

Conceptual-categorical apparatus of the right of fixed use by the land plots

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The purpose. To formulate conceptual-categorical apparatus of a component of state and municipal property on land — the rights of fixed use in view of bunch of rights of elements of economic, ecological and legal relations. **Methods.** Monographic, analytical, dialectic. **Results.** Ukrainian legislation does not completely takes into account modern reaching in economic theory regarding specification of property rights not only under the content (bunch or a part of rights of use, instead of the rights to a thing), but also under the form. Article 317 gives the content of property rights in certain limits of property rights in the certain limits of rights of possession, use and settlement of property. On the basis of analysis of institutional security of right of fixed use conceptual-categorical apparatus is developed of right of fixed use of land plots, built on a bunch of rights with certain competences in: possession; use; control; right to profit; safety, including ecological; right to transfer land area to assignees of property; indefiniteness which means absence of temporary boundaries in realization of legitimacy of «rights of fixed use»; right on balance, that is compulsion of retrace of the transmitted legitimacy on land balance depot stock in case of public necessity; exclusion on harmful use. **Conclusions.** Definition and expansion of components of conceptual-categorical apparatus «rights of fixed use of land» as not the full property as an asset. Application of its basic components enables to improve normative-legal base, which regulates land relations, and to raise efficiency of use of land resources. Thus state will ensure protection of rights of all subjects of property right, social directedness of economy.

Key words: *property, right of fixed use, land area, bunch of rights, competences, land ratios.*

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Introduction. According to the Article 79 of the Land Code of Ukraine [1], a **land parcel**, being an object of the right of ownership, is a part of the Earth surface with the set boundaries, definite location, and approved rights of its employment. The right of ownership of a land parcel also refers to the top (soil) layer within its boundaries, as well as water objects, forests and perennials, which are on the land parcel, in case something different is approved by the law and does not violate rights of other people. The right of ownership for a land parcel refers to the space above its surface at the height and at the depth, which are necessary for constructing of residential, productive and other buildings. According to the paragraph 1 of the Article 78 “Content of the right of land ownership”, **the right of the land ownership** is the right to possess, use and administer land parcels.

Kulynych O.P. [2] notes that in juridical publications, the right of private ownership of a land parcel is considered as “... an absolute right of a person to a land parcel, which is exercised according to the law on his/her own free will, regardless of the will of other people”. A list of actions, which can be done by the owner of a land parcel within his/her authorities, are not defined or limited by the law. It is the feature of private ownership of a land parcel as the absolute right by its content, comparing to the essence of other property rights for land.

Thus, one should affirm that **basic rights of land ownership include possession, use and disposal of it.**

Analysis of the recent researches and publications. Right of ownership is a basis for constitutional rights in economic sphere. Alchian A. is considered the ideologist of the theory of ownership rights. The theory was developed by such economists as R. Coase, J. Barzel, H. Demsetz, R. Posner, S. Pejovich, D. North, T. Eggertsson, O. Williamson, E. Furubotn and some others [3 – 11].

The aim of the research. To improve the normative legal base for economic and ecological regulation of land relations by means of the developed framework of categories and concepts for the right of permanent use of such assets as land parcels.

Findings of the research. Article 316 of the Civil Code of Ukraine defines the right of ownership “as a right of a person to a thing (property), which he/she exercises according to the law on his/her own free will, regardless of the will of other people”, which meets triad of the Roman law [12]. Thus, drafters of the Civil Code have not completely considered modern findings of the economic theory in terms of specification of the rights of ownership not only by their content (a complex or a share of rights to use, not rights to possess a thing), and also by its form, because the Article 317 of the Civil Code sets that the right of ownership is within the boundaries of the rights to possess, use and administer the property [5, 12].

One of the variants to make structuring of the ownership rights includes:

- ✚ a right to use the thing;
- ✚ a right to get income from the thing use;
- ✚ a right to transform the physical form and substance of the thing;
- ✚ a right to delegate the mentioned authorities to another person (*to donate, to leave, to sell, to give for a time period*).

Definitely, such broad interpretation of the rights of ownership is unlawful concerning land resources!

The proposed variant refers to the neo-institutional economic theory of the right of ownership, which is focused on the rights of physical actions concerning things. On one hand, it supplies new opportunities for exercising of the right of ownership within the limits “one thing – many owners”, on the other hand – it mainly meets the modern tendencies of economic development concerning use of the property as an economic resource: **the right of permanent use**, right of lease and other limited property rights.

In that aspect, it is worth considering the work by English lawyer A. Onore [3]. He defines the following authorities of an owner:

- ◆ a right to possess, which secures a possibility to make physical control for a thing;
- ◆ a right to use, which refers to the things, which are possessed both for immediate and for mediation use;
- ◆ a right to administer includes a possibility to determine direction of the thing use (*in the current research, it is a land parcel or land use*), as well as people, who are permitted to the resource, and the procedure of such access;
- ◆ a right to get income, due to immediate use of the thing (*a land parcel*) or use of the thing by other people (*income in an imaginary form, i.e. monetary or natural*);
- ◆ a right for capital (*or capital value*), which expects an opportunity to donate, sell, transform the form or abolish the property;
- ◆ a right of safety, or immunity from expropriation;
- ◆ a right to transfer the things to heritors;
- ◆ continuity, which means absence of any temporary boundaries in rights exercising;
- ◆ a right of the ultimate character, i.e. obligatory return of the rights for some property, delegated to somebody else, after completion of the term of agreement or expiring of the last;
- ◆ prohibition of dangerous uses, which are harmful to the environment.

According to O.Ye. Rubel [13], it is a “negative” right, which does not permit to use the thing (*in the current research, it is a land parcel or land use*) in the manner, which causes harm to the lands,

environment or property of other agents. The mentioned authority is a reason to set boundaries between exclusiveness of the right and its absolute character, i.e. responsibility in the form of charges.

The right of ownership is a basis for institutional economics, while the right for **“safe land use”** is a basis for economic and ecological theory. Text of the Article 14 of the Constitution of Ukraine [14] says: “Land is the principal national wealth, which is particularly protected by the state”. The state secures the right of land ownership. The right is gained and exercised by the citizens, legal entities and the state in accordance with the laws. The Article 13 states that land, its resources, air, water and other natural resources, which are within the boundaries of the territory of Ukraine, natural resources of its continental shelf and exclusive (maritime) economic zone are objects of the ownership right of Ukrainian people. On behalf of Ukrainian people, the right of ownership is exercised by the state bodies and local authorities in accordance with the norms, approved by the Constitution. Each citizen has a right to use natural objects of the right of public ownership in accordance with the law. The property sets liabilities. The property cannot be used for harm of people or society. The government ensures the rights of all people, who have the right of ownership and economic activity, as well as secures social focus of the economics. The law is applied to all people having the right of ownership without discrimination.

Thus, deterioration of land resources quality (*including soil top layer*), employment of the resources of common use (*waters, forests, mineral resources of common use*) are defined as transactions, particularly transactions of disposal of land and environmental rights. Size of those transactions can be measured (*besides personal expenditures*) by assessing of harm, committed to social environment.

It means that ownership of land, as a basis of land relations, should be developed by creating of economic content of land ownership. Considering a particular social importance of land as an object of ownership, it is necessary to study the subjects of land ownership and land use as the objects of land benefits. Moreover, Tretiak A.M. considers that a complex of main elements of economic, ecological and legal relations, but not people, who have the right of ownership, should be taken as a formative factor. The complex includes:

- 1) instruments to appropriate land parcels as the reasons and results of organization of rational land use, a peculiarity of disposal of land benefits;
- 2) instruments to establish types of land use with consideration of the principal kinds of economic activity and changes of the intended use of land;
- 3) reasons and ways of redistribution of land and income, obtained in the process of the land employment;
- 4) methods of land (soil) productivity reclamation.

The right “to use and administer” expects a possibility to choose:

- to exercise the right personally, getting income;
- to submit it to another person, getting dividends;
- do not use personally and do not transfer to others.

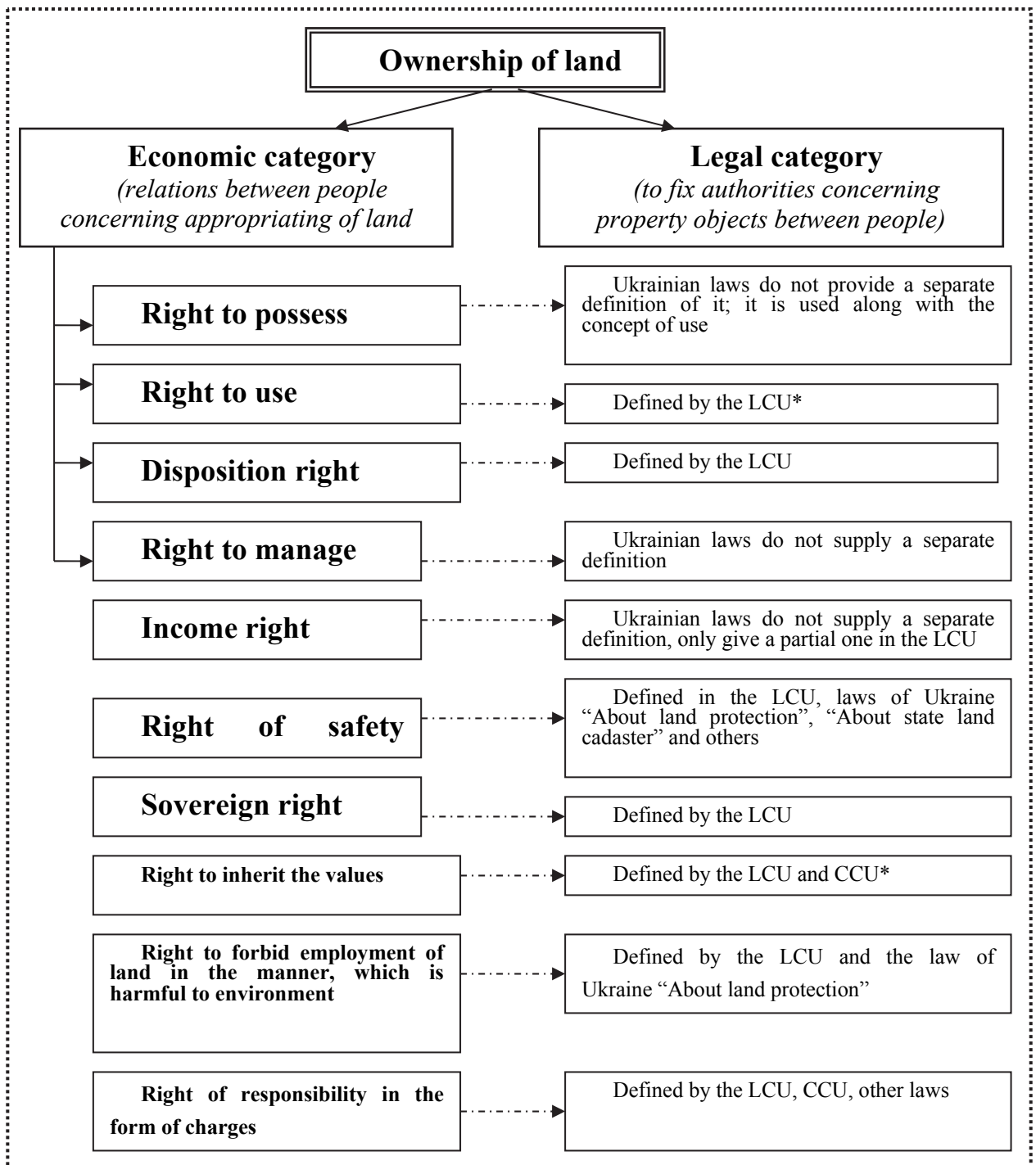
Tretiak A.M. considers that exercise of the right “to use and administer”, particularly a land parcel, is possible only in case when someone, who exercises the right, also uses his/her skills, e.g. human capital. Thus, **“use”, as a component of the right of land ownership, is considered as an active one, because it is closely connected with employment of natural and human capital.** However, it is of no importance either the land parcel is employed by its owner, or by somebody else.

The carried analysis of the features suggests that the category of land ownership should be considered in two aspects: **economic content and legal form**. In the modern Western economic theory, there is a juridical interpretation of ownership as relations of appropriating, which have been objectively established, and as manifestations of a social need to assign that is already acting in practice. Thus, the modern approach to the essence of the concept of land ownership can be represented in the form of a logical scheme (Fig.).

Appropriating is a principal and crucial aspect in the content of ownership, i.e. disposal of an object of property by a subject. The phenomenon of ownership should be separated from the phenomenon of possession, use (*including the right of permanent use*), administrating, and particularly from the right to manage.

Considering principles of non-institutional economic theory and research by A.M. Tretiak, let us study some of them:

- the right to manage is a right to decide who and how will use the values. Ukrainian laws do not provide a specific notion or content of the right. It deals with determination of the essence and content of the rights of land parcels' owners concerning management of the land parcels by employing and protecting land and other natural resources, which cannot be separated from the land parcels (*land use*);
- the income right is a right to hold results of the values. Thus, the Article 90 "Rights of the owners of land parcels" of the Land Code of Ukraine [1] says that owners of land parcels have the right of independent economic activity on the land and owning of the crops and plants of agricultural and other crops, as well as produced goods;



* LCU – Land Code of Ukraine, CCU – Civil Code of Ukraine

Content of the notion of land ownership as an economic category

➤ the sovereign right is the right of disposal, consumption, transformation and liquidation of values. Particularly, the paragraph (a) of the Article 90 "Right of the owners of land parcels" of the Land Code of Ukraine [1] says that owners of land parcels have the right to sell or administer a land parcel, submit it to lease, use available common mineral resources, turf, forest, water bodies, and other valuable properties of land, which are available on the land parcel, for personal needs in the approved order, to construct residential buildings, production and other buildings and constructions;

➤ the right of safety is the right of protection from expropriation of values and harm to environment. Thus, the paragraph "e" of the Article 90 "Rights of the owners of land parcels" of the Land Code of Ukraine [1] says that owners of land parcels have the right to compensate for losses in legally approved cases;

➤ the right to inherit values is defined by the paragraph "a" of the Article 90 "Rights of the owners of land parcels" of the Land Code of Ukraine [1], which says that owners of land parcels have the right to inherit the land parcels;

➤ the right of permanent possession of a value;

➤ the right to forbid employment of the value in the manner, which causes harm to environment, particularly the Article 91 "Obligations of the owners of land parcels" of the Land Code of Ukraine [1] defines that owners of land parcels are obliged to use the land parcels according to their intended use, keep to legal requirements concerning environmental protection, improve fertility of soils and protect other valuable properties of land, bring the land parcel to the previous conditions at their own expense in case of illegal relief transformation, except for the transformation is done not by the owner of land parcels and thus, it should be brought to the previous conditions at the expense of that person;

➤ the right of responsibility in the form of charges is an opportunity to charge values as debt payment. Thus, the paragraph "a" of the Article 90 "Rights of the owners of land parcels" of the Land Code of Ukraine [1] says, that owners of land parcels have the right to submit their land parcel in security and thus, to pay debts;

➤ the right of residual character is the right to make procedures and institutes, which secure recovery of violated titles of owners. Thus, according to the Article 152 "Ways to protect the right to land parcels" of the Land Code of Ukraine [1] defines that the government secures equal conditions of protection of the right of land ownership for citizens and legal bodies. Particularly, an owner of a land parcel or land-user can require correction of any violation of his/her right to land, even in case those violations are not connected with dispossession of the land parcel, and compensation of losses.

According to the Article 92 of the Land Code "Right of permanent use of a land parcel" is the right of possession and use of a land parcel of state or communal ownership without a defined period. Kulynych O.P. suggests [2] that the authority of possession of a land parcel, as an object of ownership right, should be divided into two sub-kinds: title and actual. Title possession appears from the moment of the title registration by the state and receiving of documents of entitlement (*certificate of the right of ownership or extract from the register of the state property rights*).

O.P. Kulynych [2] considers that authorities **to use a land parcel**, as an object of the right of private ownership, are the owner's activities concerning use of valuable properties of the land parcel as production means, object of an operating basis, natural resource or real estate, referring to its intended use. Thus, there is a question what authorities of the A. Onore's set of rights [5] refer to the subject of the right of permanent use of a land parcel as one of the principal components of the ownership right? For permanent use, the authors of the work propose to distinguish the following ones:

◆ the right to possess, which is revealed in a secured possibility to make physical control for the land parcel;

◆ the right to use referring to other natural resources, which are defined by the Article 79 of the Land Code of Ukraine, are inseparable from the land parcel and possessed to obtain direct and intermediary benefit;

- ◆ the right to manage, which includes a possibility to decide about directions of the land parcel use according to its intended use, defined by the land laws in force (*in the current research, it is order and regime of land use*), as well as a circle of people and procedure of their access to the land resource;
- ◆ the income right, which can appear due to immediate use of land parcel (*income in an imaginary form, either monetary or natural*);
- ◆ the right of safety, including environmental one;
- ◆ the right to submit the land parcel to legal successors of the property;
- ◆ continuity, which means no temporary limits in exercising of the authorities of the **“permanent use right”**;
- ◆ the right for remainder, i.e. obligatory return of the submitted title concerning land use in case social necessity;
- ◆ prohibition of harmful use.

Conclusions

Basing on the carried analysis of the essence of the right of land ownership and the derived right of permanent land use, the work expands the framework of categories and concepts of the last. Particularly, the research defines constituents of the “right of permanent use of land” as partial ownership of land in capacity of assets. Among the mentioned authorities, two aspects need additional deeper study, i.e. right to manage land use and prohibition of harmful use. Essence of the right of management, which decides concerning direction of the possible use of a land parcel referring to its intended use, approved by the land laws in force, as well as a circle of people and procedure of their access to the land resource, will be studied in the future research.

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