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Legal principles of modern agrarian reform in Ukraine and the role of the farmer in its carrying out

The current land reform in Ukraine involves transforming, changing and improving agrarian relations in order to create competitive agricultural manufacture both at the national and international markets of the agricultural sector of Ukrainian economics, which would be sufficient to ensure food security as part of the national security, and adequate social standard of living.

Principles, or components, of the agrarian reform are: firstly, the transformation of land relations. Changes in this area aim at improving both economic and social situation of rural regions. It is supposed to bring the farmer closer both to land ownership and to making land market.

At the legislative level, the agrarian reform was initiated by the Resolution of the Verkhovna Rada of Ukraine «On the land reform» of December 18, 1990¹.

Due to it, all lands of the Ukrainian SSR were declared the object of the land reform. The task of the stated reform is: redistribution of lands while giving them to citizens for lifetime ownership with hereditary succession and to collective and state farms, other enterprises, institutions and organizations for permanent possession and use, in order to create the conditions for equal development of various land management patterns, forming mixed economy, rational use and protection of land. These changes are primarily concerned with the land ownership relations, possession, use and disposal of land plots as the main means of manufacture in agriculture. Thus, the land reform in Ukraine, as the part of agrarian reform, has the distinct agrarian, agricultural nature, as it concerns particularly with relations on agricultural land use.

¹ Про земельну реформу: Закон України від 18 грудня 1990 р.: [Електронний ре-

сурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/563-12>

Reforming the land relations should resolve the issue on bringing the farmer closer to land ownership and other means of manufacture, which should be considered as one of the most important tasks of the land reform. This problem was solved through the use of mechanisms for sharing of lands, which belong to agricultural enterprises.

The legal principles of land sharing were provided by the Decrees of the President of Ukraine: of November 10, 1994 «On urgent measures to accelerate the land reform in agricultural manufacture area»¹; of August 8, 1995 «On the procedure of sharing lands transferred to collective ownership for agricultural enterprises and organizations»²; of December 3, 1999 «On urgent measures to accelerate the agricultural sector reform»³ and others.

Sharing was done for agricultural lands transferred to collective ownership for collective agricultural enterprises, agricultural cooperative societies, agri-

cultural companies, including those established on the basis of state owned farm (sovkhoz) and other state owned agricultural enterprises. Land sharing provided for determining the amount of land (share) in the collective land ownership on each member of the agricultural enterprise. In case the person left the agricultural enterprise, he filed the application on land allotment in kind in the prescribed manner, and the state act of land ownership was issued.

The important task of the land reform is creating and functioning of the land market. Because of the lack of the legitimate, transparent land market, the transformation of land relations cannot be considered logically completed. The transformations of land relations in our country have become gradual and long lasting. Today the critical issue is the urgent adoption of the law «On the purchase and sale of land».

Secondly, the important component of the agrarian reform is to change the ownership relations to the property as agricultural manufacture facilities, i.e. to transform property relations in agriculture. The Decree of the President of Ukraine «On measures to protect the property rights of farmers in the process of reforming the agricultural sector of economy» of January 29, 2001⁴ provided that the complete reform of the agricultural sector of the economy based on

¹ Про невідкладні заходи щодо прискорення земельної реформи у сфері сільськогосподарського виробництва: Указ Президента України від 10 листопада 1994 р.: [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/666/94>.

² Про порядок паювання земель переданих у колективну власність сільськогосподарським підприємствам і організаціями: Указ Президента України від 8 серпня 1995 р.: [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/720/95>.

³ Про невідкладні заходи щодо прискорення реформування аграрного сектора економіки: Указ Президента України від 3 грудня 1999р.: [Електронний ресурс]. – Режим доступу: <http://zakon4.rada.gov.ua/laws/show/1529/99>.

⁴ Про заходи щодо забезпечення захисту майнових прав селян у процесі реформування аграрного сектора економіки: Указ Президента України від 29 січня 2001 р.: [Електронний ресурс]. – Режим доступу: <http://zakon4.rada.gov.ua/laws/show/62/2001>.

the private property is the urgent task of executive power authorities. To execute the Decree of the President, on February 28, 2001, the Resolution of the Cabinet of Ministers of Ukraine «On the regulation of issues to protect the property rights of farmers in the process of reforming the agricultural sector of economy»¹ approved: «Methods to detail composition and value of share property funds of the members of collective agricultural enterprises, including reorganized ones»; «Procedure to determine the property shares size of the members of collective agricultural enterprises and their documentary certification»; «Standard provisions of the committee on property issues that arise in the process of reforming the agricultural sector» and others. These regulations have basically provided the process of sharing property of the agricultural enterprises, and to a certain extent the process of allotting the relevant property to the ex-members of collective agricultural enterprises.

Thirdly, the direction of the agrarian reform is restructuring agricultural manufacture connected with the emergence of new subjects of agrarian business, its organizational and legal forms. The legal principles of these transformations are provided by the Decree of the President of Ukraine «On urgent measures to accelerate the agricultural sector reform»

¹ Про врегулювання питань щодо забезпечення захисту майнових прав селян у процесі реформування аграрного сектору економіки: Постанова Кабінету Міністрів України від 28 лютого 2001 р.: [Електронний ресурс]. – Режим доступу: <http://zakon4.rada.gov.ua/laws/show/177-2001-%D0%BF>.

of December 3, 1999², according to which the collective agricultural enterprises have been restructured into the agricultural enterprises of private ownership to land and property, into agricultural companies, agricultural cooperative societies, farm enterprises etc. These subjects of agrarian business act under the provisions of the Civil and Business Codes of Ukraine, Laws of Ukraine «On business companies» of September 19, 1991; «On joint stock companies» of 17 September 2008; «On farm enterprises» of June 19, 2003; «On agricultural cooperation» of November 20, 2012³ etc., and provide agricultural manufacture along with state and public enterprises.

Attention is drawn to the Decree of the President of Ukraine of April 12, 2000 «On ensuring economic interests and social protection of the rural social workers and resolving certain issues that arose during the land reform», which

² Про невідкладні заходи щодо прискорення реформування аграрного сектору економіки: Указ Президента України від 3 грудня 1999 р.: [Електронний ресурс]. – Режим доступу: <http://zakon0.rada.gov.ua/laws/show/1529/99>.

³ Про господарські товариства: Закон України від 19 вересня 1991 р.: [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/1576-12>; Про акціонерні товариства: Закон України від 17 вересня 2008 р.: [Електронний ресурс]. – Режим доступу: <http://zakon4.rada.gov.ua/laws/show/514-17>; Про фермерське господарство: Закон України від 19 червня 2003 р.: [Електронний ресурс]. – Режим доступу: <http://zakon4.rada.gov.ua/laws/show/973-15>; Про сільськогосподарську кооперацію: Закон України від 20 листопада 2012 р.: [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/5495-17>.

created the legal principles for private and leased agricultural enterprises¹. The Cabinet of Ministers of Ukraine was instructed to determine the organizational and property principles for private and leased agricultural enterprise, provided that the said enterprise is founded on the property of a natural person, and the activity of this enterprise is carried out on the basis of lease of land shares, property, using labor of the natural persons under the employment contracts. Until now this order is not executed, and the Decree of the President was abolished.

The agrarian reform and well-directed agricultural policy for denationalization and privatization of agricultural sector property, realizing the right of private land ownership, cause the processes of reorientation, finding new forms of business management. This resulted in big organizational forms – agriholdings. The latter function under the Law of Ukraine «On holding companies in Ukraine» of March 15, 2006².

Restructuring agricultural manufacture allowed for creating new, previously unknown, agricultural manufacturers, namely personal farm households. The Law of Ukraine «On personal farm

households» of May 15, 2003³ defines the legal, organizational, economic and social principles of these farm households.

Fourthly, forming the agricultural market infrastructure is an integral part of the agrarian reform. Creating proper agricultural market infrastructure is a condition for developing market relations. Thus, the agricultural market infrastructure should be developed taking into account the features of agricultural manufacture, including increased manufacturing risk, seasonality, remoteness of processing, storage and marketing, servicing and other facilities. The required agricultural market infrastructure should be formed taking into account the needs of agricultural manufacturers, and therefore it was provided for establishing and functioning of wholesale markets of agricultural products agricultural stocks, auctions, fairs, agricultural and trade houses, procurement cooperatives etc. Their task was to store, to sell tradable agricultural products, to supply materials and equipment, and to maintain the service of agricultural manufacturers.

The legal principles for the functioning of wholesale markets of agricultural products are posed by a number of regulations. For example, the above mentioned Decree of the President of Ukraine «On urgent measures to accelerate the agricultural sector reform» of December 3, 1999 provide for establishing agricultural stocks, wholesale markets of agri-

¹ Про забезпечення економічних інтересів і соціального захисту працівників соціальної сфери села та вирішення окремих питань, що виникли в процесі проведення земельної реформи: Указ Президента України від 12 квітня 2000 р.(втратив чинність): [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/584/2000>.

² Про холдингові компанії в Україні: Закон України від 15 березня 2006 р.: [Електронний ресурс]. – Режим доступу: <http://zakon0.rada.gov.ua/laws/show/3528-15>.

³ Про особисте селянське господарство: Закон України від 15 травня 2003 р.: [Електронний ресурс]. – Режим доступу: <http://zakon0.rada.gov.ua/laws/show/742-15>.

cultural products, agricultural and trade houses, auctions, fairs, procurement cooperatives. The establishment of the marketable agricultural market is also provided by the Decrees of the President: «On measures to ensure forming and functioning of the agricultural market» of June 6, 2000¹; «On measures to accelerate the development of the agricultural market» of August 8, 2002²; «On measures to develop the agricultural market» of August 30, 2004³ and others.

The Resolution of the Cabinet of Ministers of Ukraine «On measures to establish wholesale food markets, procurement of agricultural products at the farms of the private sector, reforming consumer cooperative system» of March 19, 1997⁴ approved the measures to establish wholesale food markets, procurement of agricultural products at the

farms of the private sector, reforming consumer cooperative system. The government provided, in particular, for the development and approval of the Regulation on the wholesale food market. The Resolution of the Cabinet of Ministers of Ukraine «On the concept for developing the exchange market of agricultural products» of August 5, 1997 approved the Concept for developing the exchange market of agricultural products⁵. The Resolution of the Cabinet of Ministers of Ukraine «On the wholesale food markets» of June 9, 1999 set more specific measures for the establishing and functioning of the wholesale market⁶. The Resolution of the Cabinet of Ministers of Ukraine «On enhancing activity of the stock market of agricultural products and materials and equipment necessary for its needs» of October 19, 1999 fixed the provision for the purchase of agricultural products and food for public use, their sale from the state resources and state reserve, as well as the supply of enterprises with materials and equipment⁷. Of great importance for the de-

¹ Про заходи щодо забезпечення формування та функціонування аграрного ринку: Указ Президента України від 6 червня 2000 р.: [Електронний ресурс]. – Режим доступу: <http://zakon1.rada.gov.ua/laws/show/767/2000>.

² Про заходи щодо прискорення розвитку аграрного ринку: Указ Президента України від 8 серпня 2002 р.: [Електронний ресурс]. – Режим доступу: <http://zakon3.rada.gov.ua/laws/show/694/2002>.

³ Про заходи щодо розвитку аграрного ринку: Указ Президента України від 30 серпня 2004 р.: [Електронний ресурс]. – Режим доступу: <http://zakon4.rada.gov.ua/laws/show/1021/2004>.

⁴ Про заходи щодо створення оптово-продовольчих ринків, організації закупівель сільськогосподарської продукції в господарствах приватного сектору, реформування системи споживчої кооперації: Постанова Кабінету Міністрів України від 19 березня 1997 р.: [Електронний ресурс]. – Режим доступу: <http://zakon4.rada.gov.ua/laws/show/246-97-п>

⁵ Про концепцію розвитку біржового ринку сільськогосподарської продукції: Постанова Кабінету Міністрів України від 5 серпня 1997р.: [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/848-97-%D0%BF>.

⁶ Про оптові продовольчі ринки: Постановою Кабінету Міністрів України від 9 червня 1999 р.: [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/997-99-%D0%BF>.

⁷ Про активізацію діяльності біржового ринку продукції агропромислового комплексу та необхідних для його потреб матеріально-технічних ресурсів: Постановою Кабінету Міністрів України від 19 жовтня 1999р.:

velopment of the wholesale market of agricultural products is the Resolution of the Cabinet of Ministers of Ukraine «On establishing the agricultural stock» of December 26, 2005¹ and others. At the level of law, establishing and functioning of wholesale markets has been regulated by the Law of Ukraine «On the wholesale markets of agricultural products» of June 25, 2009². This law establishes the legal principles of wholesale agricultural markets activity in the country. It regulates relations in this area and is aimed at protecting the rights and interests of agricultural manufacturers engaged in wholesale homegrown products. However, this Law does not regulate a number of issues, and therefore other delegated legislation referring to this area is adopted.

Fifthly, the essential direction in the agrarian reform is to strengthen the protection of agriculture. In a competitive environment, the latter cannot function without specific measures of its state support. Such support lies in using government pledged grain purchases, credit subsidies, specific insurance features, donations etc.

The Law of Ukraine «On stimulating agricultural development in 2001-2004» of January 18, 2001³ is important for state support of the agricultural sector and its central link – agriculture. This Law defines specific features of tax and budget policy in agriculture, credit support of agricultural producers, insurance against risks in agricultural manufacture. The system of state protection measures of agricultural producers is fixed in the Laws of Ukraine «On state support of agriculture of Ukraine» of June 24, 2004⁴; «On the main principles of the state agricultural policy until 2015» of October 18, 2005⁵ etc.

It should be noted, that even partial list and shallow analysis of just stated laws and legal acts, which form the legal principles of the agrarian reforms, developing agricultural relations, can be the evidence of its permanent status, constant content, corresponding to the market conditions.

The practical application analysis of the recently adopted laws and delegated legislation somehow related to the agrarian reform indicates the lack of attention

[Електронний ресурс]. – Режим доступу: <http://zakon1.rada.gov.ua/laws/show/1928-99-%D0%BF>.

¹ Про створення аграрної біржі: Постанова Міністрів України від 26 грудня 2005р.: [Електронний ресурс]. – Режим доступу: <http://zakon1.rada.gov.ua/laws/show/1285-2005-%D0%BF>.

² Про оптові ринки сільськогосподарської продукції: Закон України від 25 червня 2009р.: [Електронний ресурс]. – Режим доступу: <http://zakon3.rada.gov.ua/laws/show/1561-17>.

³ Про стимулювання розвитку сільського господарства на період 2001-2004 років: Закон України від 18 січня 2001 р.: [Електронний ресурс]. – Режим доступу: <http://zakon2.rada.gov.ua/laws/show/2238-14>

⁴ Про державну підтримку сільського господарства України: Закон України від 24 червня 2004 р.: [Електронний ресурс]. – Режим доступу: <http://zakon1.rada.gov.ua/laws/show/1877-15>.

⁵ Про основні засади державної аграрної політики на період до 2015 року: Закон України від 18 жовтня 2005 р.: [Електронний ресурс]. – Режим доступу: <http://zakon4.rada.gov.ua/laws/show/2982-15>.

to the role and importance of the farmer in the transformations of agriculture, on the one hand, and the contradiction of conceptual approaches to covering such role of the agricultural people as a whole – on the other. Since this issue is not given due attention, this affects the total level of theoretical justifications, conclusions, complicates their specification, and as a result, adversely affects the process of solving important issues of effective social and economic development of agriculture and the entire agricultural sector of economy.

Therefore, the task of agro-legal science reflecting the higher study level of the objective development processes of agrarian relations is to explore important aspects of the farmers' role in the agrarian reform. It is obvious, that agrarian relations are the subject of the relevant theoretical justification of productive and social relations to be applied in agriculture. However, it is also the feedback to test the quality of scientific character and further development of agro-legal science. Here agro-legal science, along with others, has contributed and will contribute to the development and implementation of one of the main issues on establishing democratic system of agrarian relations in the agrarian area, forming in the present conditions on this basis effective farming owners as business people having the ownership right to land, and other means of manufacture. This does not exclude their collective use, but only on a voluntary basis.

Thus, there is a need to analyze some aspects of the farmer's ownership right to land, which is the foundation for the

whole system of agrarian relations he takes part in, as the agricultural product manufacturer, in terms of his value orientation.

The land reform, as part of the agrarian reform, provides for the use of the thesis «lands to the farmers», which is the basis for the theoretical analysis of the problems, hiding the principle of social justice. In addition, another thesis «the land belongs to those who cultivate it», which is derived from the first one, should specify it. But it does not reveal the nature of the farmers through differentiating them as agricultural product manufacturers, including their professional skills, diligence, skills to work as landowners, land users or hired farm managers etc.

It should be noted, that no matter how socio-economic elements of the agrarian relations changed in the life of the farmers, the essence of the farmer, specific features of his work, life, customs, mentality etc. are set in stone. However, one should keep in mind the important attribute of the farmer – the special type of activity. The farmer, as is evident from reference books, is a person who cultivates land¹. Representatives of the modern agro-legal science, exploring the concept «farmer», identify farmer with the country dweller, who is also engaged in cultivating land².

¹ Даль, В. И. Толковый словарь живого великорусского языка [Текст] / В. Даль. – М.: Рус. яз. Т. 3. П. – 1981. – 555 с.

² Єрмоленко В. М. Походження поняття «селянин» як основоположної категорії аграрного права [Текст] / В. М. Єрмоленко // Матеріали круглого столу (Харків, 6 грудня 2013р.): зб. тез наук. док. (за заг. ред. А. П. Геть-

Therefore, the social role of the farmer is to use their labor in cultivating land. In this context, the question arises: how the agrarian reform affects the increase of the farmer's social role? Clarification of this issue allows determining his social status in the land relations, which are the central ones but present only the part of the agrarian relations. Therefore, it is advisable to stop upon some aspects of this issue.

We have mentioned above the land sharing mechanism. The latter involved determining the land share in the collective ownership land of each member of the agricultural enterprise. In case the person left the agricultural enterprise, he filed the application on land allotment in kind in the prescribed manner, and the state act of land ownership was issued. It should be noted that the above legislative provisions allowed more than 6 million farmers to become agricultural land owners. The question arises, whether the state act of agricultural land ownership, received in the result of sharing, makes the farmer an effective owner or increases his role as a farmer, whose work lies in growing agricultural products on this land plot?

It is necessary to bear in mind that our country has on average 4.1 ha of the shared land for each farmer. This con-

tributed to creating nearly 500 thousand private agricultural enterprises. The latter allow meeting personal needs through manufacturing, processing and consumption of agricultural products, selling its surplus and providing services using property of such agricultural enterprises, including agricultural tourism. The rest of the farmers, most of them, have rented out the land plots owned by them. The stated above suggests, firstly, that the state act of land ownership limits to some extent the right of the land share owner. In most cases, the farmer, due to the lack of proper materials and equipment, is actually forced to bring the share in the authorized capital of some agricultural enterprises, and, often fraudulently, to conclude agreements on land lease, depriving himself of free disposal of land ownership. Professor V. I. Semchyk notes: «If someone thinks that citizens who have the state acts of land ownership are the rightful owners, he is wrong, because they do not know the location of their areas. Besides, all state acts are kept in the safe boxes of the private enterprise managers. Farmers cannot take them back, as the lease agreements are usually concluded for the long term»¹.

When the farmer concludes the lease agreement with an agricultural enterprise, such as farm household, agricultural limited liability company, etc., this deprives him not only of land cultivating, but also of controlling the land use. Such farmer is usually not a founder or

мана; Нац. ун-т «Юрид. акад. України ім. Ярослава Мудрого». – Х.: Право 2013. – 336 с.; Багай Н. О. Селянство: проблеми законодавчого визначення поняття // Проблеми розвитку аграрного та земельного права України: матеріали Міжнародної науково-практичної конференції (м. Київ, 25 травня 2011 р.). – К.: Видавництво географічної літератури <Обрії>, 2011. – С.64–66.

¹ Карпенко, О. Кому заважає аграрне право [Текст] / О. Карпенко // – Сільські вісті. – 2012. – 19 червня. – С. 1–2.

member of a particular company, and has often no labor relations with it. In this case, the farmer is given the «passive» role of the observer in accumulating the capital by the private enterprise founders. The lease of land by the farmer to a natural person or legal entity under various circumstances as a means of manufacture does not create conditions for him to cultivate land and to be engaged in labor activity.

Here the ratio of lease relations to the farmer's land is the opposite of the principle launched by the agrarian reform: the land belongs to those who cultivate it. This results in the loss of the social purpose of the farmer as agriculturalist being the moral value of the society.

Secondly, the narrowing of the farmer's social function as the main productive force in agriculture happens due to the processes associated with the optimization of land use by the private households and consolidation of the agricultural land plots and the more efficient landownership for agricultural manufacturers, the influence mechanism on creating and developing subjects performing large commodity agricultural manufacture, which inevitably affects its efficiency. Thus, improving the efficiency of the agricultural manufacture, sustainable development, is associated with large and extra-large agricultural business, which is now represented by agriholdings. The latter attempt to monopolize the relations in land use.

Professor M. V. Shulga notes that in this case agriholdings occupy the dominant position in the market as manufacturers and exporters of agricultural prod-

ucts, having access to relatively cheap foreign bank loans. Manufacturing cheaper agricultural products, all mentioned subjects almost drive small-scale and medium-sized agricultural manufacturers out of the food market. Satisfying their private interests, agriholding leave aside social aspects of agricultural manufacture¹. It should be added that agriholdings are the «oligarchs-latifundists if they do not have their own subsidiary personal plots, they are not farmers, not direct agricultural manufacturers, but large entrepreneurs, latifundists of agribusiness, a peculiar kind of landowners».

Thus, it is clear that the land reform in Ukraine has minimized the social role of the farmer. Since it was initiated «from above», it forgot about the farmer as the main subject of the agrarian transformations in agriculture, the person with the special agricultural way of life. Formally, the farmer's part in agrarian transformations is provided on the legal level, but his status as a major acting person in them deserves the non-priority enhancing of his social role and economic freedom under market conditions. The private land ownership, which the farmer received after the agrarian reform, should give him confidence that the product of his work will not be taken

¹ Шульга М. В. До питання про перспективи сталого розвитку сільських територій [Текст] / М. В. Шульга // Актуальні проблеми юридичної науки: зб. тез міжнар. наук.-практ. конф. «Дванадцяті осінні юридичні читання» (м. Хмельницький, 8–9 лист. 2013 р. / Хмельницький ун-т упр. та права. – Хмельницький : Хмельниц. ун-т упр. та права, 2013. – Ч. 1. – С. 180.

from him, peace, and the desire for a constant hard work, transforming his work into material, moral, spiritual and other things.

Thus, the private land ownership, fair mechanism for its economic and legal implementation, is a factor of the efficient farmer's activity regardless of the form of business management. The condition describing who owns and manages the land, what is the role and place of the farmer in land ownership, establishes rational socio-economic structure of the agricultural system, and provides activity, efficient incentives for economic use of the land by the farmer. In this context, the opinion of Professor V. V. Nosik is considered quite reasonable that the landowner and the corn grower should be combined in one person, manufactured agricultural products

should belong to its manufacturer and can be easily sold it in national and foreign markets¹.

This creates the proper socio-economic environment which enables interesting life and work for the farmer as the main production force in agriculture, on which the welfare of the population depends. Farmers working on the land «deserve universal respect as those who preserve national traditions, high civil morality and consciousness»².

In this approach, the social role of the farmer is significant, actually not exaggerated; and in case this approach is absent, the social role is only the declared.

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¹ Носік В. В. Юридична природа принципів земельного права [Текст] / В. В. Носік // Актуальні проблеми юридичної науки: зб. тез міжнар. наук.-практ. конф. «Дванадцяті осінні юридичні читання» (м. Хмельницький, 8-9 листопада 2013 р.) / Хмельницький ун-т упр. та права. – Хмельницький: Хмельницький ун-т упр. та права, 2013. – Ч. 1. – С. 148.

² Землі сільськогосподарського призначення: права громадян України. [Текст] / за ред. Н. І. Титова. – Л. : ПАІС, 2005. – С. 275 /