Collision in land legislation, as a source of operational legislation: in the example of the republic of Tajikistan

Kadiddin Umedov\textsuperscript{1} and Davlatsho Elnazarov\textsuperscript{1}

\textsuperscript{1}Russian-Tajik (Slavic) University (RTSU), M. Tursunzade 30, 734025 Dushanbe, Tajikistan

Abstract. This work is devoted to a comparative legal analysis of Articles 26 and 29 of the Land Code of the Republic of Tajikistan for the presence of conflicts between the content of their norms. The relevance of the chosen topic is caused by: a) a conflict in law is expressed as a defect that needs to be promptly corrected; b) competencies between central and local public authorities should be clearly delineated and not duplicate each other; c) from the point of view of legal theory and practice, the existence of conflicts in the system of law is unacceptable. The task of the work is to develop a draft law on amending Article 26 of the Land Code of the Republic of Tajikistan. The work uses an organic approach, which will allow us to consider law as a living organism. Based on the results of the study, it was revealed that there is a legal conflict between Articles 26 and 29 of the Land Code of the Republic of Tajikistan. The authors have developed a draft law “On Amending Article 26 of the Land Code of the Republic of Tajikistan”, which can be recognized as the result of the work.

1 Introduction

The collision of Articles 26 and 29 of the Land Code of the Republic of Tajikistan (hereinafter - LCRT) was revealed by A. Sh. Azimzoda. He considers this issue in his dissertation “Legal regulation of the provision and withdrawal of land plots in the Republic of Tajikistan”. This question was one of the provisions of the author's dissertation. This issue was submitted for consideration by the Higher Attestation Commission of the Russian Federation, and it was scientifically proven and recognized that the state of the current legal norms of Articles 26 and 29 contradict each other. However, no legislative action has been taken so far.

Each scientific achievement must be tested in practice in order to consider its potential and shortcomings and correct them. The theory, one way or another, must be put into practice, only in this case it acquires value.

We intend to develop a draft law “On Amendments to Article 26 of the Land Code of the Republic of Tajikistan” and submit this draft to the competent state bodies of the Republic of Tajikistan.

* Corresponding author: kadridin1979@mail.ru

© The Authors, published by EDP Sciences. This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (http://creativecommons.org/licenses/by/4.0/).
The development of the above draft law has doctrinal and practical significance. The doctrinal approach compares theoretical data with practice, tries to eliminate ambiguities and gaps in the law [1]. Some scholars evaluate the law with the help of doctrines and make recommendations for the reform of a particular law [2, 3].

The practical significance of the work lies, firstly, in the fact that conflicts create a situation of ambiguity, randomness in the application of legal norms. Subjects (state bodies) of different levels of government have identical competence in the field of land distribution, i.e., there is a duplication of powers of state bodies, despite the fact that they are at different levels of state structure. Secondly, the ambiguity and contradiction in these legal norms create a climate for corrupt actions, since their action, in accordance with Articles 26 and 29 of the LCRT, is not considered a crime or an offense.

In accordance with the Law of the Republic of Tajikistan “On the State Anti-Corruption Expertise of Regulatory Legal Acts and Draft Regulatory Legal Acts”, one of the corruption factors is regulatory conflicts (https://www.mfa.tj/ru/main/view/2590/zakon-respubliki-tadzhikistan-o-borre-s-korrupsiei). That is, the above-mentioned conflict state of Articles 26 and 29 of the LCRT is recognized by the legislation of Tajikistan as a corruption factor that must be corrected in an operative legislative order so that the state and society are not damaged.

So, on the one hand, the norms of Articles 26 and 29 of the LCRT contradict each other, on the other hand, they are condemned by a specialized law on the examination of legal norms for the presence of corruption provisions. This circumstance, of course, scientifically substantiates the development and submission of a draft law on the correction of the existing conflict in Article 26 of the LCRT.

2 Materials and methods

In this work, such regulatory legal acts as, LCRT and LRT “On the State Anti-Corruption Expertise of Regulatory Legal Acts and Draft Regulatory Legal Acts” are used. The theoretical basis is the works of Vlasenko N.A., Tikhomirov Yu.A., Chernilovsky Z.M., Smits J., Taekema, S., Van der Burg, W., Synne, S.M., Tayanah O’Donnell, Shi Kaiquan, Chen Hui, Farrow, Trevor C.W., Ghosh, N., Chitakira, M., Nyikadzino B., Deva, M. Prasad, Sangeet, S., Bhogal, S., Adedeji, O., Campbell, O., etc.

We use an organic approach.

The legal system is seen as a “living organism”.

Law is a “living organism” that has special patterns of formation, existence and development; it tends to be subject to diseases. It can be conditionally said that legal technology acts as a kind of doctor of law [4, p. 103].

Methods for advancing in certain areas of research are an integral part of the study [5].

The methodological base of the research is made up of such methods as analytical, consisting of a set of such scientific research operations as analysis, synthesis, abstraction, induction and deduction.

Based on the analysis, the object (Land Code) of the study will be divided into parts (chapters) and into particles (articles), then we intend to compare Articles 26 and 29 in order to identify conflicts.

With the help of synthesis, the authors intend to come from the abstract to the concrete subject.

In accordance with the principle of induction, the author intends to prove that there is a conflict between Articles 26 and 29 of the LCRT.

Deduction will allow us to draw inferences (conclusions) and propose specific measures to resolve a legal conflict.
The legal dogmatic (formal dogmatic) method will help us to consider law as a sociocultural phenomenon, a system of rules, structures, means and methods of legal regulation, forms and concepts of legal activity.

With the help of a comparative-legal method, Article 26 will be compared with Article 29 of the LCRT in order to identify conflicts.

In this study, criticism is indispensable – the critical method, and all work will be carried out using the logical method.

3 Results

Conclusions. There is a legal conflict between Articles 26 and 29 of the LCRT (Table 1.).

Result. The authors have developed a draft law “On Amendments to Article 26 of the Land Code of the Republic of Tajikistan”.


1. In paragraph a) of Article 26, after the word “from”, delete the phrase “categories of agricultural land and”.

2. The law comes into force after its official publication.

Let's consider Articles 26 and 29 of the LCRT (http://adlia.tj/show_doc.fwx?rgn=132093). We will conduct a legal examination of these norms for the existence of conflicts in them.

Article 26 of the LCRT fixes the categories of land that are provided and fixed by local executive bodies of state power of districts, cities and regions.

In accordance with the first paragraphs of Article 26 of the LCRT: “a) from the category of agricultural land and the category of state reserve land for agricultural needs, regardless of the size of the land plot, and for non-agricultural needs, with the exception of the types of land specified in Article 29 of this Code for these categories, in the amount of up to 10 hectares”.

Table 1. Collisions.

<table>
<thead>
<tr>
<th>Land Code of the Republic of Tajikistan dated December 13, 1996 No. 327</th>
<th>Article 29 Features of provision of certain types of land for non-agricultural needs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Article 26</strong> Provision and fixing of land plots by local executive bodies of state power of districts, cities and regions</td>
<td>If necessary, the provision of certain types of land from the following categories of land is carried out only by the Government of the Republic of Tajikistan: a) from the categories of agricultural land and the state reserve (arable land, perennial plantations, nurseries, hayfields and pastures).</td>
</tr>
<tr>
<td>Local executive bodies of state power of districts, cities, in agreement with the local land management authority, provide for unlimited, fixed-term and lifelong inherited use, as well as for lease of land plots from the following categories of land: a) from the category of agricultural land and the category of state reserve land for agricultural needs, regardless of the size of the land plot, and for non-agricultural needs, with the exception of the types of land specified in Article 29 of this Code for these categories, in the amount of up to 10 hectares.</td>
<td></td>
</tr>
</tbody>
</table>

Article 29 of the LCRT: If necessary, the provision of certain types of land from the following categories of land is carried out only by the Government of the Republic of Tajikistan:

“a) from the categories of agricultural land and the state reserve (arable land, perennial plantations, nurseries, hayfields and pastures)”.
From the content of the norms of Articles 26 and 29 of the LCRT, we see that identical categories of land, i.e.: categories of agricultural land can be provided and fixed both by local executive bodies of state power and by the Government.

It should be noted that Article 29 specifically states that categories of agricultural land can be provided only by the Government.

This position of the Articles is subject to criticism. Article 29 quite clearly states that lands from the categories of agricultural purpose are provided only by the Government, and no other body, including local government bodies, has the right to provide lands from this category to individuals and legal entities.

Tayanah O’Donnell, using the lens of legal geography, examines how local governments use land use laws and policies to respond to climate change adaptation [6]. We assume that local authorities, using land policy, should adapt land legislation to the requirements and principles of a special law, in our case, the Land Code.

Tikhomirov Yu.A. names legal errors as one of the reasons for the existence of legal conflicts [7].

We assume that the main reason for the existence of a conflict between Articles 26 and 29 of the LCRT is legal errors: ignoring legal doctrines, principles of lawmaking, rules of lawmaking and lawmaking technology, legal means (legal technique) and legal technical methods.

Despite the fact that the draft law is being considered along with the subjects having the right of legislative initiative, other participants in the legislative process made a legal error, and it needs to be corrected in the operational legislative procedure.

4 Conclusion

Collisions, gaps, uncertainties and duplication act as diseases of law (infection) that must be promptly corrected (improved) [8].

Let’s consider the conditional formula of law and conflicts (contradictions) in it and, accordingly, the formula of conflict legislation, conflict law, conflict institution of law, and conflict rule.

Z – legislation, which consists of – NLA (normative legal act) – za) – Constitution; zb) Law passed by referendum; zs) Constitutional law; zd) – Law (Code), including a system of subordinate legal acts – SubNLA, which has its subtypes SubNLA.

IN – institute of law
N – rule of law
C – collision

Conflict in legislation can exist as follows:
• C + za)Σ → C ← za)Σ = za)CN
• za)CN → C ← za)CN = za)CIN
• za)CIN → C ← za)CIN = Cza).

Collisions in different laws may look like this:
• C + SubNLA = CSubNLA (defect of law).

There are other formulas of collisions.
The conflict we are considering in Articles 26 and 29 of the LCRT refers to the formula \( zaCN \rightarrow C \leftarrow zaCIN \), where a conflict exists in one legal institution and for the contradictions of its norms.

By conflict (collision), Moskalkova T.N. understands the contradiction between separate rules of law, or between normative acts that have one subject of legal regulation, and proposes measures to overcome legislation conflicts:

- development of the theory of law-making conflicts;
  - increasing the level of legal regulation of the legislative process;
  - expanding the practice of involving citizens in the discussion of draft laws;
  - increasing the role and quality of legal expertise;
  - providing access to the current editions of the texts of laws [9, pp. 32-34].

Along with the measures proposed by Maskalkova T.N., it is also possible to include such anti-collision measures as:

- monitoring of legislation for the existence of conflicts;
- development of a legal program of research, identification and correction of conflicts in the legislation;
- continuous professional development of law-making and law-making bodies and officials in the field of culture of norm-setting.

In the 80s of the last century, three preventive conflict principles (technical requirements) were developed to ensure the temporal stability of the legislation:

1. all future normative legal acts should be issued on the basis of and in accordance with the adopted law;
2. after the adoption of a new law, only the current legislation applies;
3. relevant authorities need to bring the current legislation in line [10, p. 46].

In our case, it is directly possible to apply the third of the listed technical requirements to resolve the “collision legal conflict” (the relevant authorities need to bring the current legislation in line).

The system of law, legislation must be stable and harmonious, must develop steadily and in parallel. As a living organism, legislation can develop, or vice versa, it can degrade (get sick). The degradation of legislation occurs when there are gaps, duplications, uncertainties and collisions (infections and parasites) in it. All these legal shortcomings clog the rights. Like any branch of social and state existence, the system of law must have a certain stability in the process of its development.

The term “sustainability” has not yet been applied to discussions about ethics and professionalism in a legal context [11]. Nowadays, the institution of sustainable development of society is applied to all spheres of public activity. Various kinds of research are devoted to the issue of sustainable development. For example, in the context of the economy [12], the water sector [13], the space industry [14], the agricultural sector [15], science and education [16], and other sectors of society. We believe that the category of stability can be directly applied in jurisprudence in various aspects. Sustainability of the legal system, sustainability of legislation, sustainability of lawmaking. Each branch of law must develop steadily. Our proposal to change the norms of land law can be considered small step in this direction.

Having considered the theoretical views of scientists on the problem of “conflicts of law”, we can conclude that “conflict legislation” is a kind of “sick state of the legal system”. A conflict is one of the varieties of a legal disease that damages the health of law (legal organism).

Collisions, gaps, duplications, uncertainties can be conditionally called “infections” or “parasites” that paralyze the cell of the legal organism (legal norm), gradually spread to a specific body (legal institution) and unbalance the entire body of law (legal system).
When diseases are detected in a legal body, it is necessary to promptly carry out legal and technological health measures with the help of legal technology. In this process, it is important not only to improve the legal norm, but it is also necessary to identify the causes and conditions for the emergence of “legal diseases” in order to prevent such precedents in the future.

The absence of contradictions between the requirements of the population and the current legislation in the field of agricultural production should be achieved at the legislative level [17].

Also, it is necessary to carry out legal and technological preventive work to identify conflicts and other legally technical shortcomings in the system of law, which were listed above.

Only when carrying out legal and technological recreational activities, as well as prevention to identify diseases of law, it is possible to minimize defects in the system of law.

Another important factor is the study of the causes and methods of the origin of collisions, which will eliminate the centers or sources of the occurrence of collisions.

References

8. K.M. Umedov, SHS Web of Conferences 94, 04004 (2021)
10. N.A. Vlasenko, Reports at the plenary session Legal technique: Collisions in law as an object of modern scientific knowledge 11, 39–48 (2017)
