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V. P. Hmyria[1], O. Spirkina[2], N. Maksymenko[3], N. Tanklevska[4]

[1]Cherkasy Educational Scientific Institute of State Higher Educational Institution "Banking University", Ukraine,
[2]Cherkasy Institute of Fire Safety named after Chornobyl Heroes
of National University of Civil Defence of Ukraine, Ukraine,
[3]Flight Academy of National Aviation University, Kropyvnytskyi, Ukraine,
[4]Kherson State Agricultural University, Ukraine.
E-mail: viktoryagmirya@ukr.net

FINANCIAL AND LEGAL ASPECTS OF THE ORGANIZATION OF THE AGRICULTURALLY USED AREAS MARKET

Abstract. The article deals with the mechanism of functioning of the market of agriculturally used areas in Ukraine. The economic conditions of the formation of the land market that have developed in Ukraine determine the priority directions of economic contradictions in the formation of the land market. In addition, the article focuses on the regulatory and legal regulation of the agricultural land regime for the conducting farm-market agriculture, the farm and private farming, the analysis of changes envisaged by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine regarding the Solution of the Issue of Collective Land Ownership, Improvement of Land Tenure Rules of Agriculturally Used Areas, Prevention of Raiding and Stimulating the Irrigation in Ukraine" dated July 10, 2018, No. 2498-VIII.

Key words: ownership, agriculturally used areas, landed servitude, land use, land lease agreement.

Articulation of issue. The current state of development of the Ukrainian agrarian sector is characterized by the reduction of agriculturally used areas, crop areas, which leads to a decrease in crop yield and gross production, worsening of the food situation in the country due to the world trends in the market situation of farm production.

In modern conditions, the agricultural sector of the country is experiencing a severe shortage of working capital, which makes it impossible to implement the process of expanded reproduction in production. The inaccessibility of long-term credit resources is due to the insufficiency of mortgaged property, which causes the use of short-term loans that are characterized by high rates. Given the situation prevailing in the market of credit resources and in order to create access to long-term credit resources, it is necessary to consider land as a source of mortgage property. However, there are a number of problems related to the state and development of the land market in Ukraine, which need to be solved in order to achieve the optimal balance of land use and volume of credit resources to ensure the production process in agriculture.

Land has always been one of the ways to invest in profit making. The land of Ukraine, taking into account the value of black earth, is one of the most attractive objects for investing. That is why the land of Ukraine is the main national wealth that is under the special protection of the state [1, art. 1].

In accordance with Articles 18–20 of the Land Code of Ukraine, each land plot, regardless of the form of ownership or use, has a specific purpose, according to which the land plot is an object of civil rights [1, art. 79]. Currently, the problem of establishing an effective legal mechanism for the usage of agriculturally used areas to prevent raiding and stimulating irrigation, as well as solving the problem of using lands of collective land ownership, is also acute.

The problem of the land resources priority usage was a part of scientific researches of a great number of scientists – agrarians. Highly appreciating their efforts and contribution to the understanding the relationship between the problems of land development in the agrarian sector and the obtaining of long-term credit resources on the mortgage of land, it can be noted that the current outline of the agrarian sector in terms of land relations and financial and credit relations, as well as the presence of tangible gaps and

unsettled tasks require the implementation of scientific researches into the refinement problems of land relations of the agrarian sector and the search for effective practical measures for their solution.

Actual scientific researches analysis. The issue of legal regulation of agriculturally used areas has always been of scientific interest to scholars. Such scientists as L. O. Bondar, A. P. Hetman, V. H. Honcharenko, I. I. Karakash, T. O. Kovalenko, P. F. Kulynych, A. M. Miroshnychenko, O. O. Pohribnyi, V. I. Semchyk, N. I. Tytova and others devoted their scientific work to the studies of this problem.

The purpose of the article is to analyze the most important changes in the legal regime for using agriculturally used areas for commercial farming, farm and private farming, as well as to determine the state of the development of the land market of agriculturally used areas and to consider the main issues associated with the formation of the land market and its functioning under current conditions.

Statement of basic materials. One of the specific markets is the land market, which has many features that distinguish it from other markets. So far, the land market in Ukraine has been clearly differentiated depending on its usage. Because of the natural resource potential Ukraine is one of the wealthiest countries in the world.

Basis of formation of effectively functioning of agricultural production is improvement of the land relations and formation of system of land use, "adequate to the market economy". Society is in great need in transition to essentially new type of economic growth: to the intensive growth of resource-saving type, based on careful use of natural resources, on achievement of ecological equilibrium. The dependant relation to the nature has put the habitat of activity on a degradation side. As a result we see the surrounding environment, which being a source of factors of production and means of life, loses the qualities of self-restoration, and the economy faces with unforeseen and often acute contradictions, unpredictable on the consequences, between the nature and society. [8]

The most valuable natural resource and the main component of the national wealth of any country is the land. About 27% of the world's black earths are located in Ukraine. Ukraine occupies 5.7% of the territory of Europe, its agriculturally used areas – 18.9% and arable land accounts for 26.9% [2]. Unlike industrial means of production, prone to physical and moral depreciation, the correct use of land not only does not reduce its productive capacity, but also increases it, determining the market price of land in the presence of rental income and market demand. All land within the country regardless of the ownership forms is a nationwide wealth. The state must take care of the rational land distribution and effective land usage, since it is a non-reproducible and indispensable means of production. The main task of efficient land use is to preserve and increase the soil fertility, as well as to create conditions for the most complete usage of agriculturally used areas for seeding and increase of their crop productivity. The main means of improving the soil fertility are the best possible treatment, the application of mineral fertilizers, the correct selection of crops and varieties, as well as the order of their placement in crop rotation.

Recently, a number of changes have taken place in the sphere of regulation of relations concerning agriculturally used areas. Thus, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine regarding the Solution of the Issue of Collective Land Ownership, Improvement of Land Tenure Rules of Agriculturally Used Areas, Prevention of Raiding and Stimulating the Irrigation in Ukraine" dated July 10, 2018, No. 2498-VIII [3] introduced a number of amendments to the Land Code of Ukraine, the Law of Ukraine "On the Lease of Land" dated October 6, 1998, No. 161-XIV and other laws with the purpose of optimizing the use and disposal of agriculturally used areas. This act substantially changes the legal regime of leased lands, establishes the peculiarities of the use and disposal of land plots located in the territory of agriculturally used areas, as well as field-protective forest strips that restrict such a territory. The above-mentioned changes do not apply to all agriculturally used areas, but only to the land plots for commercial farming, farm enterprises and private peasant farming. It should be noted that the changes envisaged by the above-noted act, entered into force on January 1, 2019.

According to the Land Code of Ukraine Article 21 determines the agriculturally used areas as lands for farm production, the implementation of agricultural scientific and research and educational activities, the placement of the corresponding production infrastructure, including the infrastructure of the wholesale markets for agricultural products, or intended for these goals [1].

Land plots of agriculturally used areas intended for private peasant farming, farming, horticulture, gardening, haymaking and cattle grazing, commercial farming; located in the territory of agriculturally used areas, can be used by their owner or land user also for commercial farming without changing the purpose of such land plots [1, p. 3 art. 22].

After making legislative changes, the norm of the Land Code, namely, Article 37-1 "Features of the Use and Disposal of Land Plots Located in the Territory of Agriculturally Used Areas, as well as Field-Protective Forest Strips that Restrict such a Territory", aimed at the optimization of the use of land plots and the formation of integral land masses is positive. Thus, Paragraph 2 of Article 37-1 defines the powers of the owner of land plots of all forms of ownership, located in the territory of agriculturally used areas, who may exchange such land plots.

Currently, almost the only income for many peasants – owners of land shares is receiving land rent from the assignment of them to rent at unreasonably low rates. The total amount of payments for the lease of land shares in 2016 actually amounted to 12.9 billion UAH, which is calculated on 1 hectare is 862 UAH [6, p. 7]. This is a very small income, even in Ukraine. While "in developed countries with an open land market, not only the cost of acquisition, but also the lease of land plots, which amounts to 250–700 dollars per hectare, is increasing" [6, p. 45]. As a rule, open-market countries are the most successful ones, they have higher GDP per capita and higher added value in the agricultural sector.

The exchange (swap) of a land plot of state or communal property located in the territory of agriculturally used areas, to another land plot located in the same territory, is carried out only if both land plots have the same regulatory monetary value or the difference between the regulatory monetary values is not more than 10 percent [1].

Moreover, such agreements are not subject to the prohibition (moratorium) on the alienation of land for commercial farming, as well as the in-kind allocated through the realization of the right to a land parcel (share) of land for the conduct of a private farm, provided for Paragraph 15 Section X «Transitional Provisions» of the Land Code of Ukraine [1].

Analyzing Article 37-1, attention is paid to Paragraph 3 which states that the owners and tenants of land plots of agriculturally used areas located in the territory of agriculturally used areas for the period of validity of the lease agreement can exchange their rights to use land plots by means of the mutual conclusion of lease agreements, sublease of the respective sections [1]. This rule essentially optimizes the process of land use within integral land areas.

Features of acquiring and realization of the right to lease land, located in the territory of agriculturally used areas, are determined in Article 8-2 of the Law of Ukraine "On the Lease of Land". The first feature is the possibility to conclude a sublease agreement that does not require the consent of the landlord, while the tenant remains responsible to the landlord for the execution of the lease agreement. Moreover, the termination of one of the lease agreements, sublease of the land plot, concluded in the order of exchange of rights of use, terminates the operation of another lease contract, sublease, concluded in return, which is necessarily indicated in such contracts [7].

The next thing to note is that tenants of land plots are required to inform the landlord in writing about the exchange of their rights to use land plots within five days from the date of the state registration of the right of sublease. The written notification shall indicate the cadastral number of the land plot (if any), the term for which the sublease contract has been concluded, and the person to whom the land plot has been subleased. A written notification shall be sent to the landlord by a registered letter with return receipt or handed him personally against of acknowledgement of receipt.

It is also positive that the owner or user of a land plot whose land is transferred to a lease (sublease) to a person who has the right to use an essential part of the territory of agriculturally used areas, shall have the right to indemnify the property damage suffered by him as a result of such transferring completely [7].

The extent of property damage is determined by conducting an assessment in accordance with the legislation on land valuation and property valuation legislation, property rights and professional appraisal activities. The subject of evaluation activities is determined by the initiator of the exchange of the rights of use. The cost of the services of the subject of valuation is paid by the initiator of the exchange of the rights of land plots use. If the owner, the user of the land plot does not agree with the assessment of the amount of property damage carried out by a valuation subject designated by the initiator of the exchange of the rights of use, it may involve another entity of valuation activity for a new assessment or to review the report from the previous expert monetary evaluation of land plots. In this case, the cost of such services is born by their customer.

The analysis of amendments to some legislative acts of Ukraine regarding the solution of the issue of collective land ownership and land possession shows that Article 37-1 of the Land Code of Ukraine defines the right of the person who owns the right to use an essential part of the territory of agriculturally

used areas, to lease other agriculturally used areas, located in such a territory, and in the case if other land plots are leased, to receive them in sublease, subject to the transfer to their owner (tenant) of the use (lease, sublease) of another land plot located in the same territory for the same term and under the same conditions, if, because of the strip farming the nonuse of such lands impedes the rational usage of land plots that are used by that person. Such a person is a land-user who owns the right of use (lease, emphyteusis) of land plots located in the territory of agriculturally used areas, with a total area of not less than 75% of all lands of the territory [1].

In this case, the right to lease land is acquired in accordance with the procedure established in Article 8-2 of the Law of Ukraine "On the Lease of Land". Thus, if another person proposes to conclude a lease agreement for the same land plot, the person (except for the person who has the preferential right to renew the lease agreement in accordance with Article 33 of the Law of Ukraine "On the Lease of Land"), who owns the right to use a substantial part of the territory of agriculturally used areas, has the preferential right to conclude a lease agreement on terms not worse than the conditions for the specified person. At the same time, in the presence of a proposal of a person who has a preferential right to renew the lease, the preferential right to conclude a lease agreement for the same land is not applicable.

In accordance with Paragraph 5 of Article 8-2 of the Law of Ukraine "On the Lease of Land" the right to lease (sublease) land plots acquired by a person who owns the right to use an essential part of the territory of agriculturally used areas with the transfer in exchange for the right to use another land plot, acquires and implements with the following features:

- the term of the lease (sublease) must not exceed the term of use of the land plot under an agreement to be concluded in return;
- the size of the rent (payment for sublease) must correspond to the rent (payment for sublease) under an agreement to be concluded in return;
- the tenant does not have a preferential right to purchase a leased land plot in case of sale;
- the tenant (sub-tenant) has no right to compensation by the other party to the contract of expenses for improvement of the leased land, for renewal of the lease contract (sublease) for a new term in case of objections of the other party to the contract;
- in case if the land to which the right to transfer is transferred in the absence of access from the edge of the territory of the agriculturally used areas, the person who owns the right to use a substantial part of the territory of agriculturally used areas, is obliged to provide the land-user the right to pass and drive to such a land plot on the terms of a free land easement;
- in case if a person who owns the right to use an essential part of the territory of agriculturally used areas leases (subleases) several land plots belonging to one person the land plots, the right of use of which are transferred in return, shall be connected by common borders.

It should be noted that when making conditions which are different from the above-mentioned in the lease (sublease) contract of a land plot, the right to which is transferred in exchange, is allowed only with the consent of the other party to the contract.

From January 1, 2019, in accordance with the analyzed amendments to certain legislative acts of Ukraine regarding the solution of the issue of collective land ownership and land use, a special procedure for leasing land owned by the state or communal property under the field roads is also introduced. Thus, land plots of the state or communal property under the field roads designed for the access to land plots located in the territory of agriculturally used areas (except for field roads limiting the territory) are leased without carrying out land auction to owners and/or users of land plots, adjacent to the land plots under such field roads. The term of lease of such land plots is 7 years [1, para. 5 art. 37-1].

At the same time, it should be noted that the lease of land plots of the state or communal property under the field roads designed for the access to the land plots is carried out provided the free access of all landowners and land-users to their land plots to use them for their intended function.

It should be paid attention to the fact that, in accordance with the legislative changes, land plots under the field roads, located in the territory of agriculturally used areas (except for the field roads that restrict the territory), can be used by the landowner (land-user) as a passage (driveway) to other land plots located in such a territory, and for the cultivation of agricultural products.

Moreover, in accordance with the legislative changes to the Land Code of Ukraine, from January 1, 2019, the term of use of land plots of the state, communal and private property for agricultural purposes (emphyteusis), as well as the term of use of the land of the public or communal property for building construction (superficies) cannot exceed 50 years (Art. 102).

Article 98 of the Land Code defines the content of the right of land servitude, the changes of which also occurred on January 1, 2019. Thus, the term of validity of the land servitude established by the agreement between the person who requires it and the land-user cannot be longer than the term for which such a land plot has been transferred for use to the land-user.

The Land Code of Ukraine (Art. 37-1) establishes the specifics of the use of land under the field-protective forest strips. Such plots, if they limit the territory of agriculturally used areas, are transferred to the permanent use of the state or municipal specialized enterprises or leased to the physical and legal persons with the obligatory inclusion to the lease of land the conditions for the maintenance and preservation of such strips and ensuring the fulfillment of their functions of agro-forestry land reclamation. A lease agreement for a land plot under the field-protective forest strips should also contain conditions for the maintenance and preservation of such strips and ensure that they perform the functions of agro-forestry land reclamation. The rules for the maintenance and conservation of the field-protective forest strips located on the agriculturally used areas should be approved by the Cabinet of Ministers of Ukraine.

The land market is an important segment of the market economy and ensures the implementation of relations between its parties. The land is considered in the economics as an operational or exhaustive resource. The special status of land in the country's economics and its properties determine a number of specific features of this market:

- the magnitude and nature of the demand and supply of land plots due to the political system of the society, geographical and historical factors, the state of infrastructure and the level of the development of the region as a whole, as well as the irrationality of its value;
- lands are differentiated by quality and positioning. Additional investments of labor and capital allow economically to improve fertility and to obtain a great return from the land, which is practically possible in all areas;
- limited supply of land resources is enhanced by private property relations. Under market conditions, landowners prefer not to sell their land plots, but to lease them for having a stable income. Therefore, even a small part of the land fund is offered for sale, which is not an adequate response to the growing demand;
- legal registration of transactions in the land market requires mandatory state registration and complicated, expensive legal registration. This requires the presence of the state in the processes of market regulation [5].

At the present stage it can be stated that the land relations formed in Ukraine do not encourage but impede the effective use of land-resource potential. Therefore, the land has always been, is and will remain a special object of social relations, which is characterized by spatial constraints, irreplaceability, constant location, etc. The value of land as a leading resource of human development in rural areas, where it is not only a spatial basis, but also a main means of production, cannot be overestimated [6].

Conclusions. The most important place in the development of land relations is the system-institutional transformations. Their main goal is to create an effective infrastructure of the land market – a set of systems, services, enterprises and organizations serving the market and providing a normal mode of operation. A prerequisite for a successful land reform is the formation of new economic institutions: the state and regional regulation, legal support, registration of rights and transactions, financial support, organizational development. The purposeful integrated land policy of the state will strengthen the market relations in Ukraine, the stability of economic development, and increase the competitiveness of the economy.

The analyzed legislative changes provided for in the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine regarding the Solution of the Issue of Collective Land Ownership, Improvement of Land Tenure Rules of Agriculturally Used Areas, Prevention of Raiding and Stimulating the Irrigation in Ukraine" dated July 10, 2018, No. 2498-VIII and introduced after January 1, 2019, are one of the attempts to improve the legal regulation of the agricultural land regime for commercial farming, farm enterprise and private peasant farming. The proposed changes will help solve most of the existing land use issues in the agriculturally used areas and will help prevent violations of rights and protected by the law interests of landowners and land-users. It should also be noted that the trends observed in the agrarian sector of the country's economy indicate that, even after the possible lifting of the moratorium on the alienation of agricultural land, the lease of land will continue to remain the basis of agrarian land tenure in Ukraine for a long time. Therefore, these measures will be useful in the future market circulation of agricultural land.

В. Гмыря, О. Спиркина, Н. Максименко, Н. Танклевская

АУЫЛ ШАРУАШЫЛЫҒЫ МАҚСАТЫНДАҒЫ ЖЕР НАРЫҒЫН ҰЙЫМДАСТЫРУДЫҢ ҚАРЖЫЛЫҚ-ҚҰҚЫҚТЫҚ АСПЕКТІЛЕРІ

В. Гмыря[1], О. Спиркина[2], Н. Максименко[3], Н. Танклевская[4]

[1]Черкасский учебно-научный институт ГВУЗ «Университет банковского дела», Украина,
[2]Черкасский институт пожарной безопасности им. Героев Чернобыля
Национального университета гражданской обороны Украины, Украина
[3]Летная академия Национального авиационного университета, Кропивницкий, Украина,
[4]Херсонский государственный аграрный университет, Украина

ФИНАНСОВО-ПРАВОВЫЕ АСПЕКТЫ ОРГАНИЗАЦИИ РЫНКА ЗЕМЕЛЬ СЕЛЬСКОХОЗЯЙСТВЕННОГО НАЗНАЧЕНИЯ

Аннотация. В статье рассмотрен механизм функционирования рынка земель сельскохозяйственного назначения в Украине. Хозяйственные условия формирования рынка земли, которые сложились в Украине, определяют приоритетные направления экономических противоречий формирования рынка земли. Кроме того, в статье уделено внимание вопросам нормативно-правового регулирования режима земель сельскохозяйственного назначения для ведения товарного сельскохозяйственного производства, фермерского хозяйства и личного крестьянского хозяйства, анализа изменений, предусмотренных Законом Украины «О внесении изменений в некоторые законодательные акты Украины относительно решения вопроса коллективной собственности на землю, совершенствование правил землепользования в массивах земель сельскохозяйственного назначения, предотвращения рейдерства и стимулирования орошения в Украине» от 10 июля 2018 № 2498-VIII.

Ключевые слова: право собственности, земель сельскохозяйственного назначения, земельный сервитут, землепользования, договор аренды земельного участка.

Information about authors:

Hmyria Viktoriia Petrivna, Associate Professor, Candidate of Science (Economics), Cherkasy Educational Scientific Institute of State Higher Educational Institution “Banking University”, Ukraine; viktoryagmirya@ukr.net; https://orcid.org/0000-0003-3070-0158

Spirkina Oksana, Candidate of Historical Sciences, Associate Professor of the Department of Psychology of Activity in Special Conditions, Cherkasy Institute of Fire Safety named after Chornobyl Heroes of National University of Civil Defence of Ukraine, Ukraine; https://orcid.org/0000-0001-7932-0127

Maksymenko Natalia, Candidate of Juridical Sciences, Associate Professor, Associate Professor of the Department of Management, Economics, Law and Tourism, Flight Academy of National Aviation University, Kropyvnytskyi, Ukraine; https://orcid.org/0000-0002-1005-5115

Tanklevska Nataliya, D. Sc. (Economics), Professor, Head of the Department, Department of Accounting and Taxation, Kherson State Agricultural University, Ukraine; https://orcid.org/0000-0003-2906-4051

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