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Problems of land reform

Goal. To investigate the process of reforming land relations and ways of completing the land reform. **Methods.** Analysis, synthesis, generalization. **Results** The peculiarities of implementation of land reform, its legal, land management and land-cadastral support are considered, the principles, directions and mechanisms for completing the reform are worked out. **Conclusions** It is proposed to develop a National Report on Completion of Land Reform and the concept of the relevant State Program.

Key words: land reform, land relations, land legislation, land management, land cadastre.

As you know, the land of our country, the 25 th year are in a state of reforming land relations. The land reform was started on March 15, 1991, in accordance with the Decree of the Verkhovna Rada of Ukraine of December 18, 1990 [9] and the Land Code, adopted on the same day [4]. First of all, it should be recalled that we started the land reform in a part of another state - the Soviet Union - and were limited to the adoption of national land legislation.

If for the adoption of December 18, 1990, the new Land Code of the Ukrainian SSR was able to receive additional votes of 10 deputies, then we could already have the right of private property of Ukrainian citizens to land. The legal grounds for such a decision existed, since the Declaration of State Sovereignty of Ukraine, adopted on July 16, 1990, established that the land is the property of the Ukrainian people. Later, this provision was reproduced in the Constitution of Ukraine (Article 13).

Principles of land reform have never been unambiguously assessed. Reform In 1861, it was interpreted not as a means of abolishing Christianity, but as a factor in the further abolition of the peasantry. The Stolypin reform was evaluated mainly from the point of view of the destruction of communal land use and agricultural management of the country. The fact that, as a result of these reforms, the peasants of Ukraine got ownership, in the order of redemption, more than 10 million acres of land, official sources were silent. In the Russian mass media, it was not reported that the well-known Decree on Land banned the confiscation of lands of ordinary peasants and ordinary Cossacks. They also became the object of nationalization. The peculiarity of the land reform of independent Ukraine was, first of all, that the land was transferred to the property of citizens on a royalty-free basis. And if in the past, in 1990, only 6 million citizens had land in use, then as a result of the reform, their number increased to 25 million, and the area of private property exceeded half the land area of the entire state. Even in a democratic country like the United States, land was not transferred free of charge during the reform process in the property. We did not use the American principle "for one acre - one dollar", although there were a lot of suggestions on this issue.

We did the right thing in not dividing the agricultural land among all the citizens of Ukraine. In this case, the peasants would lose 3/4 of the agricultural land, which would have passed to the urban population. And the decision on such a division was approved formally.

During the reform, the right to private ownership of land for citizens also failed, which was not perceived by the population and, in particular, the Communist Party leadership of the state. As a result, measures were taken to privatize land and to reform agricultural enterprises. Decisions of the President of Ukraine 1994, 1995 and 1999 gave a serious impulse to accelerate the land reform.

Analyzing the traversed path, one can not but mention the particular complexity and social significance of land reform. It should be noted that in our country a new land system has practically been formed: the state monopoly on land was liquidated, the transition to various forms of land ownership was carried out, a free redistribution of land for the benefit of our citizens was carried out, paid land use was introduced, objective preconditions for treatment of land plots [2].

An undeniable positive result of the land reform for the agrarian sector was the creation of legal and economic conditions for the transformation of collective farms and state farms into much more flexible production structures capable of self-improvement and adaptation to changes in the economic situation.

Instead of 12 thousand reformed collective farms and sovkhozes, which had 27.6 million hectares of land, 38 thousand new agribusinesses were created, of which 8.8 thousand were limited liability companies, 5.7 thousand - private (private lease), 680 - joint stock companies, 820 - agricultural cooperatives, 15,5 thousand - farms, 6,5 thousand - other business entities.

Significant work was done on the reform of urban land use, primarily through the transfer to private ownership of land plots of individual housing construction and collective gardens, the introduction of land within cities into circulation, the organization of the urban land market.

Reforming land relations, however, is not devoid of a number of significant disadvantages. This concerns first and foremost the problems of land redistribution, which resulted in the grinding of land masses, the loss of the boundaries of sustainable land use, the violation of crop rotation, and the neglect of measures to protect the land stock. One of the fundamental tasks of the land reform - rational use and protection of land - is too freely implemented.

Serious problems have been created with regard to the formation of communal ownership of land, the realization of land ownership rights and the introduction of land markets. Significant problems in the field of land relations regulation, combating land degradation, and land administration are related to the fact that Ukraine did not develop a nationwide program of land reform, land use and land use programs, land relations development programs. Work on land conservation, state land cadastre management, and the implementation of land management were not sufficiently financed from the state budget. The constitutional provision that the land as the main national wealth is under the special protection of the state, did not find real incarnation.

In accordance with the Land Code in 1990, new types of land use were introduced - life-long inherited possession for citizens and permanent possession for agricultural and forestry enterprises. These forms brought the right to land to limited private ownership, but they were deprived of a more important function - the allocation of land owned by the owner, including private ones. Private and collective forms of ownership were introduced on January 30, 1992, in connection with which a new stage of land reform began, the essence of which was the privatization of land [7].

The process of transferring land to collective ownership, carried out quite dynamically, did not become a factor in improving the efficiency of agricultural production. It became obvious that the way of redistribution of land for the reform of land relations could not be limited, although the number of peasant (farmer) farms in Ukraine was constantly increasing (by the end of 1994 there were 32 thousand).

On November 10, 1994, the Presidential Decree "On Urgent Measures to Accelerate Land Reform in the field of agricultural production". With its adoption, the main emphasis of land reform in our country began to shift towards the reform of land relations in collective farms. In particular, according to the Decree of the President of Ukraine of August 8, 1995, land coving was conducted.

At the same time, each member of the enterprise, cooperative or partnership issued a certificate for the land parcel (share). The right to a minor share (share) became the object of purchase, sale, donation, mines, inheritance, collateral.

The Verkhovna Rada, declaring all land in Ukraine since March 15, 1991, was the subject of a land reform, clearly assigned functions related to the management of reform and implementation of tasks for the reform of land relations. In particular, the Government was entrusted with the task of resolving the issue of establishing an appropriate body for land reform, allocating the appropriate funds and material and technical resources necessary for the reform, ensuring the provision of the necessary number of specialists in land surveying, and jointly in the higher educational establishments with local councils, to carry out a series of works related to the reformation of land relations.

The State Committee of Ukraine for Land Resources, which was directly subordinated to the Cabinet of Ministers of Ukraine from 1991 to 2000, was established in a timely manner to ensure the organization of the implementation of land-reformed works. In accordance with the Decree of the President of Ukraine of January 6, 1996, a unified system of state bodies of land resources was formed.

Currently, the central executive body, which by January 2015 was called the State Land Resources Agency, is referred to as the State Service for Geodesy, Cartography and Cadastre.

we have undergone significant changes both in the structure of the green fund for the main types of land, and for the main land users and land owners. In particular, the area of agricultural land for 1991 - 2015 decreased by 520 thousand hectares. This is much larger than the total area of such lands, for example, in the Transcarpathian region. The reason for this change is due to the significant use of land for non-agricultural needs. The area of built-up land has increased by 370 thousand hectares.

The most significant changes occurred in the distribution of the land fund by ownership, which is a direct consequence of the land reform. If in 1990 all lands were state owned, now their share is 47.9%, and private lands have reached 31.4 million hectares, or 53% of the country's territory.

Ukraine is characterized by an extremely high level of agricultural development in the territory, which far exceeds the ecologically sound limits. Compared to European countries, whose arable land occupies 30-32% of the total area, the Ukrainian land plots reach 53.8%. According to the level of erosion of lands and other qualitative indicators (salinity, solosity, repossessibility, etc.), the land fund of the country has a steady tendency to deteriorate. This is due to the violation of scientifically grounded principles of land use and the foundations of agriculture, in particular non-compliance with crop rotation, reduction of volumes of agrochemicals, especially fertilizers, especially organic ones.

In today's context, when there is no credible reform program, it is especially important to determine which criteria should be used to assess its completeness.

According to the Decree of the Verkhovna Rada of Ukraine of December 18, 1990 (with subsequent changes), the main tasks of the land reform were defined:

- 1) redistribution of land with the simultaneous transfer of them into private and collective ownership, as well as for use;
- 2) creation of conditions for the equal development of various forms of management on the ground;
- 3) the formation of a multi-faceted economy;
- 4) rational use and protection of land.

These land-reform tasks in the early years of the reform were implemented in accordance with the Land Code of the RSFSR of December 18, 1990, the Land Code of Ukraine of March 13, 1992, the Verkhovna Rada of Ukraine Resolution "On accelerating land reform and privatization of land" of March 13, 1992 p. 5, the relevant laws of Ukraine and the Decree of the Cabinet of Ministers of Ukraine "On Privatization of Land Plots" [1].

During 1994-1999, to accelerate the land reform by decrees of the President of Ukraine "On Urgent Measures to Accelerate Land Reform in the Field of Agricultural Production" of November 10, 1994, "On the Procedure for Paid Land Transfer to the Collective property agricultural enterprises and organizations" of August 8, 1995 [10], "On Non-Immediate Measures to Accelerate the Reform of the Agrarian Sector of the Economy" of December 3, 1999 [11] defined the legal provisions and the procedure for implementation of a significant amount works on reforming land relations.

During the period of 1991-2000, the national or republican (Autonomous Republic of Crimea) or regional programs of land reform were not developed.

A wide range of issues related to land reform contains program documents of the Government and parliamentary majority of the Verkhovna Rada of Ukraine.

Assessing the general state of implementation of measures for land reform should proceed from the following criteria:

- realization of tasks defined in 1990 in accordance with the Verkhovna Rada (as amended) and developed by the 1991-1992 bills and decrees of the President of Ukraine 1994, 1995 and 1999;
- completeness of the legal framework, organization of the system of management of the reform, definition of measures of land management and land and cadastral support.

Taking into account the expert analysis, the completion of the land reform can be linked to solving the following issues: the formation of communal property; ensuring the implementation of the constitutional powers of land owners; Consolidation of agricultural land; the completion of the formation of a legal field defined by the Land Code; change in the direction of land management and improvement of land cadastre.

Ensuring the real formation of the ownership of territorial communities on land and guaranteeing the constitutional rights of individuals and legal entities remains the most serious problem of completing the reform. The Law of Ukraine of September 6, 2012 "On Amendments to Certain Legislative Acts of Ukraine Regarding the Distinction of Land in State and Communal Property", which entered into force on January 1, 2013, it has been established that since the date of the coming into force of this Law the land of state and communal property in Ukraine is considered to be delimited [3].

Thus, as of January 1, 2015, according to the state statistical reporting, which is conducted by the State Geocodist of Ukraine, the area of communal property in the country is only 12.6 thousand hectares, and the area of state-owned land is 28886 thousand hectares. Thus, land of state and communal ownership is still practically not delimited, since the size of the land of territorial communities of villages, settlements, cities should be at least 300 times bigger, and the area of state-owned land is 3.5-4 million hectares lower.

If the Constitution of Ukraine establishes that the bodies of state power and bodies of local self-government exercise the rights of the owner (possession, use, disposition) within the limits specified by the Constitution, then the laws provide that the right of ownership on the land of state and communal property occurs only after the state registration of this right. Consequently, the lack of registration reduces the constitutional right of the owner.

The registration of the right of territorial communities to land in full in the manner prescribed by law requires decades of time that is unacceptable. This problem should be solved by inventorying the relevant land plots with the transfer of its data to the cadastre for 2-3 years.

In accordance with the Constitution of Ukraine, ownership of land is guaranteed. This right is acquired and realized exclusively in accordance with the law. Consequently, possession, utilization and disposal of land is the constitutional right of the owner. According to Art. 41 of the Constitution of Ukraine: "No one shall be unlawfully deprived of property rights. The right to private property is immutable. Forced alienation of the objects of the private property right can be applied only as an exception to the motives of social necessity "... Taking into account these norms, it should be borne in mind that alienated from citizens for public needs land plots of private property can not be provided in property to other persons. They should become the property of the state or of the territorial communities that represent the public needs or the general necessity.

The use of land and land shares formed as a result of land plots under lease conditions by legal entities (agroholdings, farms, and other enterprises) caused serious shortcomings in land use (mismatch land use, through mussels, depersonalization of landowners' landowners, etc.) and requires the implementation of works on the formation of land use and consolidation of agricultural land, especially in connection with the consolidation of territorial communities and districts.

The practice of using land, divided into land parcels (shares) and leased in arrays, indicates that they are processed as united arrays. There is no boundary between sites in practice, field paths for access to specific sites are also not organized.

Under actual conditions, it is possible to raise the question of creating arrays of joint partial ownership instead of individual sites that are projected, but do not exist in nature. Given the specific conditions and environmental requirements it would be advisable to form fields of crop rotation on the right of joint partial ownership of citizens, increasing the size of the co-owners' land lots (shares) at the expense of the projected, but non-existent natural roads, and to draw up lease contracts for each field in general rather than on separate plots (units) of citizens.

It would be advisable to develop appropriate pilot projects and discuss them with the public, first and foremost, with share holders.

In the case of non-implementation of joint partial ownership, it would still be necessary to form the fields of the optimal size from the shares (units) and, in each field, ensure that each share in the field is leased to one lessee in accordance with the proposals of the Coalition Agreement of the Verkhovna Rada of Ukraine . It is necessary to put an end to the practice where the fields are formed without any ecological and economic justification - only on the basis of concluded contracts at the discretion of the tenant.

There is a blocked circulation of agricultural land parts used for commodity agricultural production, due to the moratorium on their alienation. This is the reason why these lands are used mainly on lease terms.

The moratorium restricts the possibility of consolidating land that has been crushed as a result of land reform to small medium-sized land divisions and the formation of investment-attractive land masses for large-scale production.

By this time, the draft National Program for Land Use and Protection has not been submitted to Parliament, although according to Art. 14 of the Constitution of Ukraine: "... The earth is the main national wealth that lies under a special protection of the state "[5], and the Law of Ukraine of 19 June 2003 requested the Cabinet to submit this bill in July 2004. The State Target Program for Land Relations until 2020, the concept of which was approved by the Cabinet, was not approved. Ministers of Ukraine on June 17, 2009.

Unlike other natural resources, the country, as the main national wealth of the state, still has neither the National Program for the Use and Protection of Land nor the Land Development Program. This explains why land protection, land cadastre, land management, and other work have almost no state funding.

The fundamental change in the system of land relations regulation due to the reform of the administrative and territorial structure of the state, the decentralization of power and the reform of local self-government, in particular the introduction of its general nature, requires the change of powers in the field of regulation of land relations of oblast, Kyiv and Sevastopol city, district, salt - village, town, city councils. The functions and organs of executive power are significantly changed.

First of all, the responsibilities of local councils should include the issue of land cadastre management at the regional and local levels, the disposal of land within the territories of the respective councils and communities, and the exercise of self-regulatory control over land use in the communities and councils.

Since land sales are carried out in a country on a permanent basis, the legislative regulation of agricultural land can not be linked to a moratorium termination or prolongation. The said legislative act is necessary to regulate the market circulation of these lands in general. The content of the law on the circulation of agricultural land should include:

- a prohibition on acquiring agricultural land for the benefit of foreigners. This prohibition may be applied until Ukraine receives the status of a member of the European Union;
- restrictions on the area of land that may be owned by one person (such area according to the Land Code of Ukraine there are areas up to 100 hectares);
- the possibility of selling land plots to socially unprotected owners of land shares (their redemption by the state and territorial communities), as well as acquisition land plots by private peasant and farmer farms for agricultural production. In the structure of executive power, it is advisable to restore the central body for managing land reform and regulating land relations with the coordination of its activities directly by the Cabinet of Ministers of Ukraine or the Minister of Agrarian Policy and Food of Ukraine.

The service of geodesy and cartography may function as an independent central executive body.

Implementation of land policy at the regional and local levels on land relations regulation, land management, land cadastre management, land conservation, etc. should be concentrated in relevant local government bodies [6].

Activities in the field of land management should focus on land-securing the processes of decentralization of power, the formation of a new system of administrative-territorial division and reformation of local self-government. In view of the formation of new rayons and territories of communities, issues of development on the above-mentioned issues become especially relevant areas of land management schemes, agricultural holding projects, farms, and soil protection.

It is necessary to restructure the land cadastral documentation, which has provided the State Land Cadastre with the restoration of powers of the land resources bodies for the state registration of rights to the land plots in order to eliminate dual state registration of land plots as part of the State Land Cadastre, and rights to these same sites as part of the State Register of Rights to Real Estate.

Ensure the quantitative and qualitative accounting of the land fund, registration of the boundaries of administrative-territorial units that will be formed as a result of administrative-territorial reform, transparency and accessibility for the population of land-cadastral documentation.

It is necessary to restore the state statistical reporting, approved by the Order of the State Statistics Committee of Ukraine dated November 5, 1998, No. 377, which was carried out during 1999-2015 for forms

No. 6-zem; 6a-earth; 6b-earth; Land 2 and was abolished from January 1, 2015 by the Law of Ukraine "On State Land Cadastre".

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