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**LEGAL BASIS OF LAND MARKET REGULATION IN MODERN UKRAINE**

**Zyhrii** **O., Kovalchuk Yu. Legal Basis of Land Market Regulation in Modern Ukraine**

**Abstract**. The article deals with the issue of market reforms in Ukraine, including land reform. The study of positive and negative aspects of the moratorium and introduction of the land market has been conducted. The situation, which may arise in connection with the lifting of the moratorium on land sales, is analyzed. A detailed analysis of the impact of the opening of the agricultural land market on economic welfare and the potential profit (loss) of various stakeholders is carried out. It is proved that issues of ownership of land in agriculture require further discussion.

*Key words: land, land relations, moratorium, land market regulation, agricultural sector.*

In recent years, the issue of reform has become acute in Ukraine. The main reason for the imbalance of the country's economy is the imperfect implementation of unilateral land reform, where the ultimate goal should be the reformation of the civilized land market. Discussions about the introduction of free sale of land cause fierce disputes between opponents and supporters of this topic. Issues of land ownership, namely: possession, use and disposal of land resources, in agriculture, need further discussion and are urgent for the present. Land policy is essential for ensuring sustainable development, welfare of the population, rational management and economic opportunities of Ukrainian citizens. Land policy research and analysis of specific land-use-related issues are always relevant and of public interest.

The investigation of the legal principles of the formation and functioning of the land market in Ukraine has been repeatedly covered in the scientific works of H.I Baliuk, A.P Hetman, T.O. Kovalenko, P.F. Kulinich, A.M Miroshnichenko, O.S. Lysanets, N.I. Titova, A.M Tretiak, O. Pendzin, M.M Fedorova, V.V. Yurchishin, M.V Shulga and many other scholars. However, despite significant scientific developments, this issue requires further study and research, since the opening of the land market is supported by the International Monetary Fund and insists on the lifting of the moratorium on land in Ukraine. However, in Ukraine there are opponents to the introduction of free sale of land, which also affected the extension of the moratorium for a further one year. The question of moratorium on land remains one of the most controversial issues, since it considers major business interests for which politicians and agrarian magnates have been discussing for many years. Considering this, some features of these issues are not fully open, causing the need for further analysis.

The aim is to study and research the legal principles of formation and the functioning of land markets.

Land reform in Ukraine operating since 1991 and is aimed at overcoming the monopoly of state ownership of land, creation of appropriate conditions for equal development of various forms and rational use and protection of land and the formation and development of efficient land market circulation. The implementation of the land reform has changed the nature and nature of land relations in Ukraine and led to the emergence of a mechanism of market circulation of land as a new institution of land law [10, p. 5]. After all, the land is the only product that is not produced, and therefore valued significantly higher than all others.

With the adoption of a number of legislative acts, our state has, since 2001, deprived owners of land shares (shares), of separate agricultural land areas the right to dispose of them. The moratorium on land has been limited to their rights in accordance with paragraph 15 of the Law of Ukraine "On Amendments to Section X" Transitional Provisions "of the Land Code of Ukraine regarding the extension of the prohibition on the alienation of agricultural land" of 06.10.2016, No. 1669-VIII, where it is indicated that it is not allowed to sell or otherwise dispose of and change the intended use of the land and land belonging to them, other than mines, their inheritance, and the extraction of land for public purposes, and also, in addition to changing the intended use of land plots in order to provide investors-participants in product-sharing agreements for the conduct of such transactions [5]. This principle contradicts the rights of land owners as enshrined in paragraph 1 of Art. 90 of the Land Code of Ukraine, where it is indicated that land plot owners have the right to sell or otherwise dispose of a land plot, to transfer it to a lease, a pledge, an inheritance [6].

Issues concerning the opening of the market for agricultural land are long-lasting and urgent. Ukraine and the International Monetary Fund update the memorandum of cooperation. In order to receive further tranches from the international creditor, by the end of March 2017, a law on the circulation of agricultural land was due to come into force, which would stipulate the terms for lifting the moratorium on sale and the mechanism for its future sale. In April 2017 the IMF issued a memorandum with Ukraine, which provides a number of structural reforms, including land. By the end of May 2017, Ukraine is obliged to adopt a law regulating the circulation of agricultural land, and from 2018, after the moratorium, to start selling agricultural land [12; 16; 17]. However, the requirements of the IMF and the need for external financing for the country can change the situation of free sale of land. We understand that in the context of globalization, the extension of the moratorium constrains the creation of a civilized land market, does not solve existing problems, and, conversely, leads to the accumulation of new ones.

The current state and trends of land use in Ukraine are characterized by critical, and further degradation processes of the potential of agricultural land can have catastrophic consequences. Outside of attention it is preservation and maintenance of the proper level of soil fertility, observance of rational crop rotation, maintenance of field protection measures, and many others.

In the absence of a free market of agricultural land Ukraine from 2004 to 2016 was without about 43 billion dollars. Annual loss is manifested in the comparison of yields - it is 3.3 billion dollars [4].

The main threat is the inefficient use of land, low rent (about 900 UAH / ha), high competitiveness of Ukrainian grain, a large number of agricultural enterprises of different forms of ownership and management, which use agricultural land mainly for the purpose of maximal self-enrichment, neglecting the technological norms production of agricultural products. It is believed that land as the main factor in production in Ukraine is underestimated, since producers use it for nothing at all [7, p. 65].

One of the painful problems of today is the registration of land lease agreements. In accordance with the current legislation of Ukraine land parcels can be leased for a term up to 50 years or by means of emphyteusis for an indefinite period. These norms have been in place for more than 10 years, however, the activation of registration of lease agreements for 50 years and emphyteusis has taken place in 2016. With the help of emphyteusis, by the end of 2016, about 14 thousand land lease agreements with a total area of 65 thousand hectares were concluded, which is by 80% more than in 2015 [16].

Domestic agrarian sector is not adapted to the conditions of a market economy in comparison with other countries of Eastern Europe. During the years of independence, despite the large number of reforms implemented, the structure of production and the infrastructure of the agro-market has hardly changed.

Agriculture is deprived of the regulated role of the state, which is why it suffers huge losses of agrarian potential. We fully agree with the scholars that taking into account the above, agriculture is innovative and investment-friendly, the structure of the economy is distorted, the priorities belong to the service and intermediary structures, and not to the production spheres.

Unemployment, worsening of the demographic situation, migration, destruction of the social sphere, loss of material and technical base, industrial technologies in agricultural enterprises have led to poverty and the extinction of rural areas.

At the same time, restrictions on the land market did not prevent the AIC from becoming phenomenally successful, generating up to 12% of the country's GDP, providing a third of export earnings and bringing Ukraine to the top 10 suppliers of grain to the world market.

Analyzing this situation, we understand that the extension of the moratorium on the sale of agricultural land may lead to the fact that in a few years its abolition will be superfluous, as most of the land will be owned by agrarian enterprises. It is necessary to think that Ukraine will give free land sales, and the risks and opportunities it brings. As a rule, supporters and opponents of the land market are in extreme cases and promise either a compulsory collapse and a social blast in the countryside, or immediate prosperity and the attraction of multibillion-dollar investment.

Noteworthy conducted by Kyiv International Institute of Sociology poll of citizens, whether they own land, and separately - land owners random sample representative of the population of Ukraine. According to sources, the sample was stratified by oblast, three-tier, random, and represented all owners of land parcels of Ukraine [17]. Among the polled 1/3 of the shareholder and more than 1/2 of the general population, it is believed that lifting the moratorium will bring benefits to the country's economy. Our analysis makes it clear that, in the long run, the welfare of the population, in particular, 23%, is allocated to the development of small agricultural entrepreneurship, 13% to the development of infrastructure in rural areas and an increase of 9% of tax revenues to the state budget through land sales. Working in real terms, the owners of shares, which is about 37% of the respondents, do not predict any changes at all, and along with them ordinary citizens (about 26%) lose their opinions on lifting the moratorium [8].

According to the statistics of the Ministry of Justice, in 2017, the same number of areas will be executed through long term lease for 50 years and the number of concluded contracts for the emphyteusis will be about 40 thousand and the same number of contracts for a total area of 300 thousand hectares. The development of such events in the land market of Ukraine shows the activation of shadow schemes, since the execution of contracts for 50 years and emphyteusis de facto signifies the sale of land plots [11, p. 128-130]. This is due to the growing poverty of the rural population, the collapse of infrastructure in the countryside.

It is clear that the possibility of buying and selling land under conditions of globalization will increase the efficiency of agricultural enterprises, promote the growth of the rural economy, the agrarian sector, increase the export potential of the country, and facilitate access to loans for small and medium sized businesses.

In particular, opening a land market for foreign investors will increase demand for land and provide more competitive market prices for this resource, which potentially will improve the economic well-being of citizens who have agreed to sell land.

Ratification of the Association Agreement with the EU, Ukraine's accession to the WTO requires adaptation of the land legislation of Ukraine to world and European requirements. Therefore, the issue of completing the land reform, creating a full-fledged agricultural land market is urgent in its decision. In the European Union, land is a commodity with almost free circulation. International and European investors will fully invest their resources in the development of Ukrainian agribusiness when they feel the security of their assets.

However, the abolition of the moratorium on the sale of agricultural land can lead to dissatisfaction of the rural population. There are fears that foreigners and agricultural holdings will buy land. The experience of foreign countries shows that land ownership is associated with many legal, economic and political risks, which, in turn, depend on the overall investment climate in the country. It is interesting the experience of Poland, where it is forbidden to sell land to foreign citizens and set the maximum size of land holdings no more than 300 hectares per person. Purchase of land is allowed to citizens who live in the area for five years, with the obligation to cultivate the purchased land is 10 years. The Balkan countries also have a ban on the sale of land to foreigners. It should be understood that this issue is rather sensitive and needs to be thoroughly investigated, as the land market needs to be protected from speculators by strengthening a number of draft laws.

At present, the main type of sale of land in Ukraine is auctions [9, c. 305], where buyers, sellers and brokers representing their interests, bid and determine the price in real time or through an informal sales contract. This is a fairly transparent and efficient pricing mechanism, but combined with the high demand for land auction experience has shown that buyers made rates much higher than the real economic value of the land itself due to pressure from other participants. It is important the definition of the value of land, influenced by a combination of factors: macroeconomic factors, living standards of the population, investment climate, social norms and demographic features of the population, measures of state regulation, natural features, physical characteristics of land plots. The main aspect is that the actual cost of land differs from the size of the land plot. Distinguished land plots are much less in demand, so individual units may not be needed by anyone except the tenant. In this case, there is no need to offer a land price higher than the cadastral value. It is clear that on the leased land the producer is not motivated to invest long-term investments. However, without creating a robust institutional and regulatory framework of functioning market and real protection of the rights of owners free market can not work and will not. If we talk about the assessment by the owners of shares of the probability of various negative consequences of the moratorium cancellation directly for them and their families to some extent depends on the financial situation of the household. In this regard, it is important to understand that the legislative regulation of the opening of the land market can not save all households without exception from systemic risks that are relevant to all spheres or are an objective component of a market economy.

It should be noted that some of the most frequently mentioned threats are already regulated by Ukrainian legislation, or may be minimized through the adoption of relevant laws. According to the current legislation, foreigners, regardless of the moratorium, do not have a right to acquire land for agricultural purposes (Part 5 of Article 22 of the Land Code of Ukraine). Other risks are manifested in the danger of concentration of land owned by a small number of people and displacement of small agricultural businesses, and may also be minimized by appropriate precautionary measures in the development and adoption of a law on the circulation of agricultural land. However, even in the absence of such measures, the danger of the introduction of the land market can not be negative, since only 12% of share holders intend to sell their land during the first two years (of which 8% of the land, and 4% of it) [17] .

Representatives of the United Nations Agricultural Agency in 2014 submitted a report on the purchase of land in the poorest countries, which states that such a trend can lead to dangerous consequences; retarded development of the country will not be able to independently provide their own food products. Specialists of the FAO note that only in the first half of 2011 sold almost 25 million hectares of agricultural land, which exceeds half of the cultivated land in Europe [17]. According to a source in 2012, highly developed countries acquired or leased another 30 million hectares of agricultural land [3].

In eastern European countries since the opening of the land market, land prices have increased by 4-5 times. Over the past 15 years, the land market has multiplied GDP, living standards and property prices. This is just an example, and our state must come from real opportunities and situations that are inherent in the Ukrainian economy.

Summing up this research it should be noted that the land legislation of Ukraine provides for a number of measures on legal regulation of land resources, their formation, functioning, protection and control. However, the action of the objective laws of globalization cannot be canceled by any specific conditions and peculiarities of national development, no crisis states and internal transformations. Without the existence of a land market, the transformation of land relations, like European ones, cannot be considered logically complete. Today, one of the important tasks of the current land reform in Ukraine is the inclusion of such a resource as land for economic turnover and the development of transparent instruments for its regulation. Considering the land market apart from the country's economy and its investment climate is impossible, therefore, the immediate establishment of a special legal regime for the use of land, which provides enhanced protection of land, limiting the possibilities for their withdrawal from agricultural circulation, and increasing the fertility of soils, is necessary. The opening of the land market can really give a boost to the Ukrainian agricultural sector.

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