Lease of Land the Republic of Kazakhstan: 
History of Formation and Modern Development

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Abstract: Research of lease of land in the territory of Kazakhstan cannot be conducted without the analysis of historical preconditions on the basis of which there was its formation. Need of effective legislative regulation of the land relations for modern Kazakhstan strongly requires appeal to our historical experience to derive lessons, both positive and negative [1]. Research of lease of land in the territory of Kazakhstan can't be conducted without the analysis of historical preconditions on the basis of which there was its formation. In the article there are proposed stages in the development of the land lease, analyzed major normative legal acts regulated land lease rights in Kazakhstan. Particular attention is paid to the research of the legislation in this area, revealing its gaps and development recommendations and proposals for improvement of the existing land laws in Kazakhstan. Theoretical and methodological basis of the study is composed of scientific works of Russian and foreign authors devoted to problems of law and economic development, land evaluation, land management and the role of land as a productive factor.

Key words: The Republic of Kazakhstan · Russian Empire · Constitution · Land law · Land · Lease of land · Rental fee

INTRODUCTION

The world lives the lease relations from time immemorial. It was for a long time realized: to earn on life, it is absolutely unessential to possess, for example, a plow [1, 2]. It appears, enough only to have the right of using this tool. Ancient thinkers (Solon, Platon, Aristotle, etc.) had noticed already that the wealth is predetermined not by the possession of the fact of considerable property or money on the property law and efficiency of managing as a whole, ability to apply various forms and methods of its arrangement and management.

Granting to another person to use a land as a special type of the social and economic relations is known (in written history) about four millennia (probably, the first act regulating lease of land-Bilalama's Laws-XX century B.C). In economic practice of ancient civilizations of India, Mesopotamia, Egypt, China various lease forms of land-use were widely used. The first material certificates on the concluded transactions of lease of land belong approximately to 2000 B.C. In 1984 during the excavation occurring on Sumeria city of Ur, scientists managed to find prototypes of the first lease contracts. There were clay plates on which the parties of the contract fixed the obligations on transfer for a certain period and payment of using and possessing an agricultural stock, the right to use reservoirs etc.

In Code of Hammurabi accepted between 1775-1750 B.C, in detail are considered not only lease of real estate, but also rental fee norm. Provisions which were contained in it regulates the various relations when lease of land, in particular, solve tenant's liability and lessor questions and also distribution of losses between the contract parties at approach of force-majeure circumstances. The value of the lease relations and their influence on social and economic communications in the ancient world are said by that fact that the whole social groups and estates received the names depending on what lease conditions they processed a land.

Historical it developed that the first mentions of the lease of land relations formation add up to cadastral and registration systems. Researchers consider [3].

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that the first land inventory (cadastre, capitastrum), appeared in Ancient Rome at the time of Octavian in the I century B.C. He described division of lands into sites during population census, including the size of a site, its value and raised tax size. Some scientists connect an inventory origin with more ancient Greek term "kadastikon" ("a writing-book for records"). The cadastre (inventory) acted as a basis of the state fiscal system of land use and land resources management.

In process of growth of the population, expansion between people, participating in a turn of real estate, expansion of trade relations geography there are new, more reliable and exact forms of strengthening of the rights-records. Practice of legal protection of the land accessory by means of records is known already since the earliest agricultural settlements along the Tiger, Efrat and Nile [4].

It is important to note that in the Roman private law there were some institutes adjoining lease of the land lots. First of all, it actually rent (location-coductio)-the consensual contract on granting in land using for a certain monetary payment. Thus there were also its versions explained mainly rather of accrual of the tenant rights or by calculation method. So, if calculation is made by the received income share, the term "contractus socidae" [5] was applied to designation of the contract also. As there was also a hereditary labour rent of the land, initially there was a dispute on possibility to carry this contract to purchase and sale or rent, the special contract "contractus emphyteuseos" finally was legislatively fixed.

The characteristic of the lease of land relations in Ancient Rome won't be complete if we do not point such rights as real (personal) and personal easement, superficies and emphyteuseos. Division of things on movable and immovable become more accurate: to immovable belong a land and everything which closely connected with it and to movable-that it is possible to transfer from place to place without change of essence of a thing. During an era of dominator rights transfer on real estate was regulated by the special rules directed on ensuring of publicity of such transactions.

It is essential that the possession of the land property law, in its full, complete look, since ancient times was a rarity. Even when in literature it is specified that a certain person during the ancient period of civilization development possessed a land on the property law, we should doubt the validity and accuracy of such statement. For example, it is known that both in state formation and in the republic and the empire the vast majority of lands nominally was in Ancient Rome under the power (but not in a property) certain persons and rights on possession of using belonged to other persons. Newly seized lands of Romans expansion were considered passed to ownership to the Roman people or to the emperor [6], granting to their individuals carried out to different possessori situations, being characterized the real rights of owners, but not the property law (from here, probably and emphyteusis was appeared). More often such sites were considered rented from the state (agri vectigales), but not in meaning of the usual lease contract and as received on the basis of the special real right; the fact is that the persons which have deserved these right (soldiers veterans, served officials and so on) were vested with sites forever. It was enough to pay a rent, often symbolical. Moreover, that, distinction between actual rent and usufruct and also other property law weren’t always carried out.

In literature also it is noted, that later in the Middle Ages the relations of feudal suzerainty-vassalage weren't under construction on “the owner-the tenant” type: “if the property is an empery over a thing (plena in re potestas), concerning the land of such domination wasn't neither at the vassal, nor at suzerain. The vassal hadn’t it, as himself received the land from suzerain and bore in this regard certain duties and suzerain too in absolutely domination wasn't unlimited, as the land was in legally protected using of the vassal”.

As the land rarely was in someone's absolute property at lease of the land “the Roman people” until the late time there were no clear differences and between purchase and sale and the lease agreement. Transfer of the land in any case was called as sale: “one for years, others for hundred years are on sale by manceps, i.e. to tenants”. Thus, initial distinction of purchase and lease consisted not in nature of possession and exclusively in its terms. In the first case the land was on sale for hundred years and in the second-on five, that is for the term up to the next lustrum, the public auction arranged by the censor. The payment for lease of the land acted in the form of a land tax and also as obligations had sacral character, the sum in the form of sacrifice at a rate of 1/10 parts of the income of a crop or a cattle issue was in addition paid. These victims were brought in the state treasury to the temple of Saturn. New lease agreements of the land usually concluded in the end of February-the beginning of March and were accompanied by special religious rituals, including sacrifices. “Then lease agreements were concluded in the form of persons purpose on feeding with grain of sacred geese and colourings of a statue of a floodlight with red ochre” [7].
Concerning the lands which were in a private property, system of the latifundium based on a pipe of slaves, the colonatus system, as more effective as was based on work of the free peasants’ voluntary entering in connection with transition to a market condition. Nevertheless, quite often there were insuperable collisions, connected with impossibility to pay off debts at enslaving lease thereof the incorporated debtors often rose or initiated the organized changes in the state.

The price and term of lease were considered as essential conditions, also using poste restante ("precarium") however was allowed.

The fact of appearance of any rights to another's thing assumed granting a counter equivalent, a payment. For this reason paid character was inherent as the property law and especially in a lease.

For the conclusion of the lease contract of the land the nexum institute (i.e. a specific form of a mancipation) was mainly used [8].

The structure of the rights and duties at lease of the land had no essential features, the site was provided in the stipulated condition, by the term end it was subject to return. Note should be taken of the fact that in case of untimely return of the lease thing, the leaseholder was considered as the aggressor of a thing.

Some features were connected with structure of transferred powers: from the point of view of the Roman lawyers the volume of the rights following from lease, could be divided into rather significant amount of separate competences (property law), the owner at such vision of a situation could specify firmly what exactly it provides to the tenant and that from the rights reserves.

Unlike the modern law, the Roman law unequivocally recognized the obligation and legal nature of the service contract of a thing.

There were no real and legal elements of the service contract, such as the right of following and real legal protection of the leaseholder as title owner. It is necessary to point out that such approach hid in itself an internal contradiction (let’s remind, the lease in other relations was badly separated from the other rights to the land), reconciled, apparently, by only legal logic.

Historical monuments of the Kazakh common law testify to an originality and identity of formation of land legal relationship in Kazakhstan. Here lease of land proceeding from features of historical development of the country had no such distribution as in the Roman private law. Therefore carrying out direct parallels in history is represented not quite true.

Regulation of the land relations in Kazakhstan leaves in the remote past. Formation and development of the legislation of lease of land the phenomenon arisen in connection with transition to a market condition. The history of formation of the land relations in Kazakhstan is subdivided into the following stages: land legal relations before entry of Kazakhstan into state of Russia, the land relations of Kazakhstan as a part of Russia, the land relations during the Soviet period, the land relations of sovereign Kazakhstan [9].

Formation and Development of the Legislation of Lease of the Land Before Entering of Kazakhstan into State of Russia: Before entering of Kazakhstan into state of Russia signs of lease of the land didn't take place, but regulation of a land turn has the history and originates in the remote past. The most various factors always influenced on character of a land turn, on its essence, a form and climatic conditions and a level of development of relations of production and many other things. All this influenced and to the land turns existing in Kazakhstan before entering into state of Russia. The main influencing factor of a land turn of this period was the nomadic way of Kazakhs’ life. The right of a private property to the land on legal notions of Kazaks up to the XIX century was absent [10]. Land legally was considered as the general property of generation and communities. Actually true owners of lands were Biys and other feudal lords, in the XVIII century wintering began to be in private possession of certain feudal lords [11].

In any society, irrespectively of a development level of the productive relations, one of the main issues is questions about land ownership. Kazakhstan isn’t an exception in this sense. Throughout all history of the Kazakh society, the land remained the one and main stipulation of production generating social contradictions and the intergeneric conflicts in fight for best camping-grounds. It is known that the main reason for popular revolt in the internal orda made, including the agrarian and ground relations.

It is impossible to disagree with S.Z. Zimanov’s and A.E.Yerenov’s opinion which noted that existence of a land property in Kazakhstan is indisputable and “would be an inexcusable mistake to mix communal using separate nomadic ways with communal ownership of land. The careful analysis of productive bases of the Kazakh feudal society shows that communal using separate nomadic sites is the phenomenon occurring inside and in the conditions of an monopolistic property of feudal lords on the land” [12]. The existing method
which confirms their position, the title of the fertile land lots then by owners feudal lords’ name. At permission of land disputes courts started with the name of lands, as accessory sign to this or that owner. Most the best land lots with watering sources were in hands of feudal lords. Thus many simple nomads often faced obstacles when using even river water. For this purpose, quite often, special permission of the khan or the owner of a site adjoining to the river was required. It is obvious that if pastures with watering sources were in a communal property, it would not be necessary to receive such permissions.

These historic facts undoubtedly confirm that in Kazakhstan there was a private property on the feudal lords land. It is natural that the private property institution on the land of that period differs from our modern views. The category of a property carried on itself lines of patriarchal and feudal society what Kazakhstan was during this period. Thus, it was the feudal ownership of land, with the features caused by a nomadic way of life of the Kazakh society.

Despite existence of a patriarchal and feudal private property institution on the land in Kazakhstan, in society there were no relations on land alienation. It is caused by that circumstance that the capitalist relation, including, the relations on purchase and sale of the land lots, commission of civil-law transactions, including the lease contract for the land yet weren't and couldn't exist. Therefore, there were no actual preconditions of formation of the market of the land. The land system changed after entering of Kazakhstan to Russia [13].

It is important to point out that entering of Kazakhstan to Russia should be reflected in character of the land relations and on their legal regulation [2].

Firstly, all land fund carried over from hands of khans’ and sultans’ generation of chingizids in hands of the Russian Empire.

Secondly, the tsarism kept a communal form of land use for Kazakhs and regulation of the land relations was still carried out on the Kazakh common law norms basis.

Thirdly, in Kazakhs common law there were norms which the private property right behind separate families on autumn and winter pastures, estates, hayfields etc.

Fourthly, legal regulation of the land relations, besides a common law, was carried out by the all-imperial Russian legislation. It is important to point out that this historical stage of legal regulation of land market in Kazakhstan can't be considered in a separation from Russia. Anyway, the all-Russian social processes found the direct or indirect reflection in Kazakhstan. Despite a big array of the acts regulating the land market, regulations didn't render essential influence on the land relations in Kazakhstan. Thus, the Russian Empire pursued purposeful policy of withdrawal of land grounds from indigenous population, both for military needs and for granting to the Cossack and military population.

The land relations during this period can be characterized as follows: firstly, in case of their emergence between the Kazakh population and public administration or Cossack communities as strictly settled by the imperial legislation; secondly, regulation of land use, a lands turn in purely Kazakh environment was carried out generally by common law norms.

Fatal influence on a ground system of Kazakhstan was rendered by the Stolypin's agrarian reform. The Stolypin's agrarian reform was the following stage of the public relations development connected with distribution and the address of the land lots in Kazakhstan as well. The land system which has developed as a result of this reform existed up to October revolution.

P.A. Stolypin's reforms were directed on the dominating right transition of the general ownership of land among peasants (communal land tenure) to the right of head personal property of household. The decree from the 3rd of November, 1905 the redemption payments were double reduced which promoted the peasants rights expansion on the land.

**Formation and Development of the Legislation of Lease of the Land in Entering of Kazakhstan into State of Russia:**

Process of entering of Kazakhstan in state of the Russian Empire had difficult sociopolitical and strategic character. It is known that as the beginning of this political process the diploma of the Empress Anna Ioannovna from February 12, 1731 and also the oath of the khan of Junior Juz - Abulkhair on October 10, 1731. At the same year, the khan of the Middle Juz of Semeka swore on allegiance to Russia on the same conditions, as well as the Junior Juz. A little later the khan of the Middle Juz, Suik Ablaykhanov swore on allegiance with 55462 dependent Kazakhs was accepted in the Russian citizenship in 1740. The actual entering of Kazakhstan to Russia was carried out in 1847. Thus, the entering of Kazakhstan to Russia, having begun in 1731 and it was completed only in 1847, this process passed irregular - generally 116 years.
During an agrarian reform of 1906 some householders have an opportunity to fix the arable strips (including grounds) in a private property. The Russian Empire stimulated the peasants to unite and integrate the estate. Peasants acquired the right to dispose of the allotments, including selling, putting in pledge and lease. Thus, only after fixing of the country land in a private property there was a possibility it to sell, lease or make other transaction. But, as it known, above mentioned process occurred slowly, constraining developments of the land market.

During periods of reforms, despite the high price and crippling terms, part of peasants and even poor people bought the lands. Rich peasants bought a land, thus developing commodity production. But most of all among buyers of the land there were persons of so-called not country estate: bauermesters and clerks, wine benches owners, police clergy, dealers etc. This category bought up the land for speculation (after all the land constantly rose in price) and for its delivery into rent to the same peasants and the rental fee reached until a half crop.

As practice of buying up of the land for speculation and tenancy were widely adopted, the Russian government concerned by this phenomenon, published the circular establishing norm of purchase of the allotment no more than 6 plots within one district. However actually many speculators and the investor bought up (using bribability of officials and bribes) on 100-200 plots.

Immense Kazakh steppes also were mentioned by Stolypin’s reform-for weakening of the political-economical sharpness caused by agrarian transformations, resettlement of land-poor peasants from densely populated provinces was purposefully carried out on the territory of Kazakhstan.

The imperial government by resettlement policy expected to resolve a number of tasks: firstly, mass resettlement of peasants from the southern, most densely populated regions of Russia, on his plan, should weaken a sharpness of an agrarian question in these areas, smooth mass discontent of poor peasantry layers and by that to constrain accruing revolutionary country movement; secondly, the lodged in Kazakh steppes Russian and Ukrainian peasantry should become his support in implementation of a colonial policy in Kazakhstan; thirdly, as kulaks-immigrants the imperial government created to itself a political and economic support in the village. Strategic plans of the Russian Empire tried to veil a plausible goal of development of fertile lands and increases in grain resources of the country [2].

That fact is important that all market-land relations in Kazakhstan in the period of stolypin’s reform were already strictly regulated by the all-imperial legislation which in essence was an embodiment of a colonial policy of the Russian Empire.

That fact also was printed in the history that besides all-imperial legal establishments were accepted and the special normative acts were operated, directed on regulation of the public relations just in steppe areas of Asian Russia. The legal status of the lands occupied by the Kazakh population was defined also in the Provision on steppe areas management.

It is important to point out that these legal establishments in many respects stimulated increase of circulability activity of the land market objects. However, besides purely progressive market character, these legal statuses had colonial character-protecting in the lease relations priority of Russian population in a damage of interests non-russians, strictly defining target mission of lease. Subjects of the lease include wintering settlements which were limited concerning the tenant to criterion of Russian origin, i.e. the Kazakh nomad couldn't lease this land to his tribesman that is one more proof of the Russian Empire discrimination.

The reform begun by P.A.Stolypin in 1917 wasn't completed yet. The right of a private property in the land and the right of a communal property in a plot both coexisted in parallel. Besides, these rights joined the right of rent a basic right of using the land lot. Nearly a half of arable lands, as before, belonged to the landowners often leasing the land to peasants. Peasants processed it with a help of their stock as rental fee working off. During the reform the part of lands passed to new land users - investor who widely applied practice of land delivery in lease to deriving of profit. The lease areas being processed by country stock were increased. Thus, lease of lands not always promoted development of progressive farming practices.

**Formation and Development of the Legislation of Lease of the Land During the Soviet Period:** The situation sharply changed after 1917-the rights to the land got other content. The country order within the Decree “About land” from October 26, 1917 (on old style) declared that all land is national property, cancelled a private property on the land, forbade to lease it and pledge.

The land was transferred in the order of land committees which were authorized bodies of the government on places. Thereby the land passed to the order of the states. The decree about socialization of the
land provided that any ownership of land and other natural resources is cancelled forever and the order is transferred by them public authorities [14].

Thus, from all legal designs there was a place only to the right of use. The history shows that it cardinaly affected public opinion about need of radical land transformations by the end of the eighties [15].

In pre-revolutionary times, in Kazakhstan all set of the land relations was regulated not only land rules of law, but also the civil legislation—Volume X the Code of Russian Empire laws. Civil rules of law regulated the public relations concerning the lands being in a private property, both in the cities and in villages. Thus the legal regime of regulation of the state lands, so-called "state", was identical with the right mode of privately owned lands. The state lands were actively included in the sphere of the land market: farmlands were leased to individuals, from the auction sale of cut-over land in the state woods was carried out, the payment for collateral using in the state woods was raised. The specific lands belonging to an imperial surname as whole and cabinet lands, being personal property of the tsar also were objects of the land market. Nevertheless, effective development of the land market was interfered by tendency of the government to "tie down" the peasant to the land, to embarrass his striking off from the land in any form. It was the political policy of the Russian Empire for several decades before serfdom cancellation in 1861. In a basis of strategically and political position of the Russian government fear was that easiness of land alienation will create "the proletariat ulcer" in society. It also created the objective reasons of the actual impossibility of peasants to go "on earnings" to the city.

Interestingly, but the fact that in this question new socialist system was the political assignee of tsarism, collective farmers violently tied down to the land also couldn't leave freely the collective farms and were actually attached to the land. So, before revolution at the lease relations norms of land and civil law were applied. But in some cases landowners, using land management shortcomings, forced peasants to lease of lands at the prices considerably exceeding the market. It took place in the droves relation, watering places, at in lands in country that compelled peasants to lease them not to pay penalties for damage. At a lack of meadows, arable lands and at agrarian resettlement, peasants were compelled to lease the next landowners' estates on the extremely unprofitable conditions. Legally it promoted situation creation when a considerable part of the civil-law transactions assuming equality of the parties and voluntary nature of their accomplishment, became forcibly enslaving.

Under the Land Code of Russian Soviet Federative Socialist Republic (further—RSFSR) of 1922 peasants used the state land, without making out neither lease, nor other contracts. This Land Code, as well as all other laws of RSFSR, acted and on the territory of Kazakhstan being then KAZSSR. Developers of RSFSR Land Code assumed that it concerning the land will replace the Civil Code and regarding the labor relations—Code of Laws on Labour. Time showed that this opinion didn't come true.

During the period from 1920 to 1936 in KAZSSR more than 14 normative legal acts were accepted. However, the tendency was appreciable that in the land legislation all-union legal statuses began to prevail essentially over the republican. The bright example of this position is formation of National commissariat of agriculture of USSR in 1930 which directly obeyed national commissariat of agriculture of federal republics. All-union of rule-making concerning lands of agricultural purpose it was directed on implementation of collectivization of agriculture that entailed partial absorption of the land right by again arisen collective-farm right. As a result of it the Land Code actually lost, validity and more couldn't be applied properly to destination.

The new Constitution of the USSR which has proclaimed was adopted in 1936 that the land of collective farms is forever assigned to them in free using. However in exchange for the "free" land collective farms were obliged to give to the state the production on the low prices according to the fixed by hectare norms.

So, gradually market relations were substituted for the pseudo-free preferential collective farms which have turned back for them, as we know, total state control that led to a full separation of the land relations from their natural economic contents. Shy attempts of a monetary assessment of the land were stopped, which in the twenties were considered necessary, for example, for exchanges of country lands for the purpose of elimination of inconveniences of land use.

Scientists-lawyers stopped to consider the land as property; it was offered to recognize the land relations as administrative. Land damage, its withdrawal could be compensated only by compensation of expenses for reclamation of new lands. The mention of a money equivalent wasn't allowed. Transactions with the land were sharply limited and lease of the land lots-is forbidden.
The Central Election Commission and USSR CPC resolution from June 4, 1937 forbade tenancy of agricultural purpose with lease collection as it contradicted policy of the Soviet state. At this stage of development the lease land relations were absent: the land was withdrawn from a turn and there was res extra commercial.

The Civil Code of RSFSR of 1964 didn't contain norms about lease of land and in comments were given in examples of bans and restrictions concerning separate types of property. The rights of citizens couldn't act as a subject of lease, lease of lands of agricultural purpose was forbidden. Lack of the contractual land relations between the state and collective farms led to serious deformation of relationship between them, generated arbitrariness and didn't guarantee to farms of the right to the product made by them.

The developed situation couldn’t be noticed by huge losses of the best land grounds, induced the legislator to depart from the concept of "free of charge" of the land. The Land Code of KAZSSR of 1971 telling about contents of the land inventory, mentioned “an economic assessment of the land”. In theoretical justification of recognition of the land as economic value, determination of its property character and need of its monetary assessment, the important role was played by such scientists, as S.D. Cheremushkin and V.P. Shkredov. In existing scientific community discussions was settled stage-by-stage development. From the moment of independence getting in 20 years the land relations underwent certain changes and represented before itself legal mechanisms, admissible in cases of official recognition of the land relations as the property.

Over time this position found understanding and support even in “the highest echelons of power” of the USSR. On August 31, 1990 the program of economic transformations-“Transition for the market”, known as the program “500 days” was prepared by the group under the direction of the academician S. S. Shatalin. Many ideas of this work have extremely interesting and actual character for our time. Many ideas of this work have extremely interesting and actual character for our time. The state officially admitted, only that the person having the land lot which he can always transfer or leave, to the children, is objectively interested in stability of society, a social and national consent.

The land, entering into a personal part-time farm, declared to be personal property of a country family or is transferred to it for a small payment. The right of a free exit of the worker from collective farm is legislatively fixed by an allotment passing to his property. In the republics the Land banks are established which are carrying out crediting, a land acquisition in a property, a mortgage loan.

The most effective lever of land reform is the land payment. The state carries out control of the conclusion of commercial transactions concerning the land. In personal property of urban population for a small payment garden and garden sites in the size to 6 hundred square meters are taken away. The main task of reform is earth [16] denationalization.

**Formation and Development of the Legislation of Lease of the Land in Sovereign Kazakhstan:** There were cardinal changes in the land relations and in substance for short period of time after the state independence of the Republic of Kazakhstan, the new land system was created. Instead of exceptional state ownership on the land and free land use in the republic along with the state the private property is recognized, the payment on the land is set out; other land transformations are carried out. Transition to market economy objectively caused of implementation various in forms of ownership on the land, payment of land use, the legislative decision on the status of land real estate, as a subject (object) of legal regulation. Reforming of the ground relations is the long, difficult process demanding continuous and stage-by-stage development. From the moment of independence getting in 20 years the land relations underwent certain changes and represented before itself the purposes and the directions.

**Formation and Developments of the Legislation of Lease of the Land Is Subdivided into Some Stages:** The first stage-1990-1993 At this stage the Land Code of KAZSSR, Laws were adopted “About land reform, About a country economy, About a land tax and other regulatory legal acts put a basis of the new land relations. Certainly they played a certain positive role in creation of new forms a land management. But with implementation of the market relations, development of private business the exceptional exclusive property of the state on the land became a deterrent of these processes. At the initial stage the land was only in state ownership and commission of any transactions with the land was forbidden.

However, signs of the economic mechanism of land use were expressed in collection of a lease and a land tax. In accordance with KAZSSR Land Code land tenure and land use is rental. The payment for the land is raised in forms of a land tax and a rental fee defined depending on
quality, location and water security of the land lot. Payments for the land are received in local budgets and go first of all on protection of lands, increase of their quality, on material stimulation of land owners and land users, including tenant, on implementation of these action and also on land management and social and cultural development of the territory [17].

The law “About Land reform” was adopted with a view of transformation of the ground relations for creation of legal, economic and social conditions for effective functioning of various forms of managing on the earth, ensuring rational land use and protection of lands. Analyzing normative legal acts accepted at the initial stage of formation and the land market relations development and legislations of lease of the land, it is possible to make a conclusion on that in the conditions of transition to market economy the state moved ahead to creation of the land market and further improvement.

The second stage of formation and development of the land market relations and the legislation of lease of the land began from 1994. At this stage development of the land relations and gradual transition to paid land use is connected with adaptation of the land legislation to conditions of the forming land market. At this stage Decrees of the President of the Republic of Kazakhstan “About some questions of regulation of the land relations” were published and “About further improvement of the land relations” allowed for the first time to include in a market turnover of the right on land use. According to these Decrees citizens of Republic of Kazakhstan had the right to receive the land lot in lifelong inherited possession, irrespectively of their accommodation term in the republic territory in temporary use under lease condition for the term up to 5 years (short-term rent) and till 99 years (long-term rent) [18].

The land relations with signs of the economic mechanism found reflections in the Decree of the President of Republic of Kazakhstan «About further improvement of the land relations». According to the Decree of the President resolved to heads of local administrations within the competence established to them on granting the land lots to sell to citizens the right to lifelong inherited possession of the land and to legal entities (if their property doesn't belong to the state) to whom the land lots are provided in using or lease, can sell, lease either pledge a right of use or the right of lease of the land lot to citizens and other legal entities.

Citizens and legal entities can transfer respectively the right of lifelong inherited possession, the right of use or the right of lease of the land lot as a contribution to authorized foundations (capitals) of joint-stock companies, associations, cooperatives, including with foreign participation. The arisen relations were regulated by the land and also civil legislation. It is important to note that at this time were made civil and legal transactions with the land lots and the land lot partially admitted object of a market turn [19].

Private property institution introduction on the land became the third stage of transition to the land market. On August 30, 1995 the Constitution of the Republic of Kazakhstan was adopted according to which, are admitted and similarly protected the state and private property on the land and legal status of the land lot, as real estate changed. In following, the Decree of the President of RK “About the land” accepted solved on December 22, 1995 a question of principle is a legislative status of land real estate, as subject of legal regulation. Statement of the solution of these difficult problem questions in the conditions of market economy demand new transition as from the point of view of the theory, methodology and in development of legislative regulations and the mechanism of their realization.

The adopted regulatory legal acts during this period with a view of regulation of the land relations were directed on introduction of the land lots and the rights to them in a market turn.

In compliance with provisions of the Decree of the President of Republic of Kazakhstan by forms of a payment for the land is the land tax, a lease for the land and a payment for transfer of the land lots. Transfer of the land lots from state ownership in the private is made by payment. By sale of the land lots in a private property, by their granting by the state in continuous land use and also at delivery by the state or the state land users of the land lots in rent the base rate of a payment for transfer of the land lots is established by the Government of the Republic of Kazakhstan. At this stage according to the Constitution and the Decree of the President of Republic of Kazakhstan “About the land” regulatory legal acts directed on attraction of the land lots in a market turn were adopted. At this stage according to the Constitution and the Decree of the President of Republic of Kazakhstan “About the land” were adopted the regulatory legal acts directed on involvement of the land lots in a market turn.
The fourth stage of formation and development of the land market relations and the legislation of lease of the land began with the moment of adoption of law of the Republic of Kazakhstan “About the land” which provided separate provisions of the land legislation according to the changed civil, nature protection norms and other legislations. According to provisions of the Law “About the land” the land lots being in a property, continuous land use or primary gratuitous temporary land use, assessed with a land tax according to the tax legislation of Republic of Kazakhstan. The law was focused on wide development of the lease relations. However the law didn’t provide a private property institution on lands of agricultural purpose that constrained market and economic circulation [20].

The fifth stage of development of the legislation begins with the moment of adoption of the existing Land Code of Republic of Kazakhstan. The main objective of the present act consists in expansion of a limit of a private property on the land and private property institution introduction not the agricultural purpose land. During the years of land reform in the republic are formed the land relations focused on involvement of the land lots land market [20].

CONCLUSIONS

The historical analysis of land reforms which were carried out in Kazakhstan gives the reason to assume that land reform represents change of a legal regime of the landed property, including fixing of a private property on the land, elimination of the right of a private property or land nationalization. At any change of a legal regime of the land there is a change of all land and legal institutes: state inventory; order of land management and state land control; and also change of legal status of the citizen [21].

Reforms carried out in the territory of Kazakhstan periodically repeat the main historical errors of last land reforms, among which: absence of the program of carrying out reform and also contradictoriness and imperfection of legislative base. New land legislation in many supplied the specified lacks of legal regulation of the lease contract of the land lots, but didn't eliminate them completely that doesn't allow to function to the lease land relations completely.

Transition to market economy, privatization of agrarian sector, creation of the secondary land market, need of effective management of the state and private land resources demanded creation of the relevant rules of law creating civilized bases of the land lots turn on the right of lease, without existence of legal collisions between them. In purpose of optimization of a property structure, change of approaches to real estate management, involvement of the maximum quantity of lands in an economic turn became objective need of legislation improvement according to the economic requirements, shown to the land lots as to one of fixed assets of receiving the capital.

It is considered that the use of harmonization experience of the legislation in the field of legal regulation of lease of the land takes on special significance both for Kazakhstan and for the new integration associations where it presents as a member.

At the same time, perceiving foreign experience, it is necessary to consider originality and development conditions peculiarity of the Kazakhstan legislation and the right. In this regard at interaction and cooperation with other states it is necessary to proceed, first of all, from own interests of Kazakhstan caused by specifics of historical development of our state. Therefore “the West European recipes” of the land lots lease developments should be transferred on the Kazakhstan land very carefully.

REFERENCES