

# ECONOMIC CONSEQUENCES OF UNAUTHORIZED LAND CAPTURE AND ILLEGAL CONSTRUCTION

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**ABSTRACT.** The purpose of this article is a comprehensive study of the illegal activities of individuals and legal entities in the squatting of land and the impact of these actions in general on the economic security of the country. The changes taking place in Kazakhstan in political, socio-economic, legal and other relations have led not only to positive results, but also to negative consequences, expressed, in particular, in an increase in land squatting. Recently, the issues of unauthorized seizure of land plots, the erection of unauthorized buildings, which violate not only the real rights of citizens, but also the interests of the state, have become more frequent and topical. The methodological basis of the study was the generalized achievements of the institutional and neo-institutional theory, as well as on the scientific works of domestic and foreign scientists in the field of land disputes. The author, the first in Kazakhstan, tried to determine the economic consequences of illegal buildings.

**KEYWORDS:** illegal construction, economic damage, land tax, property tax, urban planning activities.

## ЖЕРДІ РҰҚСАТСЫЗ АЛЫП АЛУ ЖӘНЕ ЗАҢСЫЗ ҚҰРЫЛЫСТАРДЫҢ ЭКОНОМИКАЛЫҚ НӘДІПТЕРІ

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**АҢДАТПА.** Бұл мақаланың мақсаты жеке және заңды тұлғалардың жерді басып алуға заңсыз әрекеттерін және жалпы осы әрекеттердің еліміздің экономикалық қауіпсіздігіне әсерін жан-жақты зерттеу болып табылады. Қазақстандағы саяси, әлеуметтік-экономикалық, құқықтық және басқа да қатынастарда болып жатқан өзгерістер тек оң нәтижелерге ғана емес, сонымен қатар, атап айтқанда, жер телімдерінің көбеюінен көрінетін жағымсыз салдарға әкелді. Соңғы кездері азаматтардың нақты құқықтарын ғана емес, мемлекет мүддесін де бұзатын жер телімдерін өз бетінше басып алу, рұқсат етілмеген құрылыстар тұрғызу мәселелері жиілеп, өзекті болып отыр. Зерттеудің әдіснамалық негізі институционалдық және неoinституционалдық теорияның жалпыланған жетістіктері, сондай-ақ отандық және жер дауы саласындағы шетелдік ғалымдар. Автор Қазақстанда бірінші болып заңсыз салынған құрылыстардың экономикалық зардаптарын анықтауға тырысты.

**ТҮЙІН СӨЗДЕР:** заңсыз құрылыс, экономикалық зиян, жер салығы, мүлік салығы, қала құрылысы қызметі.

# ЭКОНОМИЧЕСКИЕ ПОСЛЕДСТВИЯ САМОВОЛЬНОГО ЗАХВАТА ЗЕМЕЛЬ И НЕЗАКОННОГО СТРОИТЕЛЬСТВА

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**АННОТАЦИЯ.** Целью данной статьи является комплексное исследование незаконной деятельности физических и юридических лиц, по самозахвату земель и влияние от этих действий в целом на экономическую безопасность страны. Происходящие в Казахстане перемены в политических, социально-экономических, правовых и иных отношениях привели не только к положительным результатам, но и к негативным последствиям, выражающимся, в частности, в увеличении самозахвата земель. В последнее время участились и стали злободневными вопросы самовольного захвата земельных участков, возведения самовольных построек, что нарушает не только вещные права граждан, но и интересы государства. Методологической базой исследования послужили обобщенные достижения институциональной и неинституциональной теории, а также на научных трудах отечественных и зарубежных ученых в области земельных споров. Автор, первым в Казахстане, попытался определить экономические последствия от незаконных построек.

**КЛЮЧЕВЫЕ СЛОВА:** незаконное строительство, экономический ущерб, земельный налог, имущественный налог, градостроительная деятельность.

**INTRODUCTION.** One of the main objectives of Kazakhstan's policy aimed at creating conditions for a decent life and free human development is to ensure the sustainable development of the country's territories, as well as the arrangement of a comfortable and favorable living environment for the population in these territories. The solution of this task requires joint balanced actions: aimed, on the one hand, at progressive transformations, and, on the other, at preserving historical and architectural heritage, maintaining local traditions and protecting special natural territories.

Activities for the development of territories, including cities and other settlements, carried out in the form of territorial planning, urban zoning, territory planning, architectural and construction design, construction, capital repairs and reconstruction of capital construction

facilities, refers to the subject of urban planning activities. Urban planning activities directly affect relations in various spheres of society (political, socio-economic and others); it is characterized by its diversity, its direct impact on the environment and on the quality of life of the population, and therefore the regulatory regulation of a multi-stage urban planning process has a complex intersectoral character. The impact of unauthorized self-seizure of land latently occurring in the economy on the revenue side of the state budget is so significant that it may pose an economic threat to the country. Currently, the problem of assessing the damage caused by illegal land grabbing activities to state revenues has become particularly acute, which is determined by a combination of objective and subjective factors.

The solution of this problem is possible

only with a comprehensive analysis of the phenomenon of land self-seizure, the development of a methodological apparatus for assessing the damage caused by illegal activities to the budget of Kazakhstan. Only a balanced set of economic and legal measures will prevent the transfer of resources into shadow circulation, which will not only increase the volume of tax revenues to the budget, but also give impetus to the sustainable development of the country's economy.

#### **MATERIALS AND METHODS OF RESEARCH.**

As the analyzed materials, data from the Land Cadastre Department and the Automated Information System of the State Land Cadastre were taken. Abstract-logical, analytical, monographic, economic-statistical, sociological, expert methods, as well as the method of economic-mathematical modeling were used in the work.

**RESULTS AND THEIR DISCUSSION.** The article proposes the conclusion that illegal constructions are a threat to economic security, but amendments to the legislation, extension of the legalization period minimize the economic losses of the state. It is problematic to calculate the damage to the state from illegal constructions, due to the complexity of calculating the damage of future periods and assessing losses from unauthorized seizure of land. Economic damage from illegal constructions includes the amount of losses from changes in fixed assets or individual components of the environment, expressed in their pollution, degradation, depletion, damage, destruction, illegal seizure or other deterioration, plus the costs of eliminating the consequences. In Kazakhstan, the topic of calculating the amount of damage from illegally erected buildings or illegal seizure of land has been little studied.

Unauthorized construction is recognized as a house or other type of real estate that was built without legal approvals and permits, in violation of urban planning and building codes and regulations. If the building was erected in violation of the designation of the land plot or on land that was not legally provided to the

owner, it is also recognized as unauthorized construction.

All these requirements must be met at the time of commencement of construction and be valid on the date of detection of unauthorized construction. If at the time of the start of construction there were no restrictions for the construction, then it cannot be considered unauthorized. Also, if the owner could not have known about any restrictions on the development of his site, but they were, then the construction is not recognized as illegal [1].

Unauthorized construction, which, due to its parameters, technical characteristics and condition, poses a threat to the safety, life and health of citizens, is not subject to legalization. In any case, such a building is subject to demolition. In addition, the right to unauthorized construction cannot be recognized if it is located on a site owned by another person. In other words, it is necessary to have rights in rem, directly provided for by law, in order to legalize unauthorized construction. [2].

In Kazakhstan, the issues of legalization of illegal buildings are very relevant. For example, in 2017, 119 illegal objects were identified. 66 of them were demolished. In the first half of 2018, another 77 illegal objects were identified, 65 were demolished.

The issue of illegal constructions became especially acute after the tragedy on December 27, 2019, when the Fokker 100 plane of the Bek airline crashed near Almaty. On board were 93 passengers and five crew members. The crash killed 12 and injured 49 people. Losses could have been avoided if not for the unauthorized construction of the building.

The plane crashed between villages on a plot that belonged to the category of irrigated farmland. [3]. Since this land is located close to the airstrip, according to the Land Code, it was impossible to build residential buildings on it and engage in some types of agriculture related to animal husbandry. This attracts birds, which can become a hindrance to aircraft.

A similar situation with illegal buildings near airports is also observed in Atyrau, Aktobe, Shymkent and Taraz.

Back in 2012, officials of the Atyrau region and Atyrau issued more than a hundred land plots in the territory of protected zones, restricted development zones, sanitary protection zones and the airport strip, which, according to the documents, belongs to the airport.

In Aktobe, entire neighborhoods appeared near the airport, there are residential high-rise buildings. Although, according to building and aviation standards, there should not be buildings higher than 50 meters within a radius of four kilometers from the borders of the airport. Also, at this distance, it is impossible to build structures, the radio frequencies and electromagnetic effects of which can affect the radar equipment of the airport and aircraft. In this regard, all construction, sanitary norms and rules, technical regulations and aviation standards are violated in Aktobe.

In Shymkent, in the security zone of the airport, land was first given out for a peasant economy, for summer cottages and subsidiary farms, and now full-fledged cottages stand in their place. And in Taraz, greenhouses and structures were also built in the buffer zone, which should not be here.

The problem in Kazakhstan is that, for example, a number of districts have been annexed to Almaty recently, and in rural settlements there are a lot of buildings that were not legalized, there are about 14 thousand such buildings [4]. If in other cities this may be of a single nature, then here we are talking about tens, maybe even hundreds of thousands of hectares.

There are quite a lot of unauthorized buildings in the Republic of Kazakhstan, many of them cannot be legalized, while others can be successfully legalized. Previously, such buildings were dealt with simply - they were demolished. The law adopted in 2018 simplified the possibility of legalizing unauthorized construction, and now such an object can only be demolished through a court. The document introduced specific grounds for the demolition of such structures, the court will consider the possibility of legalizing such structures, if possible. Currently, the issue of extending the

legalization period for unauthorized buildings until January 1, 2027 is being considered. In parallel with this, liability for the illegal erection of buildings is introduced by law.

Thus, the Decree of the Government of Kazakhstan introduced changes and additions to the base rates for calculating the amount of damage caused by violation of the forest legislation of the Republic of Kazakhstan.

In particular, the following additions have been made to the base rates for calculating the amount of damage caused by violation of the forest legislation of the Republic of Kazakhstan:

- For damage to hayfields and pastures for 1 m<sup>2</sup> provides for a fine of 3 MCI (10,350 tenge);
- for illegal uprooting of logging sites and burnt areas for 1 m<sup>2</sup> - 0.5 MCI (1725 tenge);
- for illegal erection of buildings and arrangement of warehouses for 1 m<sup>2</sup> - 2 MCI (6900 tenge).

In addition, oak and ash were excluded from the list of tree species growing within cities or towns for illegal felling, the destruction and damage of which should be compensated for damage.

Now this list includes about 30 tree species, including pine, larch, cedar, maple, birch, walnut, apricot, acacia, willow, sea buckthorn.

The regulation comes into force on February 25, 2023. And although punishment is being toughened in Kazakhstan, the problem still remains relevant, and the size of the punishment is not commensurate with the amount of damage to the state.

An economic assessment of damage from illegal constructions should be carried out taking into account whether it is possible to completely eliminate the damage caused by measures to restore the environment.

Damage caused to the environment, which has a monetary value, including a negative change in fixed assets or individual components of the environment, expressed in their pollution, degradation, depletion, damage, destruction, illegal seizure or other deterioration, plus the cost of eliminating the consequences [5].

When calculating the amount of damage,

the totality of negative impacts on humans and the natural environment is taken into account. First of all, the impact on human health and life is taken into account, then - the safety of the animal and plant world, after that - the productivity of resources, the state of economic objects and factors of production, etc. [6]. The total environmental and economic damage is calculated as the sum of losses from environmental pollution in various sectors of the economy and ecological systems.

However, in practice, it is difficult to measure economic damage. This is due to a number of reasons. First, some of the negative impacts cannot be quantified and given an adequate monetary value. An example would be the disappearance of biological diversity, i.e. a particular species of animal or plant. Secondly, the negative consequences of environmental pollution often manifest themselves after a long time and at a great distance from the emission source [7].

Violation of the law leads to negative consequences for the construction company, which started work without obtaining permits. The results of such actions are serious. First of all, the object can be attributed to unauthorized construction.

An entity that has violated the law and carried out unauthorized construction does not receive the right to own it. As a result, he will not be able to dispose of the constructed property, as with a full-fledged and registered object. The

violiator is not allowed to sell, donate, rent or perform other actions [8].

The most serious consequence is the need to demolish the house for illegal construction by decision of the judicial authority. Under the law, such work is carried out at the expense of the violator [9].

If the building was erected in accordance with the current rules and regulations, it is worth contacting the judicial authority, providing the required papers and waiting for a decision. [10]. If you have the required package of papers and follow the "letter" of the legislation during the construction process, the court can secure for the owner the right of ownership of the object erected on the land plot that is in the owner's perpetual (permanent) use.

**CONCLUSION.** Thus, the problem of land squatting, illegal construction and possible legalization is important for ensuring the economic security of the country. Legalization of illegal constructions, increase in the amount of fines will minimize the damage.

It seems appropriate to apply more widely the universal methodology of GIS monitoring of territories developed in the work, since the losses and additional costs that arise as a result of self-seizure of land manifest themselves over a long period of time and can significantly affect economic security. It is necessary to continue research in the field of improving the accuracy of damage assessment from illegal constructions and is very significant.

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