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SUSTAINABLE DEVELOPMENT**

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MAIN TRENDS IN THE USE OF AGRICULTURAL LAND IN UKRAINE

Ignatenko I. V., Fedchyshyn D. V.

INTRODUCTION

The lands of Ukraine are one of the most valuable objects of civil circulation. Due to some restrictions on land circulation, in particular, the moratorium on the alienation of agricultural land (which was canceled in 2021), the legal relationship of land lease as the most effective form of its use in a market economy has become particularly widespread.

According to the results of the Monitoring of Land Relations in July 2015 – June 2017, 3632.4 thousand transactions were made with agricultural land (89.5%) and 428.0 thousand – with non-agricultural land (10.5%). The structure of transactions of agricultural land was dominated by lease transactions – 76.1%; inheritance accounted for 18.3%, purchase and sale – 3.1%, land and donations – 1.6%, emphyteusis – 0.8% and only 0.05% – mortgage¹.

In the legal literature issues on use of land plots on the right of lease have always been in the spotlight of scientists in the sphere of land law. In particular, the following scientists paid attention to these issues in their works: O. Bondar, P. Kulynych, Z. Lerman, A. Miroshnychenko, O. Nivievskyi, D. Nizalov, V. Nosik, A. Ripenko, M. Shulga, J. Swinnen, V. Sydor and others.

It should also be noted that since 2002 till 2021 as a result of the prohibition of the sale or other means of transfer of certain types of agricultural land according to P. 15 of Chapter X “Transitional Provisions” of the Land Code of Ukraine the land market in the form of sale was virtually locked. So, the lease of agricultural land was the main type of agreements on the acquisition of rights to land plots of this category². In view of this, it can be concluded that in Ukraine there was a land market in fact in the form of lease of such land plots. In the foreign scientific literature, it is noted that the land market in the form of land lease develops

¹ Моніторинг земельних відносин в Україні. Статистичний щорічник. Вересень, 2018. URL: <https://land.gov.ua/wp-content/uploads/2018/10/monitoring.pdf> (дата звернення: 18.06.2023).

² Шворак А., Євсюков Т. Способи та методи консолідації земель сільськогосподарського призначення. *Економіка природокористування*. 2014. № 8. С. 44–48.

faster and has more advantages than the land market in the form of purchase and sale³.

In some countries, land lease is the main form of acquisition of agricultural land rights. Thus, in Belgium, tenants use 68% of agricultural land, in France – 53%. The popularity of land lease relations is mainly due to such economic factors as the cheapness of acquiring land rights, which makes it possible to save capital and invest it in agricultural production⁴.

In general, in Belgium, France, Luxembourg, Great Britain, Germany farmers in expanding their economy traditionally prefer not to buy and sell land, but to lease it. Such economically successful states as the Netherlands and Israel, built their land relations on the right of lease⁵.

In order to support the process of economic transformation in Ukraine, the joint strategy of the European Union provides for land reform, which is necessary to ensure (among other things) the possibility of using long-term land lease as collateral for loans, which will increase investment in agriculture. Also, in 2016 the government of Ukraine proposed to reform land relations by introducing a mechanism for selling the right to lease agricultural land.

The economic activity of modern agricultural enterprises, based on land lease, helps to increase the efficiency of agricultural production. Due to the functioning of the land lease mechanism there is an intensive development of entrepreneurial activity in the agricultural sector: market-type enterprises are formed, vertical integration processes are intensified, which together contributes to ensuring food security and increasing the export potential of organic products⁶. In addition, in a land market in the form of a lease, agricultural land will be distributed among the most efficient agricultural producers, and therefore they will be processed efficiently and rationally⁷.

³ Roy Prosterman, Tim Hanstad. Legal Impediments to Effective Rural Land Relations in Eastern Europe and Central Asia. The World Bank. Washington, 1999. 325 p.

⁴ Богач Л. В. Стан і тенденції формування земельно-орендних відносин сільськогосподарських підприємств. *Вісник Харківського нац. технічного ун-ту сільськогосподарства імені Петра Василенка*. 2014. Вип. 150. С. 82–90.

⁵ Ступень М., Дума Ю. Ринок земель в Україні: основні проблеми та перспективи розвитку. *Економіка природокористуванні*. 2015. № 4. С. 40–41.

⁶ Fedchyshyn D., Ignatenko I., Shulga M. Legal principles of organic production in Ukraine: realities and prospects. *Economics of agriculture*. Vol. 65. № 4. 2018. P. 1513–1528. URL: <http://www.ea.bg.ac.rs/index.php/EA/article/view/370/1162>. DOI:10.5937/ekoPolj1804513F

⁷ Юрченко Е. С. Розвиток ринку права користування землями сільськогосподарського призначення в Україні. *Актуальні проблеми соціального права. Еволюція правового регулювання аграрних, земельних та екологічних відносин: матеріали міжнар. наук.-практ. конф. (м. Львів, 18 лист. 2016 р.) / за заг. ред. П. Д. Пилипенка*. Львів. 2016. С. 150–152.

The methodological basis of the study is represented by the dialectical method of cognition of the development of ideas about the agreement as a phenomenon in general and the agreement of lease of land in particular. The method of analysis and synthesis was used in the study of the content of regulations, analytical materials, concepts and views of scientists on specific issues that were part of the subject. The system-structural method made it possible to determine the place and role of the land lease agreement among other civil law agreements related to land use. The formal-logical method was used to interpret the content of legal norms governing the implementation of the right of agricultural land use. The method of interpretation was used in the process of analyzing the content of acts of civil and land legislation and the practice of their application. The hermeneutic method was used to determine the legal nature of phenomena and processes that occur during the emergence, implementation and termination of agricultural land use rights, as well as to formulate new scientific provisions on the research topic. The formal-legal method was used in determining the legal nature of the phenomena that were the subject of research, and the formation of relevant legal concepts. The comparative legal method was applied when considering the relevant legal institutions of the legislation of Ukraine and other countries in order to form proposals for improving domestic legislation, taking into account foreign experience. The forecasting method is used to identify ways to improve the regulatory framework for the consolidation of agricultural land.

1. Exercising of land lease rights on agricultural lands

In Art. 93 of the Land Code of Ukraine and the Law of Ukraine “On Land Lease” the concepts of “land lease right” and “land lease” are considered as identical. They are defined as a contract-based term paid possession and use of land required by the tenant to conduct business and other activities. We agree with the opinion proclaimed in land legal literature that such an interpretation of these concepts includes almost any paid use of land⁸.

There is practically no legislative definition of the legal structure "lease of agricultural land", but there are doctrinal definitions in the science of land law. Thus, N. Ilkiv defines this concept as a kind of contractual form of agricultural land use, the content of which is termed, paid possession and use of agricultural land within the limits established by law and the lease agreement, which provides for its transfer by the owner to the tenant with the requirements to provide mainly business and other activities using the

⁸ Мірошніченко А. М., Ріпенко А. І. Зобов'язальні права користування земельною ділянкою. *Право України*. 2012. № 7. С. 40–49.

natural properties of land taking into account its rational use⁹. Given the specifics of the leased object, the above definition should include such a feature as the rational use of natural properties of the land.

Considering the content of the right to lease agricultural land, as a part of it P. Kulynych includes environmental aspect, which means the contract-based termed paid possession and use of agricultural land required for business and other activities, subject to restoration, preservation and systematic improvement quality of agricultural land¹⁰.

The right to lease land is formalized by a special agreement. In Art. 13 of the Law of Ukraine “On Land Lease” land lease agreement is defined as a transaction under which the owner of the land plot is obliged to transfer it to the tenant land in possession and use for a period, and the tenant must use it in accordance with the terms of this agreement and land legislation.

Among the general features of the land lease agreement are:

1) the subject of the agreement is a land plot – an integral and main component of the environment, the main national wealth and at the same time real estate;

2) under the specified agreement not any needs of the lessee are satisfied, but only those which correspond to the purpose of the leased land plot;

3) such an agreement is bilateral, i.e. each of its parties (tenant and owner of the land plot) has certain rights and obligations to the other party;

4) the specified agreement belongs to the termed transactions;

5) a land lease agreement is a paid agreement;

6) under this agreement the tenant acquires the right of possession and use of the land plot;

7) a land lease agreement has a written form and is subject to state registration in the manner prescribed by applicable law;

8) this agreement may be notarized at the request of one of the parties;

9) a land lease agreement serves as a legal basis for the tenant to have the right to lease land use;

10) a land lease agreement concluded in the prescribed form and registered is a document certifying the right to lease land use.

Here are the specific features of the lease of agricultural land:

– the minimal term of the right to lease agricultural land for commercial agricultural production, farming or personal farming is 7 years, and the minimum lease term of reclaimed land – 10 years;

⁹ Ільків Н. В. Оренда земель сільськогосподарського призначення в Україні: теоретичні та практичні аспекти: моногр. Львів: ЛьвДУВС, 2008. 296 с.

¹⁰ Кулинич П. Ф. Правове регулювання оренди сільськогосподарських земель на засадах публічно-приватного партнерства: шляхи вдосконалення. *Юридична Україна*. 2013. № 7. С. 76–81.

- the object of lease is an agricultural land plot of private, state or communal property;
- tenants have a special obligation to preserve soil fertility and to use rationally their natural properties;
- tenants acquire ownership rights to agricultural products and income from crops grown;
- there is a right to exchange agricultural land plots, which are the objects of lease agreements and are located in one land plot.

In recent years in Ukraine there have been positive changes in the deregulation of land lease relations, which contributes to the development of the land market. Thus, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Simplification of Conditions for Doing Business (Deregulation)” dated February 12, 2015 reduced the list of essential terms of the lease agreement from 11 to 3, and abolished mandatory annexes to it. Currently Article 15 of the Law of Ukraine “On Land Lease” prescribes such essential conditions of the land lease agreement as the object of lease, the term of this agreement, the rent.

The object of lease agreement for agricultural land may be a land plot of the appropriate purpose. In order to identify it, it is necessary to indicate the cadastral number of the plot, its location and size. From the point of view of A. Miroshnychenko for identification of the land plot (as object of lease agreement) it is enough to specify only its cadastral number. But the mentioned Law requires to indicate in the lease agreement the location and size of the plot, and if they are not specified, there may be an unnecessary question about its validity¹¹. The cadastral number of a land plot is a unique code that allows to distinguish one land plot from another. But there is still a possibility lease only part of the land plot. After all, the law does not set the minimum possible size of land that is leased. In practice, the size of a part of such a land plot, of course, will not coincide with the size of the whole plot, which is assigned a separate cadastral number. Therefore, failure to indicate the location of part of the land plot in the lease agreement could potentially lead to litigation.

An essential condition of the land lease agreement is the rent with the obligatory fixing in it of the amount of the latter, indexation, method and conditions of calculations, terms, procedure of payment and its revision, responsibility for its non-payment. As noted by the scientists the rent is an economic incentive that forces the owner to lease his land plot¹².

¹¹ Мірошніченко А. М. Напрями вдосконалення системи прав на земельні ділянки. *Бюлетень Міністерства юстиції України*. 2010. № 1(99). С. 102–112

¹² Сидор В. Д. Поняття і зміст земельних орендних правовідносин. *Часопис Київського ун-ту права*. 2009. № 1. С. 230–234.

In Article 21 of the Law of Ukraine "On Land Lease" rent is interpreted as a payment that the tenant makes to the owner of the land plot for the use of it in accordance with the lease agreement. When a land plot of private property is leased the amount, conditions and terms of payment of rent for such land plot have to be established with the consent of the parties to the agreement. If land plots of state or communal property are leased, the amount of such payment shall be prescribed in the lease agreement, and the annual amount of payment may not be less than 3% and shall not exceed 12% of the normative monetary value of the land plot. The exception to the maximum rent restriction is the case when the tenant is determined on a competitive basis (Article 288 of the Tax Code of Ukraine). The tax period for the payment of rent is 1 year (Article 285 of the Tax Code of Ukraine).

At the same time, in the scientific economic literature, the rent is proposed to be calculated considering the amount of profit per unit of leased land in the amount of 10-15%¹³.

According to the results of land auctions conducted by the territorial bodies of the State Geocadastr of Ukraine for 9 months of 2019, the amount of annual rent increased by 7.6 million UAH compared to the same period in 2018. In 2019, this figure is 153.4 million UAH, while in 2018 – 145.8 million UAH. Compared to this year, the average cost of rent for state-owned agricultural land also increased and became equal to 3.74 thousand UAH, while this figure in 2018 amounted to 3.16 thousand UAH. It should be noted that the highest fee for land use is set in Poltava (44.14% of normative monetary value of the land plot), Lviv (33.63%), Chernihiv (31.26%), Sumy (31.02%) and Ivano-Frankivsk (30.42%) regions. For 9 months, the indicators of revenues to local budgets from the sale of lease rights to land plots in Vinnytsia (UAH 2.4 million – in 2018 and UAH 7.2 million – in 2019) increased significantly; Kirovohrad (UAH 8.8 million – in 2018 and UAH 16 million – in 2019) and Dnipropetrovsk (UAH 1.1 million – in 2018 and UAH 4.2 million – in 2019) regions¹⁴.

Among scholars, in addition to the minimum set amount of land lease payment, there are opinions that the maximum amount should be set, or even abolish the mandatory payment for land use. For example, O. Glotova considers it reasonable for public authorities to determine the maximum amount of rent in the form of a percentage of the value of the harvest per hectare of land on average in natural and agricultural areas for the current

¹³ Дудич Г., Стойко Н. Розвиток процесу консолідації сільського сподарських земель в Україні. *Вісник Львівського нац. аграрного ун-ту. Серія: «Економіка АПК»*. 2013. № 20 (2). С. 3–9.

¹⁴ Сайти управлiнь Держгеокадастру. URL: <https://land.gov.ua/orendna-plata-za-peredani-u-2019-rotsi-na-zemelnykh-torhakh-dilianky-zrosla-na-76-mln-hrn-porivniano-z-analohichnym-periodom-2018-roku/> (дата звернення: 18.06.2023).

year. In her opinion, this measure will influence the formation of the value of agricultural products in the interests of the majority of the population¹⁵. However, the establishment of the maximum amount of rent contradicts the economic market and civil law principles of freedom of contract.

As of today, when regulating the rent in the land lease agreement, there are both the dispositive method of legal regulation of its definition (in the agreement between the tenant and the owner of the land plot – a private person) and the imperative method (in the agreement between the tenant and the owner – the authorized body on behalf of the state or territorial community).

Cash and natural form of rent land provided for land plots of all categories. Natural is especially appropriate in the case of lease of agricultural land. On such land plots, tenants may grow agricultural products, which may be of interest to owners of the land plots, who, being mostly residents of rural areas, use agricultural products in their own farms. However, it is difficult for agricultural enterprises to control natural rent payments. So, in order to provide more effective planning of economic activities, tenants switch to rent payments in cash form.

Attention is also drawn to the inconsistency of the Law of Ukraine “On Land Lease” regarding the indexation of rent as an essential condition of the land lease agreement. In our view, it is impractical to indicate in paragraph 3 of Part 1 of Article 15 of the Law of Ukraine “On Land Lease” the legal norm about mandatory indexation of rent.

Firstly, the indexation of rent belongs to those conditions of the agreement, the need for which follows from other provisions of the Law. In particular, in accordance with Part 3 of Article 21 calculation of the amount of rent for land plot is carried out taking into account inflation indexes, unless otherwise provided by the lease agreement. Therefore, even if the parties do not specify in the agreement that the inflation index is taken into account when calculating the amount of rent, such a calculation is made with the mandatory indexation by virtue of Part 3 of Article 21 of the Law.

Secondly, Part 2 of Article 21 of the Law is formulated by applying the dispositive method of legal regulation. According to its provisions, the parties to the lease agreement may eliminate the need for indexation. At the same time, the current version of paragraph 3 of Part 1 of Art. 15 of the Law stipulates that the condition of rent with the indication of indexation is essential. Thus, Part 2 of Article 21 of the Law dispositively offers the parties of the agreement as an alternative to take into account the inflation index, and paragraph 3 of Part 1 of Article 15 of the Law imperatively

¹⁵ Глотова О. В. Правове регулювання правочинів щодо земельних ділянок в Україні : дис. ... канд. юрид. наук. 12.00.06 / Ін-т держави і права ім. В.М. Корецького НАН України. Київ, 2003. 199 с.

establishes the obligation to indicate in this transaction indexation in connection with inflation. It seems that there is a certain contradiction between these provisions of the Law on methods of civil law regulation.

In our opinion, lease agreements for agricultural land should be based on the principle “the longer the lease of land, the higher the level of rent”. It is also advisable to include gradually increasing rental payments in the lease contract of agricultural land, which will declare the serious intentions of the tenants to conduct agricultural production on the leased land. For a guaranteed business, the tenant must be sure of the long-term lease rights, otherwise he or she may not have sufficient incentives to maintain the fertility of the land and to pursue land use with a long-term. At the same time, landowners, especially those ones who own small land plots, will be sure in the benefits of transferring their property to a long-term lease¹⁶.

As for the term of land lease agreements, there are currently restrictions in the current legislation on both the maximum and minimum duration of such agreements. The maximum lease term should not exceed 50 years. When leasing agricultural land plots for commercial agricultural production, farming or personal farming, the minimum lease term is 7 years, and the minimum lease term of land plots of reclaimed lands and lands on which hydraulic reclamation is carried out to 10 years. Such a minimum lease term of land will attract investment in agriculture, construction of drainage systems, the use of extended crop rotation and reduce soil chemicals.

However, now citizens do not have the opportunity to acquire the right to lease agricultural land for a short period, for example, to house an apiary, graze cattle, harvest, and so on. Also, owners and land users are not able to transfer agricultural land for a short period for use by third parties in the event of circumstances that prevent their use for a certain period of time, which may lead to deterioration of land. Under such conditions, agreements on short-term agricultural land use are forced to be concluded, which form the so-called “gray” land market.

At one time, the scientific legal literature expressed views on the possibility of fixing the terms of lease of land depending on the timing of a particular event. P. Kulynych emphasizes that linking the terms of land lease agreements to crop rotation in general would be a justified step, as it aims to increase the responsibility of tenants of agricultural land for maintaining their productive properties. However, the scientist critically assessed the existing earlier in Article 19 of the Law, the norm of establishing the lease

¹⁶ Fedchyshyn D., Ignatenko I., Danilik D., CHyryk A. Development of the organic production in Ukraine: problems and perspectives. *Revista de Ciências Agroveterinárias*. Vol. 21. № 3. 2022. P. 324–338. URL: <https://www.revistas.udesc.br/index.php/agroveterinaria/article/view/21210/14851>. DOI: 10.5965/223811712132022324

term taking into account the existing crop rotation system due to the impossibility of applying it in practice¹⁷.

In the sphere of lease of agricultural land it is better to conclude long-term agreements. This ensures stability and sustainability of land use, which is essential in agriculture. If the tenant gets the opportunity to carry out long-termed land use, then such lands will be operated more efficiently and without excessive depletion.

In the practice of lease relations, there are sometimes cases when the parties determine the expiration of the agreement due to “the beginning of reclamation” or “the moment of development of land for sowing”, meaning that over time the land plot will be demanded by its owner for a specific purpose. The mistake of the parties is that in accordance with Part 1 of Article 251 of the Civil Code of Ukraine, the term is a certain period of time, the expiration of which is associated with an action or event that has legal significance. The establishment of the term of the lease agreement with an indication of the “beginning of reclamation” or “the moment of development of the land plot for the purpose of sowing works” seems somewhat vague. After all, it can lead to controversial situations up to the recognition of contracts invalid. Reclamation means a set of agricultural and landscaping works aimed at restoring the productivity and economic value of lands disturbed by agricultural works. These measures do not have a clearly regulated time to start them. Therefore, one of the parties of the agreement may be interested in delaying the start of their implementation. Similarly, there are no clearly defined boundaries for the beginning and end of the agreement when there is used a concept “the development of land for sowing”. That is why the establishment of land lease terms in this way is considered quite risky.

By agreement of the parties, other conditions may be specified in the land lease agreement. Thus, if this agreement provides for the adoption of measures aimed at the protection and improvement of the leased object, an additional agreement on the reimbursement of the tenant for the costs of such activities is attached to the agreement. In addition, the lease agreement may provide for the lease of several land plots owned by the same owner (and for state and communal lands – plots governed by one state authorities or local self-government body). As we can see, other contractual terms also play a significant role in concluding a land lease agreement.

According to P. Kulynych, it is expedient to provide the agrochemical passport of the field (land plot) to be leased among the appendices to the land lease agreement. If it follows from this additional document that the

¹⁷ Кулинич П. Ф. Правове регулювання оренди сільськогосподарських земель на засадах публічно-приватного партнерства: шляхи вдосконалення. *Юридична Україна*. 2013. № 7. С. 76–81.

leased agricultural land plot is too degraded and requires a radical improvement of the existing quality, the tenant must be obliged to enter into an agreement with the relevant state authorities on joint activities to restore, preserve and increase fertility and other soil properties of the leased land¹⁸.

O. Marchenko suggests that the lease agreement for agricultural land must record the list of crops that will be grown by the lessee, and the existing at the time of the agreement the level of humus in the soil of the land¹⁹.

According to L. Bogach, the parties should agree on maintaining the condition of the leased object. In the agreement:

- guarantees for the preservation of the land plot (land share) must be prescribed;
- the procedure for carrying out work to determine the quality of land before signing the land lease agreement and after its completion must be determined;
- the terms of transfer of the land plot (land share) to the tenant must be clearly established;
- it must be determined who bears the risk of accidental damage of the leased object.

This agreement must also specify the amount of compensation to the landlord in case of deterioration of soil quality²⁰.

The legal relationship, to which the agreement was directed, arises after the state registration of the right to lease land. The Law of Ukraine “On Land Lease” is a special law that regulates relations related to land lease. According to Article 17 the object of the contract is considered to be transferred by its owner to the lessee from the moment of state registration of the lease right.

As of today, the improvement of legislative regulation of lease relations is in the direction of preserving the integrity of leased land by agricultural producers. In the list of essential conditions of the lease agreement the legislator left those without which it is impossible to conclude such agreement. Their reduction, of course, helps to solve the problems related

¹⁸ Кулинич П. Ф. Поради з питань укладання та виконання договорів оренди земель сільськогосподарського призначення. *Проект АгроІнвест*. 2015. 57 с.

¹⁹ Марченко О. Агроекологічні умови оренди земель сільськогосподарського призначення потребують уточнень. *Землевпорядний вісник*. 2008. № 4. С. 31–33.

²⁰ Богач Л. В. До питання обліку оренди земель сільськогосподарського призначення. *Наук. вісник Нац. ун-ту біоресурсів і природокористування України. Сер.: Економіка, аграрний менеджмент, бізнес*. 2013. Вип. 181(3). С. 13–17.

to the numerous claims for the invalidation of lease agreements of agricultural land plots.

Given the stages of formation of the land market, tenants and owners of agricultural land plots must have a choice of favorable conditions for doing business or making a profit. Every landowner should be sure that after the tenant uses his land, the land will remain the same fertile and profitable for him. Every landowner should understand that there is competition in any market, which, in turn, allows you to choose the most favorable conditions for greater profits and more careful use of their leased property.

2. Development of the market of agricultural land use

In recent years, research on improving the efficiency of agricultural enterprises and their competitiveness has become especially relevant. Living conditions in rural areas are deteriorating, and existing problems through the implementation of projects and programs for integrated rural development are not solved. The success of such projects and programs largely depends on how to solve the problems associated with the efficient use of land resources. Important in this context is the systematic study of the process of land consolidation.

Ukrainian economists note that today land lease is the most affordable and developed form of land consolidation, used for large and more rational land use, as well as for the development of rural areas and increase their environmental sustainability²¹. V. Nosik's position is right, emphasizing that the solution of the issue of consolidation of agricultural lands is an objective necessity, because it will depend on the development or decline of agriculture and the social sphere of the village, as well as the economy as a whole²².

Unfortunately, the current legislation of Ukraine does not contain a definition of "land consolidation". At the same time, in the scientific literature its content is interpreted differently. Land surveyors traditionally consider land consolidation as an integrated system of measures for the organization of land use (land tenure) by (a) combining fragmented land into compact arrays, (b) creating legal and institutional mechanisms to avoid land fragmentation, (c) the use of environmental protection measures to implement the necessary improvements in agro-formation, in particular, irrigation and drainage infrastructure, road network, ways to prevent erosion,

²¹ Ступень М., Дудич Г. Оренда як форма консолідації земель. *Економіст*. 2015. № 7. С. 34–37.

²² Носік В. В. Право власності на землю Українського народу : моногр. Київ : Юрінком Інтер, 2006. 544 с.

as well as (d) improvement of natural landscapes based on the principles of rationality and economic efficiency²³.

According to P. Kulynych, the consolidation of land as a legal category should be understood as regulated by the rules of land and some other branches of law activities of the subjects of land relations, aimed at forming optimal in size, other production characteristics, natural and ecological criteria of land and land tenure, which create favorable conditions for the subjects of rights to them for profitable agricultural production, preservation and increase of fertility of agricultural lands, ecological sustainability of rural areas and agricultural landscapes, as well as improving the quality of rural areas as a place of human habitation²⁴.

A. Popov notes that the exchange of land plots, the cooperation of adjacent land plots, their lease and sale can be considered as ways to consolidate them. At the same time, the scientist states that the consolidation of agricultural land should be understood as the process of unification of land plots in order to larger land use in agriculture²⁵.

Other researchers take a slightly different view on how to research ways of consolidation of land plots. For example, A. Martyn and O. Krasnolutsky identify 3 main ways to consolidate agricultural land: (a) exchange of land plots, (b) association of adjacent land plots for commercial agricultural production with the consent of the owners, (c) development of land management projects to streamline existing land tenure and land use²⁶.

Nevertheless, the above theoretical views on the legal nature of agricultural land consolidation in Ukraine give grounds to consider them as a means of legal regulation of land turnover, which directs market transactions to increasing of land holdings of agricultural producers.

In legal scientific sources it is proposed to divide the consolidation of lands into permanent and temporary²⁷. An example of permanent consolidation is the formation of a single land plot by combining several

²³ Ткачук Л. В. Консолідація земель: ефективне використання та охорона в умовах трансформації земельних відносин: моногр. Львів : Вид-во Львівського НАУ, 2009. 249 с.

²⁴ Кулинич П. Ф. Правові проблеми охорони і використання земель сільськогосподарського призначення в Україні: моногр. Київ: Логос, 2011. 688 с

²⁵ Попов А. С. Критичний аналіз способів проведення консолідації земель сільськогосподарського призначення в Україні. *Економіка. Управління. Інновації*. 2016. № 2 (17). С. 1–15.

²⁶ Мартин А., Краснолуцький О. Консолідація земель сільськогосподарського призначення в Україні: механізм здійснення. *Землепорядний вісник*. 2011. № 5. С. 16–21.

²⁷ Кулинич П. Ф. Правові проблеми охорони і використання земель сільськогосподарського призначення в Україні: моногр. Київ: Логос, 2011. 688 с/

adjacent land plots, which belong to the subject on the relevant legal title permanently (on the right of ownership, the right of permanent land use, emphyteusis, etc.). Temporary consolidation is in the case of lease of land shares and land plots by agricultural producers in a single land area. This is precisely the temporary nature of land use.

In Ukraine (in contrast to Western Europe, as a result of the redistribution of agricultural land) land plots (shares) with an average area of 4 hectares were formed. Comparing with the EU, it roughly corresponds to the country with the smallest average area of agricultural land – Greece (4.3 hectares). But in France and Germany, the average size of farm is 24 hectares, and in the UK – over 65 hectares²⁸. Thus, the structure of the land fund in Ukraine cannot be considered satisfactory. It is clear that farms that use 4 hectares of land are much less competitive compared to farms in almost any EU country.

With this in mind, O. Kutsevych emphasizes that in order to create efficient agriculture (without which an efficient economy as a whole is impossible), Ukraine must, firstly, consolidate the fragmented land fund on the basis of ownership, and secondly – to consolidate land plots concentrated in the use of one entity. Moreover, this process should not be mechanical, but have to be accompanied by structural changes (construction of roads, reclamation systems, water supply systems, communications, creation of ecological network facilities, etc.). From the point of view of the scientist, the process of land consolidation in the Western European version inevitably awaits Ukraine²⁹.

Ensuring the consolidation of agricultural land is an important means of legal regulation of their circulation, which is carried out by approving programs (plans) of their association, which determine the grounds for land acquisition in order to consolidate land holdings of agricultural producers and eliminate existing shortcomings. Legislative regulation of land consolidation should be an integral part of the legislation of Ukraine on the market of agricultural lands.

It is advisable to fully support the position of P. Kulynych that land consolidation relations are a fundamentally new type of land relations in Ukraine. The scientist convincingly proves that the current land legislation does not contain a sufficiently effective mechanism for land consolidation and needs to be improved. In order to ensure this process, today it is necessary to develop and adopt the Law of Ukraine “On Consolidation

²⁸ Latifundist. com главный сайт об агробизнесе. URL: <https://latifundist.com/193-efektivn-fermeri-chi-neeefektivn-agroholdingi> (дата звернення: 18.06.2023)

²⁹ Куцевич О. П. Зарубіжний досвід правового забезпечення консолідації земель: можливості використання в Україні. *Науково-практичний журнал «Європейські перспективи»*. 2013. № 12. С. 114–119.

of Agricultural Lands”, which would comprehensively regulate the above social relations³⁰.

Taking into account the long-termed land moratorium, which includes a prohibition of disposal of ownership of agricultural land plots, in Ukraine there has been made an attempt to introduce measures to consolidate agricultural land. For this purpose, on July 22, 2018, the Law of Ukraine “On amendments to certain legislative acts of Ukraine on resolving the issue of collective land ownership, improving the rules of land use in agricultural land, preventing raids and promoting irrigation in Ukraine” was adopted. This Law establishes a number of new rules and opportunities for tenants of agricultural lands, in particular:

- provides the possibility of exchanging rights to use land plots located in the array, by concluding sublease agreements between tenants without the consent of the owner of these land plots;

- granted the right to the land user, who has the right to use most of the land plots of the array (75%), to use other land plots of the latter with the provision of their owners (tenants) other equivalent land in the same array by agreement of the parties or in court by court recognition leases (subleases) concluded;

- the legal regime of land plots under field protective forest strips, as well as the conditions of their provision for use to individuals and legal entities have been established;

- tenants of the majority of the land plots of the array have the right to receive for the use lands under field roads (with the obligatory establishment of land easements for access to other parts of it);

- established the procedure for distribution of land remaining in the collective ownership of a collective agricultural enterprise, agricultural cooperative and agricultural joint-stock company between owners of land shares (units), which must be completed by January 1, 2025, otherwise the land will be automatically transferred to communal ownership.

It should be noted that this Law is aimed at consolidating land to solve the problem of cross-strip (the so-called “chessboard”) land plots in the land arrays, which is used for commercial agricultural production and farming³¹.

However, the legal mechanism of this process does not depend on the moratorium and is in fact a means of legal regulation of the circulation of rights to land within the land (fields) used by agricultural producers.

In order to ensure the efficient conduct of agricultural production, agricultural entities are interested in consolidating agricultural land plots and

³⁰ Кулинич П. Ф. Консолідація сільськогосподарських земель в Україні (правові проблеми). *Право України*. 2007. № 5. С. 45–50.

³¹ Зубрицький О. В. Зміни до земельного законодавства: що готує Верховна Рада. *Юридична газета*. 2018. № 32–33. С. 34–35.

increasing the size of arable land arrays. Enterprises exchange rights to use land plots within one land plot or adjacent ones. In addition, to increase the volume of cultivated land, they enter into land relations for the acquisition of agricultural land use rights by concluding land lease agreements, sublease, emphyteusis. But quite often medium and large agricultural enterprises (such as agricultural holdings), interested in a significant increase in the amount of agricultural land they cultivate, enter into mergers and acquisitions, acquiring rights to other agricultural enterprises, as well as their real estate, means of production, and most importantly – their agricultural land plots and rights to them. Today in agribusiness there are several legally possible ways to acquire the right to agricultural land by concluding agreements on their merger and acquisition.

The first way is to conclude a land lease or emphyteusis agreements, the subject of which is the right to use land plot owned by the landlord. As for the land plots used on the right of lease, land sublease agreements are concluded, but this is possible if the land lease agreement enshrines the tenant's right to sublease the land plots (Part 1 of Article 8 of the Law of Ukraine "On land lease").

The second way of acquiring agricultural land use rights is directly related to the conclusion of a contract of sale of corporate rights of a legal entity, i.e. mergers and acquisitions. According to the transfer deed, all property and rights belonging to the legal entity being absorbed, including the rights of agricultural land use, but only to those lands to which the rights belong to the legal entity (Part 2 of Article 107 of the Civil Code of Ukraine) are transferred to the new legal entity. Land use rights for the remaining lands, which belong to the founders and / or participants (members) of the legal entity, must be acquired under separate agreements, the type of which will depend on the type of land right of the acquired entity.

The third way to increase the area of cultivated agricultural land is to conclude an agreement of purchase and sale of agricultural land use rights. The legislation does not provide for such a possibility. However, despite the gap in the regulation of the alienation of agricultural land use rights, in practice the conclusion of agreements on the sale of agricultural land use rights is one of the main types of agreements on the acquisition of rights to use large agricultural lands. We have to note that the procedure for concluding such agreements is quite long and complicated.

The fourth way to acquire rights to use agricultural land is purchase and sale of an agricultural enterprise as a single property complex. The constituent parts of a single property complex are land plots and rights, including agricultural land use rights (Part 2 of Article 191 of the Civil Code of Ukraine). Thus, the agricultural enterprise may include non-agricultural land under farm buildings, structures, yards, etc., as well as agricultural land

necessary for providing economic activity. As a result of the acquisition of a single property complex, the purchaser also receives agricultural land owned by the company on the right of ownership, lease or permanent use.

In the practice of regulating land relations in the field of agricultural production in Ukraine, there are numerous cases when the landowner refuses to enter into a land lease or emphyteusis agreement with a new land user. Under such conditions, the land user and the person who intends to receive the land for use may enter into an investment agreement, a joint venture agreement or a land cultivation agreement. Also, in order to consolidate arable land owned by different persons with different legal titles, land users may enter into agreements to exchange rights to use them. However, these agreements are outside the legal field and are considered as “gray” agreements, because they form a “gray” land market. After all, the rights of agricultural land use, which must arise under such agreements, cannot be registered in the State Register of real property rights and encumbrances, and therefore the acquirer does not legally have rights to this land (Part 2 of Article 3 of the Law of Ukraine “On state registration of real property rights and their encumbrances”).

These agreements are usually risky for agribusiness entities. In fact, they are fictitious agreements that conceal agreements for the acquisition of the right to use agricultural land. So, it is necessary to legislate the consolidation of the right of short-term agricultural land use and legal mechanisms for its acquisition and implementation. This will satisfy the interests of both entities that intend to acquire the right to agricultural land for a short period for apiaries, grazing, harvesting, consolidation of agricultural land until the possibility of acquiring the right to lease, sublease or emphyteusis for such land, and landowners and land users who for some reason cannot conduct economic activity on agricultural land during the agricultural production and economic cycle³².

Thus, the existence of different legal models of acquisition of agricultural land use rights should guarantee agribusiness entities the opportunity to choose the most effective way to consolidate land and increase the size of land legally, which, of course, will de-shadow the market of agricultural land use rights³³.

³² Юрченко Е. С. Юридична природа права оренди та права короткострокового користування землями сільськогосподарського призначення в Україні. *Держава і право*. 2017. № 75. С. 298–305.

³³ Юрченко Е. С. Сучасні тенденції розвитку ринку права сільськогосподарського землекористування в Україні. *Teorie și practică*. 2018. № 6 (34). С. 166–169.

CONCLUSIONS

The solution of many problems caused by land reform is possible through the consolidation of lands, which is relevant in terms of future development of the agricultural sector. Land consolidation, as one of the measures to improve the structure of land tenure. It can also be considered as a new and almost unfinished concept for Ukraine.

However, due to the large fragmentation of land use and the growing importance of rural areas, this process is becoming an increasingly important element of strategies and projects aimed at improving the quality of life in rural areas through more efficient management in a globalized international economy and significant food shortages.

Having made an in-depth analysis of the peculiarities of the development of the market of agricultural land use rights in Ukraine and alternative ways of acquiring this right, we can conclude that the availability of different legal models of this procedure will provide agribusiness entities the opportunity to choose the most acceptable one. Moreover, it will also contribute to the de-shadowing of the market for agricultural land use rights. In order to ensure abovementioned, we propose to supplement the provisions of land legislation with rules: (a) on the purchase and sale of agricultural land use rights, (b) the mandatory right of short-term agricultural land use and (c) the exchange of land use rights.

SUMMARY

Today, land lease is a special kind of land use right and one of the most common legal forms of land use in Ukraine. It can be also considered as the basis for effective development of agriculture, solving social problems of rural development, adaptation of agricultural producers to market economy conditions. In recent years, Ukraine has taken positive steps in deregulating leasehold land relations, which contributes to the development of the land market. The number of essential terms of the agreement has been reduced from eleven to three, and mandatory annexes to the lease agreement have been abolished. Emphasis is placed on the features of such essential conditions of the land lease agreement as the object of lease, the term of the lease agreement, rent. The general features of the land lease agreement have been clarified, specific features of the agricultural land lease agreement have been singled out.

Based on the analysis of the peculiarities of the development of the market of agricultural land use rights in Ukraine and alternative ways of acquiring this right, it is concluded that the existence of different legal models of acquiring agricultural land use rights will allow agribusiness entities to choose the most acceptable way of land consolidation, as well as contribute to the de-shadowing of the market of agricultural land use rights.

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