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Nataliya ZABOLOTNA

Lviv Polytechnic National University,
Educational and Research Institute of Law,
Psychology and Innovative Education,
Associate Professor of the Civil Law
and Procedure Department,
Ph.D. in Law, Associate Professor
Natalya.Y.Zabolotna@edu.lpnu.ua
ORCID iD: 0000-0002-7921-3994

Evgenia PALIY

President of the Luxembourg-Ukrainian Chamber of Commerce,
Luxembourg City (Luxembourg),
Ph.D. in Law

LEGAL ASPECTS OF LAND REFORM AS THE MAIN NATIONAL RESOURCE OF UKRAINE ANALYSIS OF RESEARCH PROBLEM

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The article delves into the critical issues surrounding land reform in Ukraine, highlighting its significance as a national asset. The authors examine the historical background and the legal challenges in transitioning Ukraine’s agricultural land into a functional market economy. With agriculture being a cornerstone of the country’s economy, comprising over 68 % of its total land area, reforming land relations has become essential for Ukraine’s sustainable development.

Key points include the importance of aligning Ukraine’s legal framework with international and European standards, as outlined in the “Ukraine 2020 Sustainable Development Strategy”. The article discusses the core elements of the land reform, such as the creation of a transparent legal system, the liberalization of agricultural land transactions, and the establishment of mechanisms to improve land governance, food security, and environmental protection. The authors emphasize that the successful implementation of land reform depends on the development of a robust legal infrastructure that balances economic growth with the protection of national interests.

Moreover, the paper addresses the existing legislative framework, particularly the Land Code of Ukraine and the Constitution, which recognizes land as a public resource under state protection. It critically analyzes the ongoing debate on lifting the moratorium on the sale of agricultural land and examines how this process could impact Ukraine’s agricultural sector, the economy, and landowners.

The authors also compare Ukraine’s land reform experience with that of other European countries, exploring how international practices can inform domestic policy. Special attention is given to the legal, economic, and social consequences of introducing a full-scale land market, including the potential risks and benefits for rural communities and agricultural enterprises.

Overall, the article provides a comprehensive analysis of Ukraine's land reform, proposing practical solutions for overcoming legal and economic barriers to sustainable land management.

Keywords: agrarian relations, land reform, agricultural lands, agrarian law, natural resources.

Formulation of the problem The implementation of land reform in Ukraine contributes to the opening of new opportunities for participants in land relations who previously did not have the opportunity to buy and dispose of land. Carrying out such a reform involves a comprehensive update of land and other legislation of Ukraine, which is aimed at ensuring the effective functioning of land conditions, beneficial to both society and individual citizens, on the basis of a market economy, including private ownership of land.

Therefore, the issue of land reform is particularly important today, which determines the relevance of the topic of this article.

Analysis of research problem The existing state of affairs in Ukraine should be considered natural, since until at this time, the goal itself is not clear to the vast majority of citizens the essence of the carried out reforms, especially the land reforms, as well as the ways of their possible implementation implementation from the position of national interests. Problems of land reform studied by such scientists: V. Yermolenko, V. Zhushman, G. Kornienko, P. Kulinich, S. Lushpayev, O. Pohribny, A. Stativka, N. Titova, V. Urkevich, S. Khrypko, M. Shulga and others.

Scientific developments these scientists contributed to a more objective awareness of modern people patterns of transformation of land relations, implementation of land- and nature management, implementation of reforms and their specifics.

The purpose of the article is to justify the state, problems and prospects implementation of land reform in Ukraine.

Presenting main material Every historical epoch is distinguished by unique and original events, phenomena and processes. They are a unique pattern of the era, which remains in the memory of future generations [1, p. 5]. Ukraine in the process of its historical development has been and is one of the largest countries in the world. Today Ukraine is an industrial and agrarian country with a predominance of raw materials, which is due to its area of 603,628 km² and a large number of agricultural lands.

Agrarian law as a branch of law covers the legal norms governing agrarian relations, i.e. a set of interrelated land, labor, property, organizational, managerial, social and other relations in the field of agricultural activity.

The subject of agrarian law are relations that are related to: a) agrarian relations that arise in the process of land cultivation, production of crop and livestock products; b) activities related to the processing of agricultural products and food production [2].

After the presentation of the reform package, the Ukraine 2020 Sustainable Development Strategy in 2015, the reform of the agricultural sector, which includes agriculture, fisheries and land relations, was launched. In accordance with the document (Strategy) adopted by the Government, the critical priorities of the reform were formed, in particular:

- 1) creation of a stable legal system that meets international and European standards;
- 2) land reform;
- 3) reforming the sphere of governance;
- 4) creation of a food security system;
- 5) rationalization and elimination of existing shortcomings of the tax system;
- 6) development of agri-food value added chains;
- 7) promoting the development of rural areas, rural territorial communities and the entire economy of rural areas;

- 8) increase the competitiveness of agricultural enterprises through trade liberalization, reduction of transaction costs, simplification of trade procedures and export promotion;
- 9) reforming and optimizing the state research institutions and educational institutions;
- 10) environmental protection and management of natural resources [3].

Article 14 of the Constitution of Ukraine stipulates that: “Land is the main national wealth, which is under special protection of the state” [4]. In turn, the Land Code of Ukraine gives a similar definition of the term “land” and divides it into categories: a) agricultural land; b) land for housing and public buildings; c) lands of nature reserves and other nature protection purposes; d) lands of health-improving purposes; e) recreational lands; e) lands of historical and cultural purpose; f) forestry lands; g) water fund lands; g) land for industry, transport, communications, energy, defense and other purposes [5].

Doctor of Agricultural Sciences Ya. M. Gadzalo believes that today Ukraine must comply with international principles of economic integration, and above all it is the harmonization of market relations by opening the possibilities of national agriculture, and agricultural land is the most important production, economic and competitive factor of agrarian economy development [6, p. 5].

Recently in Ukraine, the Verkhovna Rada of Ukraine has actually taken almost the first serious and important step towards lifting the moratorium on the sale of agricultural land, but this does not mean that it immediately eliminates the lack of a legal land market. According to the State Land Cadastre, the total land area of Ukraine is 60.35 million hectares, of which 41.5 million hectares (68.8 % of the territory) are agricultural land (including arable land – almost 33 million hectares).

George Washington once said that no nation can prosper until it realizes that plowing the field is as worthwhile as writing a poem. Of course – it sounds simple. But in conditions of economic instability, where there is no sustainable economic, environmental, organizational and legal mechanism for regulating land, in particular as an economic turnover.

As the experience of different countries of the land market existence shows, this is a good income. Therefore, the Land Code of Ukraine until recently proposed to make changes in the section “Transitional Provisions”, in particular to make the following corrections, in paragraph 14 “ Before the entry into force of the law on the circulation of agricultural land, but not before the conduct and establishment of the results of the All-Ukrainian referendum on the purchase and sale of agricultural land, the right to land share (unit) in the authorized capital of companies is prohibited. The introduction of the right to land share (unit) in the authorized capital of companies is introduced in case of the entry into force of the law on the circulation of agricultural land and provided that the All-Ukrainian referendum approves a decision on the possibility of free purchase and sale of agricultural land”.

Paragraph 15 “Before the entry into force of the law on the circulation of agricultural land, but not earlier than the conduct and establishment of the results of the All-Ukrainian referendum on the purchase and sale of agricultural land is prohibited: a) purchase and sale of agricultural land of state and communal property, except for their withdrawal (purchase) for public needs; b) purchase and sale or other alienation of land plots and change of purpose (use) of land plots owned by citizens and legal entities for conducting commodity agricultural production, personal farming, land plots allocated in nature (on the ground) to owners of land shares (units) for personal farming, as well as land shares (units), except their inheritance, exchange of land plot for another land plot, respectively of law and withdrawal (purchase) of land plots for public purposes and other than changing the purpose (use) of land plots for the purpose of providing investors – participants in production sharing agreements to carry out activities under such agreements. Purchase or sale or other alienation of land plots and land shares (units) specified in subparagraphs “a” and “b” of this paragraph shall be introduced in case of the entry into force of the law on the circulation of agricultural land and provided that the All-Ukrainian referendum approves the decision on the possibility of introducing the free purchase and sale of agricultural land” .

And also add paragraph 15-1 “Before the introduction of purchase and sale or other alienation of land plots and land shares (units), defined by subparagraphs “a” and “b” of paragraph 15 of Section X “Transitional Provisions” of this Code, citizens and legal entities, who own land plots for commercial

agricultural production, personal farming, owners of land shares (units), which are allocated in nature (on the ground) land plots for personal farming, have the right to appeal to the state, represented by the body authorized by the Cabinet of Ministers of Ukraine with a proposal to buy back the land plots belonging to them. Purchase by the state of such land plots by represented body authorized by the Cabinet of Ministers of Ukraine is carried out in the manner prescribed by law, on the basis of an agreement and at market value determined by taking into account prices for agricultural land in the European Union in accordance with the methodology approved by the Cabinet of Ministers of Ukraine” [7].

The opinion of I. V. Sytnyk should be taken into account, who notes that the lifting of the moratorium on land sales, not all owners are psychologically, financially and economically ready for self-management of land, although it will allow using modern technologies of land use and protection [8, p. 48]. However, in the absence of a working mechanism to control the circulation of such lands, lifting the moratorium would be impractical.

Surprisingly, the only legal procedure for land is the possibility to rent it for 50 years in accordance with the Law of Ukraine No. 161-XIV “On Land Rent”, although each owner of agricultural land has three powers: to own, use and dispose of (alienate), but the latter is not actually realized [9].

The European Court of Human Rights ruled in the case of “Zelenchuk and Tsitsyura v. Ukraine” that the ban on the purchase and sale of agricultural land violates the Convention for the Protection of Human Rights and Fundamental Freedoms [10]. Examining the problem of the land market, in comparison with other countries, the court found that national law does not set clear boundaries for the moratorium and does not provide any reasonable justification for its continued existence.

In many European countries, the transfer of agricultural land is subject to a number of restrictions and conditions. In Austria, France, Germany, Hungary, Lithuania, Norway and Sweden, the transfer of ownership of agricultural land must be authorized by a special public authority. In general, the permitting procedure is usually aimed at maintaining the efficient use of land for agriculture, so in Austria, for example, in order to obtain permission, the buyer must provide guarantees that he or she will actually cultivate the purchased land.

Another example is Norway, where a typical condition for permission may be the obligation of the buyer to move to this land and reside there for five years. In Poland, the Slovak Republic and Slovenia, certain categories of buyers, in particular those already engaged in farming or members of their families, are exempted from the permitting procedure. However, as an option, other requirements may be set, in particular for the transfer of land ownership or preference over other buyers in Austria, Hungary, Latvia and Lithuania, the buyer is required to have education or previous experience in the agricultural sector, and legal entities have additional conditions to purchase, such as the need to obtain permission. For example, in the Czech Republic, Finland, Georgia, Romania and Serbia, there are laws that guarantee the preemptive right to purchase land, mainly by co-owners, close relatives, farmers who own adjacent plots, or other farmers, tenants, agricultural enterprises, local government authorities and in some cases – the state [10].

In its decision, the ECHR stated that there were no objective reasons for the moratorium. Given the legislation of European countries, it would be appropriate to assume that after the lifting of the moratorium, to acquire ownership of agricultural land will be able to: a) citizens of Ukraine; b) legal entities of Ukraine established under the legislation of Ukraine; c) territorial communities; d) the state.

With regard to foreigners, their legal status will remain unchanged, i.e. during the year a foreigner or a person without citizenship will be obliged to alienate an agricultural land plot that was inherited from the moment of acquiring of the right of ownership.

The main goal of land reform in Ukraine is to regulate land relations, in particular in the agricultural sector. No long-term restrictions on the land market have been imposed in various countries around the world since such a reform, despite certain time constraints on the entry into force of the relevant legislation.

Taking into account various political, economic and even scientific proposals to lift the moratorium on the sale of agricultural land, the Verkhovna Rada of Ukraine adopted in first reading the draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Circulation of Agricultural Land”

of 10.10.2019 No. 2178-10. This act proposes amendments to the Land Code, the Laws of Ukraine “On Sanctions”, “On Notaries”, “On state registration of material rights to real estate and their encumbrances”, “On State Land Cadastre” and “On State Registration of Civil Status Acts”.

Compared with the proposed changes in the Land Code, in particular in Article 130 it will be stated that acquire the right of ownership of agricultural land can: a) citizens of Ukraine; b) legal entities of Ukraine established under the legislation of Ukraine; c) territorial communities; d) the state. For foreigners, the legal constant will remain unchanged, i. e. foreigners and persons without citizenship will be able to acquire ownership of agricultural land by inheritance by law, but must alienate them within one year from the date of acquisition of ownership.

This bill establishes a certain maximum size of land plot or their totality in the following proportions: a) within one united territorial community, should not exceed 35 percent of agricultural land of such community; b) within one oblast or the Autonomous Republic of Crimea, should not exceed 8 percent of agricultural lands of such oblast or the Autonomous Republic of Crimea; c) should not exceed 0.5 percent of agricultural land of Ukraine. In addition, for these proportions there is a condition under which such lands may belong exclusively to citizens of Ukraine or legal entities created under the laws of Ukraine, taking into account related parties and final beneficiaries.

On the positive side, tenants of agricultural land will have a preemptive right to purchase it. However, if such land is sold at the price set for it, it will be a corruption risk, which will manifest itself in undue pressure on tenants, including setting exorbitant prices, and such plots will be sold at auctions to the necessary “winners”. The fact of possible installment for 5 years of payments related to the purchase of land without land auctions is neither a positive nor a negative fact, although not indisputable.

Until January 1, 2024, for legal entities, the beneficial owner (controller) of which are foreigners, persons without citizenship, legal entities established under legislation other than the legislation of Ukraine, foreign states ownership of agricultural land will not be allowed that is: 1) state and communal property, 2) privately owned and intended for the conduct of commodity agricultural production, 3) allocated in nature to the owners of land plots for personal farming economy, as well as land shares (units).

However, the above mentioned condition will not have legal force for the acquisition by agricultural producers in the ownership of land plots, which use such land plots on rent, emphyteusis, in the presence of the following conditions: a) at least 3 years have passed since the state registration of the legal entity – the acquirer of the right of ownership b) the right to rent, emphyteusis arose before the entry into force of the relevant law [11].

In any case, lifting the moratorium is a risk that can be minimized by establishing a regulated mechanism for selling land, which will be manifested in the gradual unblocking of actions against land, for example: to divide the whole process of lifting the moratorium into two stages. Therefore, in the first stage, time is given for 1–2 years to give the primary right to purchase such land to tenants and the possibility of registration the necessary paperwork by persons who have such a right on the basis of the right of permanent use, the right of lifelong inherited ownership of land plots of state and communal property.

In the second stage, allow all actions with land, but only for citizens of Ukraine and legal entities, the ultimate beneficiary of which is any foreign element. This stage should be carried out until necessary to create the necessary mechanisms, full-fledged legislation and ensure the necessary control by the state. Then you can allow all legal actions with the land.

Conclusions In addition, it would be appropriate for the state to establish certain subsidies for persons who have purchased such land and are engaged in farming, for example not to pay income tax for the first 2–3 years depending on the size of the plot, available infrastructure for cultivation and use of such land. Or the state, represented by its bodies, would offer those wishing to receive such land free of charge or for a nominal fee in exchange for a voluntary obligation to move and live on it, next to this land, and cultivate it for a certain period of 5–10 years with the right of pre-emption or full purchase.

Thus, we can assume that the lifting of the moratorium on the sale of agricultural land will be the beginning of a new stage in the development of land relations.

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Наталія ЗАБОЛОНА

Національний університет “Львівська політехніка”,
доцент кафедри цивільного права та процесу
Навчально-наукового інституту права,
психології та інноваційної освіти,
кандидат юридичних наук, доцент
Natalya.Y.Zabolotna@edu.lpnu.ua
ORCID: [0000-0002-7921-3994](https://orcid.org/0000-0002-7921-3994)

Євгенія ПАЛІЙ

кандидат юридичних наук,
Президентка Люксембурзько-української
торгової палати, м. Люксембург (Люксембург)

ПРАВОВІ АСПЕКТИ ЗЕМЕЛЬНОЇ РЕФОРМИ ЯК ОСНОВНОГО НАЦІОНАЛЬНОГО РЕСУРСУ УКРАЇНИ: АНАЛІЗ ПРОБЛЕМИ ДОСЛІДЖЕННЯ

У статті досліджено критичні питання, пов’язані з земельною реформою в Україні, підкреслюючи її значення як національного ресурсу.

Автори розглядають історичний контекст і правові виклики в процесі перетворення сільськогосподарських земель України на ефективну ринкову економіку. Оскільки сільське гос-

подарство є основою економіки країни, охоплюючи понад 68 % її загальної площі, реформування земельних відносин стало важливим для сталого розвитку України.

Основні моменти охоплюють важливість погодження правової бази України з міжнародними та європейськими стандартами, як зазначено в Стратегії сталого розвитку “Україна 2020”. У статті розглянуто ключові елементи реформи, такі як створення прозорої правової системи, лібералізація операцій із сільськогосподарськими землями та запровадження механізмів для покращення управління земельними ресурсами, продовольчої безпеки та охорони навколишнього середовища. Автори наголошують, що успішне впровадження земельної реформи залежить від створення міцної правової інфраструктури, яка збалансовує економічне зростання з захистом національних інтересів.

Крім того, у статті висвітлено чинну законодавчу базу, зокрема Земельний кодекс України та Конституцію, які визнають землю громадським ресурсом під державною охороною. Проведено критичний аналіз дискусії, яка триває, щодо скасування мораторію на продаж сільськогосподарських земель і досліджено, як цей процес може вплинути на сільськогосподарський сектор, економіку та землевласників в Україні.

Автори також порівнюють досвід земельної реформи України з іншими європейськими країнами, досліджуючи, як міжнародні практики можуть сприяти вдосконаленню національної політики. Особливу увагу присвячено правовим, економічним і соціальним наслідкам впровадження повномасштабного ринку землі, включно з потенційними ризиками та перевагами для сільських громад і сільськогосподарських підприємств. Загалом стаття надає всебічний аналіз земельної реформи в Україні та пропонує практичні рішення для подолання правових та економічних бар’єрів на шляху до сталого управління земельними ресурсами.

Ключові слова: аграрні відносини, земельна реформа, сільськогосподарські землі, аграрне право, природні ресурси.