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Organisational and legal mechanism of land reform completion in Ukraine

Formulation of the problem

During the years of independence, new land relations were established in Ukraine, characterized by a new legislative and regulatory framework, a variety of land ownership forms, the creation of a market-oriented system of state land cadastre, and so on. Positive trends in land conversion during this period did not become a prerequisite for the formation of high-yield land use. On the contrary, there are negative consequences of ill-considered land policy, which manifested itself in organizational disorder in the state bodies for managing land resources and land use. Further elaboration requires a legislative and regulatory framework, a coherent land policy and effective state regulation of land issues. The legislative framework has become extremely politicized, the legislative process is imbalanced, and the ways of passing land to the hands of efficient users are almost blocked. The imperfect state regulation of land relations is still felt in society. The lack of reform further exacerbates the natural resource problems of ensuring the sustainable development of the state and its regions. The legal framework in the field of legal regulation of land relations is manifested as an uncoordinated array of legal acts, above all by-laws, which are unrelated and create preconditions for numerous conflicts¹. All of this has become a reason for the study of this topic, since the importance of this issue in Ukraine is quite high, which determines the relevance.

¹ T. Titarenko, *Formation and realization of state policy of regulation of land relations in Ukraine*, Czernihiv 2016, p. 252 [in Ukrainian].

Analysis of recent research and publications

In recent years, Ukrainian scholars and practitioners have made significant contributions to the study and research of the land market. Theoretical and methodological aspects of the rational use and protection of land resources in Ukraine have been the subject of research by many scientists, in particular: V. Druhak, V. Horlachuk, O. Kanash, V. Kirsanov, A. Martin, M. Laveikin, L. Novakovskiyi, A. Tretiak, M. Stupen A. Sohnych and others.

Problems of legal regulation in the land industry were investigated in the works of D.I. Babmindra, I. Yu. Banashko, E. Halinovskaia, Yu. H. Hut-sulyak, O.S Dorosh, P.F Kulinich, A.M Miroshnichenko, A.V Ursu and others. However, various aspects of these issues require deeper study and research. This is, first of all, due to the fighting in eastern Ukraine, the economic crisis in the country, the lack of an organizational and legal strategy for overcoming the crisis phenomena and the lack of scientific and methodological research into the above-listed problems. All of this significantly hinders the process of opening up the land market and requires further thorough research.

Formulating the aims of the article

The tasks are to study in depth a number of contemporary issues in the legal regulation of land relations, particularly those concerning the opening of the land market, as well as to develop proposals for their resolution.

Outline of the main research material

The main national wealth of Ukraine is land as a natural resource. This is stated in the Constitution of Ukraine and it is quite natural that all lands of Ukraine are under the special protection of the state². Ukraine has unique land use potential and therefore requires rational, economical, efficient and environmentally friendly use and proper protection. Ukraine is one of the largest European states and accounts for six percent of Europe's territory. Agricultural land accounts for about 19 percent of all European land³. The most fertile soils of Ukraine are black soil. Their area is estimated at be-

² Constitution of Ukraine 28.06.1996, № 254k/96, <http://zakon3.rada.gov.ua/laws/show/254k/96> [in Ukrainian].

³ R. Brukhanskyi, P. Putsenteilo, O. Zyhrii, *Accounting-analytical and organizational-legal support of the activity of enterprises in the conditions of institutional transformations*, Ternopil 2017, p. 150 [in Ukrainian].

tween 15.6 and 17.4 million hectares⁴. 2/3 of the total area of agricultural land is black soil, which is the best in terms of natural fertility, accounting for 8.7% of all black earth in the world⁵.

At present, there is a negative situation in Ukraine regarding the deterioration of the soil quality, which involves a decrease in humus supply and nutrient content. In addition, processes of soil salinization, erosion and acidification are also causing degradation and desertification of the soil cover. The whole territory of Ukraine has extremely high indicators of agricultural development, which exceed ecologically sound limits. Land leases (shares) are treated as single arrays. There are no land boundaries, and there are no field paths for access to specific land plots.

The Land Fund of Ukraine lacks adequate measures to protect and restore as a productive resource such an important component of the environment which, in turn, has led to the progressive degradation of land. It should be noted that since the beginning of the land reform, there have been significant changes in the structure of the land fund of Ukraine by major types of land and by major land users and landowners. Agricultural land decreased from 42.0 million hectares in 1990 to 41.5 million hectares as of 01.01.2018, i.e. by 518.6 thousand hectares⁶. Another source reports that over the past year, the decrease was by 5,100 hectares and amounted to 42,726.4 thousand hectares from 42,731.5 thousand hectares⁷.

Citizens of Ukraine, according to the Constitution of Ukraine, are the owners of national wealth and should consider the right to land and its natural resources from both legal and economic perspectives. As a co-owner of the major national wealth, at the same time, it can be a member of a territorial community, and a consumer of products and products, environment and space. At the same time, a citizen can be a real owner, entrepreneur, worker and owner of a particular land plot and the natural resources available to it⁸.

The Constitution of Ukraine states that the path to achieving the well-being of Ukrainians must be through a comprehensive settlement of all constituent relations of law with respect to basic national wealth⁹. The basis

⁴ L. Novakovsryj, *National report on the completion of land reform*, Kyiv 2015, p. 48 [in Ukrainian].

⁵ R. Brukhanskyi, P. Putsenteilo, O. Zyhrii, op. cit., p. 150.

⁶ P. Kulynycz, *Legal problems of the protection and use of agricultural land in Ukraine*, Kyiv 2011, p. 28 [in Ukrainian].

⁷ Infographics: Changes in the structure of the land fund of Ukraine for 2015, <http://land.gov.ua/infografika-zminy-v-strukturi-zemelnoho-fondu-ukrainy-za-2015-rik/> [in Ukrainian]; O. Zyhrii, *Organizational and legal aspects of land use and protection*, „Actual Problems of Law” 2017, No. 5(9), p. 70–74, <http://www.tneu.edu.ua/uf/scientific-journal-uf/> [in Ukrainian].

⁸ O. Zyhrii, *Organizational and legal aspect of land use and protection*, „Actual Problems of Law” 2017, No. 5(9), p. 70–74, <http://www.tneu.edu.ua/uf/scientific-journal-uf/> [in Ukrainian].

⁹ Constitution of Ukraine 28.06.1996 p. № 254k/96, <http://zakon3.rada.gov.ua/laws/show/254k/96-> [in Ukrainian].

must always be a citizen of Ukraine with its national wealth – the land and its natural resources. The main functions of these two reciprocal constituents of statehood must relate exclusively to nation-states and cannot be delegated or „decentralized” to anyone. Instead, functions of national importance should be strengthened, especially with regard to guaranteeing the legal rights of all citizens, including land and its natural resources as an object of the property of the Ukrainian people¹⁰.

Thus, land in Ukraine is a major agricultural product and continues to be used with low returns. Legally, economically and infrastructurally, the market circulation of agricultural land has not yet been prepared. At the same time, the issue of lifting the moratorium on the alienation of agricultural land and the formation of the land market is the main, most debated and politicized issue of state land policy in Ukraine. During the 18 years of Ukraine’s moratorium on the sale of agricultural land, a number of unresolved issues remained, which led to the accumulation of a considerable number of problems in the country’s agriculture. These include:

- the impossibility of applying the latest technologies and improving the technological conditions of agricultural land use due to their irrational land tenure;

- the reduction of land plots of owners into arrays of farms renting land plots to citizens of Ukraine;

- the concentration of a large part of the agricultural land owned by the least economically active part of the rural population (pensioners and the elderly), who do not have the proper professional knowledge and are deprived of the opportunity to engage in soil cultivation;

- slowing the processes of creation of market-type farms, which dramatically reduces the competitiveness of agriculture in Ukraine on world markets;

- reduction of the investment climate of the agricultural sector of the economy, which is associated with increased risk of investment due to the inability of mortgage lending to agriculture secured by land, etc.

Professor A.M. Tretiak notes that land is a special resource that requires the formation of special economic, environmental and legal relations of property rights in the organization of its use¹¹.

The common scientific consensus is that the land serves five aspects:

First, land is the territory of the country, the main state-forming component (national security);

Secondly, land acts as a universal spatial basis, supported by the relationship between land categories and land use types (spatial security);

¹⁰ O. Kovaliv, *Land Reform in Ukraine: A New Paradigm*, Kyiv 2016, p. 324 [in Ukrainian].

¹¹ A. Tretiak, B. Tretiak, N. Tretiak, *Land reform in Ukraine: trends and consequences in the context of quality of life and safety of the population*, Cherson 2017, p. 522 [in Ukrainian].

Third, land is the main means of production in agriculture and forestry (food security);

Fourth, land is a major component of nature (environmental safety);

and, finally, land is a storehouse of water, minerals, forests and recreational and other resources (economic security)¹².

Considering that land is a resource that requires the use of certain technological equipment, land, as an object of life security of each person, requires constant protection and people need a special approach to land management and land use, which are components of the regulation of land relations and administration of land use. According to Professor A.M. Tretiak, a systematic (holistic) approach to the problems of national land use is needed¹³.

Agricultural lands occupy a central place in the land of Ukraine and cover areas of the most valuable soils, and serve as the basis of the food security of the state. They are characterised by unique natural resources, the foundation of the economic development of the state and the material well-being of the Ukrainian people¹⁴.

Agricultural land, according to the Land Code of Ukraine, is an independent category of land within the land fund of Ukraine. This includes land granted for agricultural production, agricultural research and training activities, the placement of appropriate production infrastructure, including infrastructure or intended for the wholesale markets of agricultural products¹⁵.

Agricultural land includes land used as a primary means of agricultural production:

1) arable land is land that is regularly tilled in order to create agrotechnical conditions for growing crops on them;

2) land under perennial plantations, by which they mean agricultural land with tree- or shrub-type fruit plantations which bear fruit over a long period;

3) hayfields are agricultural land on which the herbaceous vegetation used for livestock breeding is grown;

4) pastures – agricultural land where grasslands are used for grazing;

5) fallow lands are agricultural lands (mostly arable land) that are temporarily withdrawn from active agricultural tillage (ploughing) for the natural restoration of soil fertility¹⁶.

It should be noted that the legal regime of agricultural land is aimed at addressing two aspects:

¹² Ibidem.

¹³ Ibidem.

¹⁴ Land Law of Ukraine: Theory and Practice, 2011, No. 1 [in Ukrainian].

¹⁵ Vidomosti Verkhovnoi Rady Ukrainy. Land Code of Ukraine, 2002, <http://zakon2.rada.gov.ua/laws/show/2768-14/page> [in Ukrainian].

¹⁶ Ibidem.

– qualitative – ensuring the fertility of land using environmental measures;
– quantitative – ensuring the preservation of the quantity of these lands, preventing the reduction of the area of agricultural lands by establishing imperative prescriptions for the order of their use, transfer to non-agricultural lands, etc.¹⁷.

Considering the specific nature of agricultural land, the law establishes the subjective rights and obligations of landowners. However, some of them need to be adjusted in order to protect and specify the rights of individuals and to ensure the rational use of land¹⁸.

Another danger is low rent, inefficient use of land and a large number of agricultural enterprises of different forms of ownership that use agricultural land irrationally. Their main purpose is their own enrichment while neglecting technological standards of agricultural production¹⁹. It is believed that land, as a major factor in production in Ukraine, is undervalued, as producers use it virtually for nothing.

Equally important is the design of leased land contracts. According to the current legislation of Ukraine, land units can be issued for rent for up to 50 years or through emphyseus. Such norms have been in force for more than 10 years, however, the activation of the lease agreement for 50 years and the emphyseus took place in 2016–2018. By the end of 2016, around 14,000 leases of land with a total area of 65 thousand hectares were concluded with the help of the emphyseus, which is 80% more than in the previous year²⁰. In Ukraine, cases of concluding emphyseus contracts have even been recorded for 100 years. However, as of 2019, the right to use another's agricultural land is limited to 50 years. However, the contracts of emphyseus concluded before the new legislation comes into force will be valid and the legislator sees no need to amend them, and their term is determined by the terms of the contract itself. Thus, the limitation of the period of validity of the emphyseus of private land plots extends to contracts concluded from 01.01.19²¹.

The situation on the land market of Ukraine testifies to the intensification of corruption schemes. This is due to the increasing poverty of the rural

¹⁷ M. Szulha, A. Getman, A. Stasivka, *Legal regulation of environmental, agrarian and land relations in Ukraine: current state and directions of improvement*, Charkiv 2012, 280 [in Ukrainian].

¹⁸ R. Brukhanskyi, P. Putsenteilo, O. Zyhrii O., *Accounting-analytical and organizational-legal support of the activity of enterprises in the conditions of institutional transformations*, Ternopil 2017, p. 150 [in Ukrainian].

¹⁹ O. Zyhrii, *Some Questions about Impact of Moratorium on Formation and Development of Land Market in Ukraine*, „Economics and Society” 2017, No. 8, <http://economyandsociety.in.ua> [in Ukrainian].

²⁰ The shadow market for agricultural land will amount to UAH 10 billion as of December 20, 2016, <http://AgroPortal.ua> [in Ukrainian].

²¹ https://uteka.ua/ua/publication/news-14-novosti-zakonodatelstva-1-izmeneniya-2019-kollektivnaya-sobstvennost-ispolzovanie-paev-i-obmen-zemelnymi-uchastkami_

population and the decline of rural infrastructure²². Due to such shadow or questionable land purchase and sale schemes, in the next 5–7 years, they can change up to 80% of the ownership of Ukrainian lands through an emphyteusis or a 50-year lease²³. The Ukrainian government says that the state land is much smaller than it was announced before, and the moratorium on its sale is the best form of theft²⁴.

Conclusions from this research

While researching and analysing the system of Ukrainian legislative regulation of land relations, it should be noted that the issue of the circulation of land parcels of owners of land shares (units), involving the process of transfer of ownership of land from one entity to another, is quite important. The situation on the Ukrainian land market is determined by the policy pursued by the state in the field of land relations through the legislative consolidation of the right to obtain private ownership of land through civil legal agreements. Previous studies have mentioned that the main type of land sales in Ukraine are auctions, which are considered to be a fairly transparent and effective pricing mechanism. However, coupled with the high demand for land, auction experience has shown that buyers have made bids far higher than the real economic value of the land itself due to pressure from other bidders²⁵.

In September 2019, the Cabinet of Ministers of Ukraine approved a bill on the circulation of agricultural land and announced that on October 1, 2020, the land market would become operational. In order to determine the economic, political and legal aspects of the land market, it is necessary to understand that agricultural land use and rights include all activities involving its lease, sublease, sale, exchange, inheritance, temporary use related with the right management and sharing²⁶. Professor A.M. Tretiak in his monograph states that the turnover of agricultural land and rights to them should:

– rely on clearly formulated legislation, by-laws, availability of appropriate market infrastructure determined by institutional support;

²² O. Zyhrii, *Some Questions about Impact of Moratorium on Formation and Development of Land Market in Ukraine*, „Economics and Society” 2017, No. 8, <http://economyandsociety.in.ua> [in Ukrainian].

²³ *Ibidem*.

²⁴ Ukrinform, <https://www.ukrinform.ua/rubric-economy/2822844-u-zelenskogo-zaavlaut-so-moratorij-najkrasa-forma-rozkradanna-zemli.html> (available 27.11.2019) [in Ukrainian].

²⁵ *Ibidem*.

²⁶ A.Tretiak, B.Tretiak, N. Tretiak, *Land reform in Ukraine : trends and consequences in the context of quality of life and safety of the population*, Cherson 2017, p. 522 [in Ukrainian].

– reflect historical, environmental, economic, psychological and other conditions and regional characteristics;

– be formed or constructed to serve a function²⁷.

The approval and practical implementation of the Law of Ukraine „On the circulation of agricultural land”²⁸ will have certain socio-economic consequences:

– the full rights of citizens of Ukraine to private ownership of agricultural land;

– objective market value for agricultural land in the process of economic circulation and an increase in land capitalization;

– investment attractiveness of the agricultural sector;

– ensuring transparency of land operations;

– an increase in the economic well-being of the population, the creation of a strong economically active middle class in the countryside;

– a gradual return to state ownership of lands that do not have effective owners.

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²⁷ Ibidem.

²⁸ Kabinet Ministriv Ukrainy, *Law of Ukraine „On Amendments to Section X»Transitional Provisions« of the Land Code of Ukraine on the Extension of the Prohibition of Alienation of Agricultural Land”*, 2016, <http://zakon2.rada.gov.ua/laws/show/1669-19> [in Ukrainian].

Zyhrii, O., *Some Questions about Impact of Moratorium on Formation and Development of Land Market in Ukraine*, „Economics and Society” 2017, No. 8, <http://economy-and-society.in.ua> [in Ukrainian].

Summary

Organisational and legal mechanism of land reform completion in Ukraine

Key words: law regulations, land relationships, moratorium, land market.

This article addresses problematic issues of agricultural reform in Ukraine. Following completion of the reform, new land relationships emerged characterised by a new legislative and regulatory framework, various forms of land ownership and the establishment of the state cadastre market system, etc. However, in recent years, negative consequences of political actions have occurred, which are manifested by organisational issues in state bodies as regards resource management and land use. The legislative work carried out in recent years should have been aimed at the conclusion of the agricultural reform, and not vice-versa. The current moratorium on the sale of agricultural land has deprived landowners of the right to freely dispose of their land. At the state level, the number of parcels is decreasing and concentrated in the hands of oligarchs, which has led to a growing corruption problem. The aim of this article is analysis of a number of contemporary issues in the legal regulation of land relations, particularly those concerning the opening of the land market, as well as to develop proposals for their resolution.

The article discusses the organisational and legal mechanism of agricultural reform completion in Ukraine. It analyses the legal framework and proposes changes in legislative and regulatory sources in order to balance the legislative process and to identify promising ways of transferring land to efficient land users.

Streszczenie

Mechanizm organizacyjno-prawny do zakończenia reformy gruntowej na Ukrainie

Słowa kluczowe: regulacje prawne, ziemia, relacje gruntów, moratorium, rynek gruntów.

Artykuł dotyczy problematycznych kwestii reformy rolnej na Ukrainie. W tym czasie powstały nowe stosunki gruntów charakteryzujące się nowymi ramami legislacyjnymi i regulacyjnymi, różnorodnymi formami własności gruntów, stworzeniem rynkowego systemu państwowego katastru gruntów itp. Jednak w ostatnich latach wystąpiły negatywne konsekwencje działań politycznych, które objawiły się zaburzeniami organizacyjnymi w organach państwowych w zakresie zarządzania zasobami i użytkowaniem gruntów. Prace legislacyjne ostatnich lat powinny zakończyć reformę rolną, a nie odwrotnie. Obecne moratorium na sprzedaż gruntów rolnych pozbawiło właścicieli ich gruntów swobodnego rozporządzania nimi. Na szczeblu państwowym liczba działek maleje i koncentruje się w rękach oligarchów, co prowadzi do kwitnącego programu korupcji. Celem tego artykułu jest analiza szeregu współczesnych zagadnień związanych z regulacją prawną stosunków gruntów, w szczególności dotyczących otwarcia rynku gruntów, a także opracowanie propozycji ich rozwiązania.

Omówiono także organizacyjny i prawny mechanizm zakończenia reformy rolnej na Ukrainie. Przeprowadzono analizę ram prawnych i proponowanych zmiany w źródłach legislacyjnych i regulacyjnych w celu zrównoważenia procesu legislacyjnego i określenia obiecujących sposobów przekazania gruntów w ręce wydajnych użytkowników gruntów.