

LAND CONSOLIDATION IN UKRAINE AFTER LAND REFORM: VOLUNTARY AND FORCED MECHANISMS

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ABSTRACT

During the land reform, which has been going on in Ukraine since 1991, the state form of land ownership has been demonopolized. The lands of almost 12,000 farms have been reformed, and 6.77 million peasants have acquired land rights (shares), the vast majority of which are registered as separate plots of land. Today, land consolidation should be considered as a set of land management measures to regulate the structure of land rights in order to create more favorable conditions for farming, increase productivity, reduce production costs, create appropriate infrastructure, improve the agricultural structure. The current land legislation of Ukraine does not contain a sufficiently effective mechanism for ensuring land consolidation and needs to be improved. The purpose of the study is to identify ways to improve the mechanism of legal regulation of land consolidation in Ukraine and integrated land management, which will provide restructuring and improvement of spatial conditions of agriculture, achieving more efficient multifunctional use of rural areas, environmental protection and infrastructure development for further harmonization of legislation.

Keywords: land consolidation, forced exchange, land plots, parcelling, integrated land management

INTRODUCTION

During the land reform, which has been going on in Ukraine since 1991, the state form of land ownership has been demonopolized. The lands of almost 12,000 socialist collective farms were reformed, and 6.77 million peasants acquired land rights (shares), the vast majority of which were registered as separate plots of land. Each former collective farm worker or pensioner, as a rule, received four land plots as a result of privatization. But it should be noted that these are

not four plots of arable land, but one plot of arable land, one plot of a garden, one plot of pastures and one plot of hay. Thus, although an ordinary peasant in our country owns four or more land plots, these are different types of land plots with different functions of use. A typical for Ukraine pattern of land tenure after the distribution of collective lands is shown in Fig. 1.

While there is a ban on the alienation of agricultural land, and the owners of the plots do not use the land themselves, Ukraine is actively pursuing virtual land consolidation. From the point of view of the land

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Fig. 1. Typical for Ukraine pattern of land tenure after the distribution of collective farms

Source: based on orthomosaic from the State Land Cadastre, scale 1:8400.

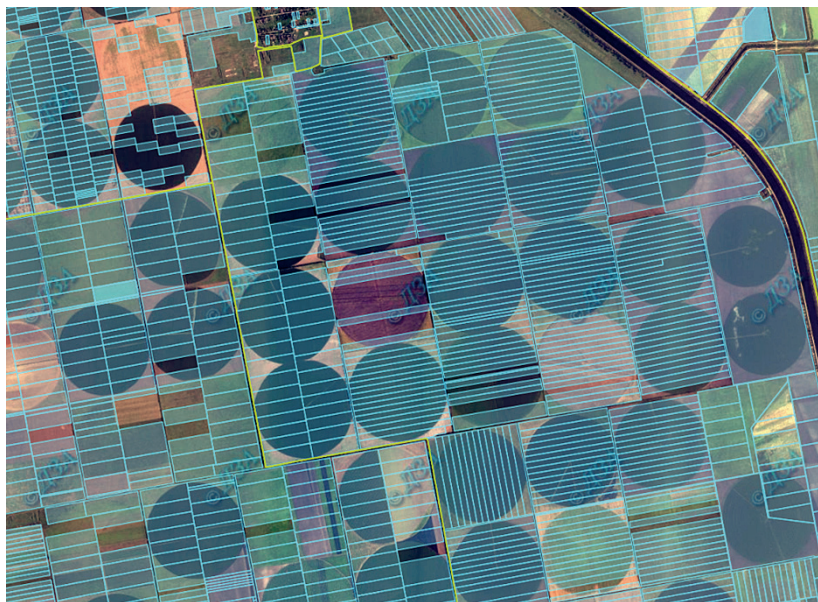


Fig. 2. Typical pattern of land tenure on irrigated lands, where circles – arrays irrigated by one irrigation unit

Source: based on orthomosaic from the State Land Cadastre, scale 1:8400.

cadastre, we have a lot of separate land plots. But they are used most often as one array by one enterprise.

During the mass privatization and redistribution of agricultural land, social and political tasks were largely solved. But, at the same time, a number of related problems also arose in agricultural land use, which cannot be ignored. First of all, most of the current owners of land plots are retired or are of fairly old age, who will never be independently engaged in farming. Children and grandchildren of former employees of collective farms who inherit land plots, in most cases no longer live in rural areas and do not engage in agriculture. Thus, land owners in most cases do not have long-term plans for independent use of their land plots. Their economic interests are usually limited to the transfer of land for use on leasehold or emphyteus.

In Soviet times, a large-scale infrastructure for irrigation and drainage was built on the territory of Ukraine. The area of meliorated land was millions of hectares. Today, we have to state that the fragmentation of fields into small areas extremely complicated both irrigation and drainage amelioration. The field, which used to be a single technological array, is today a collection of several dozen separate land plots, whose owners have different interests, and therefore are almost never able to reach consensus on the issue of sharing the entire land array (see Fig. 2).

The priority of the current land legislation of Ukraine is the unconditional protection of land rights, even when the personal interests of the owner do not correspond to the public interest or common sense. At the same time, inefficient land and property structuring is only aggravated by subsequent land management measures due to further parceling and fragmentation of land during inheritance, lease relations, etc.

Continuous parceling of land significantly complicates the conditions for spatial development and agribusiness, in particular:

– significantly hinders the attraction of investment in rural areas, as the former fields are now divided

between dozens of individual owners, each of whom is independent in deciding the use of agricultural real estate owned by him;

– any project for the development of transport, energy, communal infrastructure, as a rule, requires the solution of a significant number of land and property issues, the forced alienation of a significant number of land plots for public needs or for reasons of public necessity.

This leads to a slowdown in the development of agribusinesses, complication of the conditions for processing arable land, as well as the development of local infrastructure.

In view of the above, there is a need to introduce a modern and effective land consolidation mechanism, which will include, inter alia, instruments of forced consolidation.

LITERATURE REVIEW

All Western European countries have in one way or another gone through land consolidation as one of the methods of land reform. Research on land consolidation and the use of different methodological approaches for its implementation in European countries was conducted by Thomas (2006), Vitikainen (2014), Len (2018), Dudzińska and Kocur-Bera (2013), Versinskas et al. (2020). The issue of methodological approaches to the development of consolidation of agricultural lands in Ukraine is given attention in the works of Martyn and Krasnolutsky (2011), Tkachuk (2009), Shvorak (2016), Kilocho (2009). At the same time, despite attempts to develop separate pilot projects in the field of land consolidation (including with the support of the UN FAO), their practical implementation was not carried out.

At the same time, today the land legislation of Ukraine does not contain a sufficiently effective mechanism to ensure land consolidation and needs to be improved in order to improve the spatial preconditions of agriculture, to achieve more efficient multifunctional use of rural areas.

MATERIALS AND METHODS

The theoretical and methodological basis of the study are the provisions and principles of the modern concept of sustainable development of rural areas, the results of research by domestic and foreign scientists, which reveal the institutional nature and basic forms of consolidation of agricultural land.

During the research, general scientific and special research methods were used, namely: dialectical – to identify the conditions in which the activities of the participants in the consolidation, its focus, efficiency and effectiveness; analysis – to highlight the role and place of consolidation of agricultural land in the system of land relations; synthesis – to combine different doctrines on the formation of the institution of land consolidation; inductions and deductions – to identify gaps in the regulatory framework for the consolidation of agricultural land and its institutional environment; structural and functional analysis – to determine the main stages and components of land consolidation.

RESULTS

As Ukraine has not yet formed a national legislation on land consolidation, the priority is to identify at the legislative level ways of legal regulation of land consolidation and integrated land management, which will provide restructuring and improvement of spatial conditions of agriculture, achieving more efficient multifunctional use of rural areas, as well as infrastructure development.

The best way to solve the problem is to develop and adopt a special law amending the current legislation on land consolidation, which will introduce two main types of land consolidation: (a) consolidation of agricultural lands; (b) consolidation of lands in case of need to change the boundaries of plots or types of lands for public needs (construction of road facilities, power lines, pipelines and other linear infrastructure facilities).

Introducing instruments for consolidation of land plots located in agricultural lands should aim to

reduce land fragmentation of farms and agricultural enterprises, increase economic and environmental sustainability of land tenure and land use in time and space, including mechanisms of forced consolidation of land in arrays of agricultural lands as a public need.

It is necessary to give the owners of land plots, which together make up a significant part of the array (not less than 75%), the right to forcibly exchange land within the same array (and create a crossroads) for other land plots located in the same array (or in another array, if its location is at a short distance from the land to be exchanged). In case of refusal to conclude a mine agreement, it should be possible to enter into such an agreement in court.

The initiation of consolidation should be preceded by an inventory of lands of the array, including detection of technical errors (duplicates of land plots and others) in order to correct them and enter all information about them in the State Land Cadastre. Consolidation of land plots located in agricultural lands on the basis of the principle of transparency, which is that all subjects of consolidation have the right to be aware of all measures taken in the process of its implementation. Owners of land plots, the total area of which is more than 50% of the area of the array, should be given the right to initiate the consolidation process. If the land plots are in temporary use (lease, emphyteusis), pledge, initiation must be agreed with the land user, the pledgee of such land plots.

Permission to develop a land consolidation project [2] should be granted by the village, settlement, city council, on the territory of which an array of agricultural lands is located. Such a decision should be the basis for the introduction of a temporary ban on the division, exchange, consolidation of existing land, as well as change the types of land. The state registration of these encumbrances in the State Register of Real Property Rights and Restrictions on Land Use in the State Land Cadastre is carried out on the basis of an application of the local self-government body that made the decision on land consolidation. It is expedient to limit the term of these restrictions and encumbrances to one year – the time required for the implementation of the consolidation project

(to clarify this period, it is possible to use the experience of Poland and some other countries).

Based on the decision of the local council, a land management project should be developed for the consolidation of the agricultural land, which should include measures to:

- changes in the boundaries and location of land plots (cadastral numbers of land plots will remain valid);
- changes in land types (for example, from arable land to perennials or farmyards or vice versa).
- deciding the fate of land plots under field roads (except for field roads that limit the array), whereby land plots under field roads in the process of consolidation may change their location, boundaries;
- solving environmental problems, forming an ecological network, placing promising irrigation and engineering infrastructure.

The land management project for the consolidation of agricultural land should be able to increase the area of existing land at the expense of state or communal land under field roads (each owner in proportion to the area occupied by his land in the array). In this case:

- the state registration of the land plot under the field road is canceled, the land plot ceases to exist as an object of civil rights;
- the difference in the value of the land plot must be paid by the owner of the land plot to the local budget (the value in this case is determined by an expert monetary assessment).

It is also possible to leave field roads in communal ownership.

Project decisions of the land management project for the consolidation of the agricultural land must meet the following criteria:

- the area of land plots before and after consolidation cannot be reduced;
- after the implementation of design decisions of the project in the array should be absent through the strip;
- all land plots of one owner must be connected by common borders and have access from the road from the border of the array without the need to pass / travel on other people's plots;

- the land value before and after consolidation should be equal to or differ by no more than 10%.

The draft should also provide for the calculation of damages to be reimbursed by one consolidator to another.

A public discussion of the land management project for the consolidation of the agricultural land should be organized by the project developer together with the local government. Only owners and users of land plots located within the array should take part in the discussion. As a result of the discussion, changes may be made to the project.

The land management project for the consolidation of agricultural land should also be submitted for approval by owners and users, mortgagees of land. Then the land management project for the consolidation of the agricultural land is approved by the village, settlement, city council, on the territory of which the array is located. The project can be approved if it is approved by the owners of land plots, the total area of which is not less than 75% of the area and users of such land plots. Disagreements with the new location of land plots cannot be grounds for refusal to approve the project. At the same time, consolidation measures cannot violate the rights and interests of those who did not approve the project.

In case of creation of new infrastructural (roads, etc.), industrial, recreational, nature protection and other objects in territorial communities, the land management project on consolidation of the array of agricultural lands should be developed taking into account provisions of the complex plan of spatial development of the territorial community.

Based on the decision on approval of land management for the consolidation of the agricultural land:

- the restrictions and encumbrances established by the decision on consolidation are terminated;
- changes are made to the information on land plots in the State Land Cadastre;
- the state registration of land plots under field roads, the area of which is included in the area of other land plots of the array, is canceled, as well as the state registration of real rights to them is canceled.

The right to submit applications for entry of the specified information in the State register of real rights to real estate and the State land cadastre is given, besides the owner of the land plot, also to the representative of the local council, which approved the project. After approval of the project, the next decision on the consolidation of the lands of the array can be made not earlier than in 10 years.

The decision of the local self-government body to approve the land management project on consolidation of the agricultural land may be appealed in court by the owners of land plots, boundaries, area and lands of which were changed under such a project and who did not approve the project. Financing of consolidation of land plots located in agricultural lands should be carried out at the expense of landowners, land users included in the land, state and local budgets, other publicly available sources in accordance with current legislation of Ukraine.

Consolidation of land located in agricultural land should provide appropriate guarantees, ensuring that the legal rights of all stakeholders in the process of land consolidation are taken into account and protected. Uninterrupted implementation of projects on consolidation of land plots located in the arrays of agricultural lands should be ensured without stopping their implementation without the fundamental need for such a measure.

The proposed approaches to land consolidation in Ukraine will improve the spatial conditions of agribusiness, minimize the risks of agribusiness in the introduction of a regulated market of agricultural land, and ensure the achievement of sustainable rural development goals and environmental policies. The implementation of the proposed concept allows to lay the spatial preconditions for the location of reclamation and engineering infrastructure, as well as to ensure the adaptation of the land use system to climate change. The use of consolidation facilities to accommodate such facilities will make it possible not to use the mechanism of forced expropriation of such land for reasons of public necessity. The possibility of increasing the area of land plots, some of which are

necessary for public needs, will reduce the number of conflicts between their owners and the authorities.

CONCLUSIONS

Adoption of the Law of Ukraine “On Amendments to Certain Legislative Acts on Land Consolidation” will allow:

- to improve the spatial conditions of agribusiness, to minimize the risks of agribusiness in the conditions of introduction of the regulated market of agricultural lands;
- to ensure the achievement of the goals of sustainable development of rural areas, as well as environmental policies;
- create spatial preconditions for the location of reclamation and engineering infrastructure, as well as to ensure the adaptation of the land use system to climate change.

The use of consolidation facilities to accommodate such facilities will make it possible not to use the mechanism of forced expropriation of such land for reasons of public necessity. The possibility of increasing the area of land plots, some of which are necessary for public needs, will reduce the number of conflicts between their owners and the authorities.

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