

Land Market of Ukraine: Problems of Legislative Regulation

Alla Zemko[†], Hryhorii Bukanov^{††}, Halyna Zadorozhnia^{†††}, Olha Vinyukova^{††††}
 Kristina Yefimenko^{†††††}

[†]Department of Law, Lutsk National Technical University, Ukraine

^{††}Department of Constitutional, Administrative and Labor Law, Zaporizhzhia Polytechnic National University, Ukraine

^{†††}Department of Administrative, Financial and Information Law, Kyiv National University of Trade and Economics, Ukraine

^{††††}Sector of Marketing and Economic Research, Donetsk State Agricultural Science Station, Ukraine

^{†††††}Head of the Sector for Management of State Property, State Agency for Infrastructure Projects of Ukraine, Ukraine

Summary

The article examines the main problems of land market formation in Ukraine. The article is devoted to the study of problems and prospects of land market introduction after the abolition of the ban on alienation. The advantages and disadvantages of lifting the moratorium on the purchase and sale of agricultural land are highlighted. The experience of such European countries as France, Germany, Latvia, Romania and Poland in regulating the market of agricultural lands is analyzed. The historical stages of market formation, features of state policy in this area are considered. The authors found that in these countries the market for agricultural land is well developed and works effectively, which has positive consequences for the economy of these countries. After analyzing the experience, we identified common elements of an effective mechanism for regulating the land market in European countries, which can be implemented in Ukraine. It is emphasized that after the opening of the land market it is necessary to prevent the concentration of a large number of agricultural lands in the hands of one person or close persons and it is necessary to create an effective supervisory body, whose main functions will be supervising sales prevention of speculation in the land market. Emphasis is placed on the need to improve legislation in the field of land, organizational and informational conditions for land reform. The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Circulation of Agricultural Land" was analyzed, the adoption of which put an end to the systematic extension of the moratorium on the sale of agricultural land. The positive aspects of such reservations are noted, such as the gradual introduction of the land market, quantitative restrictions, the lower limit of the value equivalent, which can not be less than the normative monetary value. At the same time, the problem is that the lack of an imperative norm on termination of the lease agreement in case of refusal of the lessee to purchase such land at a price not lower than expert assessment, will negatively affect its price formation and actually make the landlord hostage.

Key words: *land resources; land market; land use; land lease; rational land use; agricultural land.*

1. Introduction

In modern conditions, the most pressing issues of regulating market relations in Ukraine are reforms in the

field of land tenure. In recent decades, inefficiency, irrationality and consumer attitudes towards land, despite the formation of market relations, have complicated the process of land market formation. Despite the fact that Ukrainian soils are the most fertile and have the highest level of land use in the world, the main goal of agrarian reform is still not achieved - to form highly productive landowners and turn land resources and the agricultural sector as a key factor economic growth. The unresolved number of socio-economic problems of land use is due to the lack of prudent public policy. In general, having a significant agricultural potential, our state does not use it to the full to increase the competitiveness of the economy. That is why this topic is relevant and needs research in the context of determining the content, problems and prospects of state regulation of the land market.

Ukraine's place in the global ranking of arable lands in their ratio to the total area occupied - the highest with a result of 71.87%. For Ukraine, which has declared a European vector for building domestic and foreign policy, it will be useful to consider the experience of those countries that are most similar to us in quantitative characteristics of land resources on the European continent. Among the member states of the European Union, France and Spain are among the twenty richest countries in the world.

Land ownership, land relations - these are the issues that were relevant yesterday, today and will always be relevant. Among the main normative legal acts regulating land relations in Ukraine are, first of all, the Constitution of Ukraine, the Land Code of Ukraine, the Civil Code of Ukraine, the Tax Code of Ukraine, etc. In addition, there are a number of other pieces of legislation that we will talk about.

2. Theoretical Consideration

The introduction and functioning of the land market in Ukraine aims to stabilize the country's economy by realizing the economic potential of the land. Ukraine is a country that is

well supplied with land resources. On its territory is a third of the world's chernozems, it is characterized by the highest supply of land per capita among European countries. Today, our state has the ability to provide food to almost 180 million people a year [1].

At the same time, the rather high level of plowing of agricultural lands in Ukraine should be pointed out as a negative factor. On average, this figure is 54% of the territory. In addition, in some regions of Ukraine plowing reaches almost 90%. For comparison: in foreign countries this figure averages 35%, while in Bulgaria plowing is at 29.9%, Italy - 31, France - 33%.

Poland's agricultural production employs 11.2% of the active workforce. Agricultural lands occupy 47.1% of the country's territory, 35.2% is arable land. Land reform in Poland began in 1991 with the adoption of the Law on State Agricultural Land Management, according to which, unlike Latvia and Romania, it was decided to refuse restitution, but claims for restitution of lost property rights were considered under civil law on an individual basis. The main goal of land reform was the formation of a transparent market for agricultural land, the creation of family farms, protection and preservation of agricultural land. Until 2016, foreigners were not allowed to buy agricultural land. Today, they are entitled to this if they are married to a Polish citizen and have lived in Poland for the last 2 years or if they have lived in Poland for 5 years, after obtaining the status of permanent resident. Landowners can only be entities that will conduct economic activities, individuals must have agricultural education (secondary or tertiary level) or experience in this field (on the farm). There is also a restriction that one person can own an agricultural land plot of no more than 500 hectares. In Germany, 53% of the total area of this country is used as agricultural land, half of which is classified as less suitable for growing crops. The agro-industrial complex of the country employs about 20% of the population, while directly in agriculture - only 1.3%. Today, almost 100% of agricultural land is privately owned.

Scandinavian countries (Denmark, Finland, Sweden) are characterized by significant environmental taxes and large-scale state support for agricultural producers. Land policy is based on the assumption that the farmer must live on his land and manage the farm independently. Despite the lack of absolute restrictions on the acquisition of land for both foreigners and citizens of these countries, in practice it is difficult to obtain property rights due to a number of requirements for farmer education, place of residence and very high environmental standards. The United Kingdom and Ireland have the most liberalized policies for regulating agricultural land market, which has led to a high level of efficiency and productivity in the sector. However, the average value of agricultural land in Ireland and the UK is an order of magnitude higher than in most EU countries, which is often an obstacle to market development and dynamics, as not everyone can afford to buy land and farm. In the countries of the South (Italy, Spain, Portugal and Greece) the market for

agricultural land is developed, open and quite liberal. The exception is Greece, where there is a formal market for buying and selling, but in fact the market is very underdeveloped due to the lack of a developed inventory, gaps in legislation, significant bureaucracy and corruption. Greece is a clear example that the state of the land market is an indicator of the country's overall economic development policy. But in Italy, for example, the highest tax for registration of the transaction - 18% of the transaction price, which significantly increases the total cost of purchasing the site.

In order to characterize the main prerequisites for the formation and development of the land market of Ukraine, it is necessary to define such concepts as "land market" and "land turnover".

For P.T. Sablukom, the land market is a sphere of economic relations that arise in the process of its circulation. "Land market" and "land turnover", as the scientist notes, are different concepts. However, he believes that the market is broader in meaning and includes, in addition to the system of land agreements, the mechanisms and infrastructure that provide them. Land turnover P.T. Sabluk defines as a set of agreements with the land [2].

The definition of land turnover as "carried out in accordance with civil law and the features provided by land law, transfer of ownership, other rights to land on the basis of civil transactions, as well as civil means allowed by land law" offers SI Gerasin [3]. Thus, in Ukrainian law, the term "circulation" is used to denote the movement, movement of things, objects, and the transfer of rights to them. VM Lyovochkina draws attention to this, according to which "circulation" is a process of turnover (movement) of various objects, including the transfer of rights to them, which is regulated in the manner prescribed by law depending on the sphere of legal relations. Circulation is the process of moving an object from one subject to another. At the same time, the circulation of land, unlike other types of circulation, is associated with the transfer of the legal title to the land, while for other objects, the circulation can be interpreted more broadly as, say, transportation, transit, etc. [4]. Yes, A.G. Arnaut, taking into account the research of Ukrainian and Romanian scientists, defines the "land market" as a system of legal and economic relations for the redistribution of land between their owners, users and persons wishing to become owners or users of land, based on land and civil law and competition supply and demand [5]. A similar position is held by G.M. Dudych, who specifies that the transfer of ownership of land or the right to use it should be carried out on the basis of competitive supply and demand [6]. Having analyzed the above definitions, we are inclined to believe that an integral feature of the land market is the transfer of land rights on the basis of supply and demand, which is carried out on the basis of legal mechanisms, and therefore generally agree with the definitions

M.V. Shulga rightly points out that in the relationship between the concepts of "land market" and "land turnover", many authors allow a mixture of economic and legal concepts. The scientist emphasizes that the land market is primarily regulated by current legislation public relations arising in the exercise of state and local government rights to land on behalf of the Ukrainian people, as well as the implementation of individuals and legal entities, state and local communities guaranteed by the Constitution Ukraine's subjective ownership and other rights to land, the formation and operation of land market infrastructure, state and self-government regulation of the land market at the national, regional and local levels, ensuring the protection of the rights of land market participants. Instead, the circulation of land MV Shulga defines as regulated by the rules of current legislation public relations that arise between the relevant entities in the process of transfer of rights to specific land on the grounds and in the manner prescribed by law, contract or court decision [7]. That is, according to the scientist, the concept of "land market" - is, above all, an economic and social category. The concept of "land turnover" is more legal and in fact means the transfer of certain rights to land from one person to another.

Thus, the circulation of land can be defined as a set of regulated legal social relations, in the process of which there is a legislative transition of ownership of land from one person to another. Land turnover is considered the basis of the market, but the implementation of agreements with land does not prove the existence of a full-fledged market.

One of the main documents that will, in fact, launch the land market legally is the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land" of 31.03.2020. It entered into force on July 1, 2021 and partially reveals the mechanisms that will allow individuals, legal entities and local governments to be active, legal participants in land processes, including purchase and sale, alienation of land that has been under a moratorium for a long time.

Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" on clarifying the procedure for leasing water bodies in the complex with land plots "from 04.11.2020. The peculiarities of the lease of water bodies deserve attention, as the procedure for leasing water bodies in a complex with land plots has been clarified since last month. Now water bodies are provided for use under a land lease agreement in a complex with a water body located on it in the manner prescribed by the land legislation of Ukraine. The right to lease a land plot under a water body extends to such a water body. A standard land lease agreement in a complex with a water body located on it is approved by the Cabinet of Ministers of Ukraine, it does not exist yet. The conditions of use of water bodies, the amount of rent and the term of the lease agreement are determined in the land lease agreement in

the complex with the water body located on it. For the use of a water body, the lessee is obliged to pay rent for the water body and rent for the land plot under such water body. In other words, if before we simply wrote "water body rent (rate)" and indicated in the subject of the contract that it is a pond, now it is two different objects: a water body as water and land under it. Accordingly, the rent is charged as two separate objects, although it is made out by one document. This should also be taken into account by local governments in order to properly draw up lease agreements.

Important things concern the Law of Ukraine "On Amendments to Other Legislative Acts on Resolving Collective Land Ownership, Improving Land Use Rules in Agricultural Land, Preventing Raids and Promoting Irrigation in Ukraine", which has been in force since 2019 and regulates a number of important issues. In particular, it is important that he identified the features of use and disposal of land located in the massif of agricultural land, as well as protective forest belts that limit such massifs, now protective forest belts can be leased to individuals and legal entities with mandatory by including in the land lease agreement conditions for the maintenance and preservation of such strips and ensuring their implementation of agroforestry reclamation functions, field roads can now also be leased, and the maximum term of use of state, communal and private land for agricultural purposes (emphyteusis) as well as the term of use of state or communal land for construction (superficies) may not exceed 50 years, these and other issues have not been resolved for a long time.

It is also worth noting the Law of Ukraine "On the procedure for allocating land in kind (on the ground) to owners of land shares (units)", which defines the features of use and disposal of land remaining in the collective ownership of collective agricultural enterprises, as well as delimitation of unallocated and unclaimed land and land shares (units), in particular unallocated land is a land plot, which according to the land management project for the organization of land plots (shares) entered the area of land subject to distribution, but according to the protocol on land distribution was not allocated to the landowner share (share), and unclaimed is a land share (share), for which no document certifying the right to it, or land share (share), the right to which is certified in accordance with the law, but which was not allocated in kind terrain) [8-9].

If by January 1, 2025 the owner of the unclaimed land share (share) or his heir has not registered the ownership of the land, he is considered to have refused to receive the land. Such unclaimed land share (share) after its formation into a land plot by the decision of the relevant village, settlement, city council (if necessary formation) at the request of the relevant council on the basis of a court decision is transferred to the communal property of the territorial community. the procedure for recognizing property as ownerless.

In Ukraine, when opening the land market, it is necessary to listen to foreign experience in granting agricultural lands, which are the most valuable among them, the status of exclusive state property, which under no circumstances can be changed. Taking into account the corruption of government structures in Ukraine and political instability, the adoption of a law that will open the land market, it is necessary to exclude any conditions under which such lands may be deprived of the status of exclusively state property. State control over the use of these lands should be strict [10].

Conclusions

Thus, the issue of legal regulation of the land market in Ukraine remains relevant and requires a broad scientific and practical discussion on the content, forms and timing of implementation. Since, for example, agricultural land in Ukraine accounts for more than 70% of the total land resources, unjustified state reforms may lead to the loss of strategic resources and may not ensure the transformation of the agricultural sector into a driver of economic growth. The argument for implementing a balanced approach to state policy on the land market is the understanding that changes in land ownership will affect the market and, consequently, prices of food products, which is particularly sensitive in today's economic conditions of Ukraine. The formation of the legal basis for the introduction of the land market in our country is inevitable in terms of state development. However, the land reform model should protect the interests of Ukrainian citizens and legal entities.

References

- [1] Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Conditions of Circulation of Agricultural Lands" of January 3, 2020 № 2178-10. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=670
- [2] Sabluk P.T. Economic interest in the development of agricultural production: a monograph. Kyiv: NSC IAE, 2014. 356 p.
- [3] Home I.Ya. Expropriation of land plots for public needs or on the grounds of public necessity as a ground for termination of ownership of land: dis. ... Cand. jurid. Science. Odessa, 2015. 230 p.
- [4] Lyovochkina V.M. Legal regulation of land turnover under the laws of China and Ukraine: comparative legal analysis: dis. ... Cand. jurid. Science. K., 2016. 237 p.
- [5] Arnaut A.G. Land reform in Ukraine and Romania: a comparative analysis of legislation: author's ref. dis. ... Cand. jurid. Science. Odessa, 2007. 19 p.
- [6] Dudych G. Foreign experience in improving land relations in agriculture. Bulletin of Lviv National University. Economics of agro-industrial complex. № 18 (1). 2011. pp. 382–387.
- [7] Land law of Ukraine: textbook. M.V. Shulga (supervising author), G.V. Anisimova, N.O. Bagai, A.I. Hetman and others; for ed. M.V. Shulgi. K. : Jurinkom Inter, 2004. 368 p.
- [8] Svitlana Iasechko, Alla Ivanovska, Tetyana Gudz, Mykola Marchuk, Oleksandr Venglinskyi, Alla Tokar Information as An Object of Legal Regulation in Ukraine/ IJCSNS International Journal of Computer Science and Network Security, VOL.21 No.5, pp. 237-242 <https://doi.org/10.22937/IJCSNS.2021.21.5.33>
- [9] Svitlana Iasechko, Yurii Kuryliuk, Volodymyr Nikiforenko, Andrii Mota, Nadiia Demchyk, Volodymyr Berizko Features of Administrative Liability for Offenses in the Informational Sphere/ IJCSNS International Journal of Computer Science and Network Security, Vol. 21 No. 8 pp. 51-54 <https://doi.org/10.22937/IJCSNS.2021.21.8.7>
- [10] Dmytrasevych N., Litvyak A. The National Academy of Agrarian Sciences of Ukraine is one of the largest landowners of the state. URL: <https://pravo.ua/nacionalna-akademija-agrarnih-nauk-ukraini-odin-z-najbilshih-latifundistiv-derzhavi/>