decree of the president of the Republic of Uzbekistan "on measures for the effective use of land and water resources in agriculture" dated June 17, 2019 PF-5742, irrigated agricultural land was specially protected and allocated these lands for other purposes than agriculture, including the construction of industrial and civil facilities (buildings and structures inadmissibility is established [18].

The social danger of this crime is determined by the fact that in the wake of a high-speed increase in the number of inhabitants of the Republic, the transfer of agricultural land to another category and the exacerbation of the effects of global climate change, the size of irrigated land per capita in the last 15 years decreased by 24% (from 0.23 to 0.16 hectares), As a result of the non-uniform use of agricultural land for many years, the natural fertility of the soil and crop yields have decreased, the quality of grown products has deteriorated, environmental pollution has increased.

This act is a crime of formal composition according to the nature of the sign of the objective side. that is, the

origin of some socially dangerous consequence is not established as a necessary condition in the prosecution of a person for the sale of a right to a plot of irrigated land or a part of it, or for illegally giving it to another person in a different way.

As noted in Article 1971 (failure to take steps to prevent arbitrary occupation of irrigated land), a person who committed an act provided for for the first time is exempt from liability if he ensures the return of an arbitrarily occupied plot of land and eliminates the consequences of arbitrary occupation.

Likewise, in relation to the person who committed the crime for the first time, provided for in the first and second parts of Article 2296 (sale of the right to a plot of irrigated land or to a part of it or illegal transfer to another person in a different way), if he considers the return of the plot of land there is also an incentive norm that provides for the restriction of freedom and the impossibility of punishment on the basis of deprivation of Liberty, provided that the land is included in the agricultural turnover.

In place of the conclusion, it can be said that the following are examples of the severe consequences caused by land use or violations of their conservation requirements:

- human morbidity through the harmful effects of mining production on the environment;
- decrease in land fertility;
- above-ground level failure;
- a sharp drop in the ball bonity of the earth, etc.

In the third part of Article 1971 of the Criminal Code, a person who committed a crime for the first time is exempt from liability if he ensures the return of an arbitrarily occupied plot of land and eliminates the consequences of arbitrary occupation. This stimulating

norm is incomprehensible. Does the legislator not encourage a person with this norm to commit an arbitrary crime?! That is, if it provides for the return of an arbitrarily occupied plot of land, the release from liability is established. And in the dispositions of the norm, failure to take measures to notify the competent authorities about the fact that the land plot is arbitrarily occupied was assessed as a socially dangerous act. However, if a person committed a crime provided for by this norm, that is, does not take measures to inform the competent authorities about the fact that the land plot is arbitrarily occupied (the crime was completed), however, he will ensure the return of the arbitrarily occupied land plot (!) the right question arises as to how logical it is. In our eyes, it is necessary to revise the norm of this incentive. Somehow, committing a crime provided for by Article 1971 of the Criminal Code (failure to take measures to prevent the arbitrary seizure of irrigated land), that is, the return of its arbitrarily occupied land plot without informing the competent authorities provision constitutes the content of Article 229 of the current criminal law.

It is advisable to include a rule that the person who committed the crime of selling the right to a plot of land or part of it or illegally giving it to another person in a different way (article 2296) can be released from criminal liability if he confesses to his guilt, reconciles with the victim and eliminates the damage caused.

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