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Legal Issues of Agricultural Land Use by Owners and Workers

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Abstract. The study investigates the problems of compliance with the legislative requirements in the use of agricultural land in Ukraine, depending on who directly extracts useful properties from such land plots: employees of agricultural enterprises, or the owners of these lands – farmers, members of agricultural cooperatives, citizens who engaging in agricultural production activities individually. The article provides examples of the impact of the activities of workers and the labour of agricultural landowners on the state of land use, compliance with environmental safety requirements, deterioration, and improvement of the quality of land plots. Research of legal issues of targeted, rational, and efficient use of land plots, ensuring the requirements for the preservation of the natural environment, biological diversity and ecosystems contained in the study, provide an opportunity to draw certain conclusions, the essence of which comes down to the fact that the current state of legal relations concerning the use of land plots by employees and landowners needs to be reformed. This is conditioned upon the fact that employees are not motivated to improve the quality of land and its soils, comply with environmental safety requirements, and preserve biological diversity in ecosystems that include the corresponding land plots. Since the main motivation is to obtain a certain benefit, and sanctions for non-compliance with the requirements of legislation in the field of land protection are inefficient, the use of hired labour in agriculture is often described as a negligent and mindless attitude towards land use and ensuring environmental safety. But the owner or user of a land plot that uses it as a farmer, cooperative member, entrepreneur, etc., is motivated not only to make a profit at a given time, but also to improve its quality characteristics, ensure environmental safety, and preserve ecosystem biological diversity, since this is a factor in the stability of obtaining profits from agricultural activities performed on a certain site and in the future

Keywords: environmental safety, biological diversity, ecosystems, soil quality, right to use land plots, agricultural activities, land legislation



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INTRODUCTION

The functioning of the agro-industrial complex is characterised by the establishment of land relations, which are based on the use of agricultural land. Modern conditions of land market reform, particularly the removal of restrictions on the sale of agricultural land, qualitatively and quantitatively change the principles of their use, according to which the need to establish a correspondence between the agricultural sector activities and land law becomes relevant. At the same time, since land is both a natural base of the economic sector of the state and a means of agricultural production, it is important to consider it in the context of rational and efficient use, which determines the relevance of the research topic.

It should be noted that the issue of agricultural land use has been repeatedly studied by a number of Ukrainian and foreign scholars. Thus, K. Sosiedko and M. Palmieri focused on the analysis of the legislative component of the land market in accordance with the land reform in Ukraine [1]. R. Stupen, M. Stupen, Z. Ryzhok, and O. Stupen in their study searched for key issues in the functioning of the agricultural land market, based on which they proposed their method of determining the market value of land plots [2]. V. Kurylo, P. Pantalienenko, and others considered a separate aspect of agricultural land use, in particular, "fragmentation in different agro-climatic zones of Ukraine" [3]. Based on empirical research, scholars have concluded that the issue of land fragmentation is complicated by improper legal regulation. At the same time, according to agro-climatic zones, researchers have established the peculiarities of fragmentation in the mountain area of Ukraine [3]. The scientific works of I.O. Kostyashkin, N.I. Chudyk-Bilousova and others are of particular importance for the current study [4]. The authors conducted a comparative analysis of the functioning and legal regulation of the land market in Ukraine and European countries. Thus, scientists have found that in the context of the full implementation of land relations, it is advisable to consider the factor of land lease. Turning to the experience of legal regulation of land relations in European countries, it is important to emphasise such aspects as "establishing restrictions on the size of the land plot, control of changes in its intended purpose or the establishment of a ban on such activities, as well as restrictions on the right to purchase land by foreigners" [4]. At the same time, in the process of establishing a correlation between Ukrainian and European experience in the legal regulation of land use, it is impossible not to mention the prevalence of farmland tenure in European practices. I.O. Kostyashkin and N.I. Chudyk-Bilousova think

that in this way the land fulfills its social role [4]. In the end, the topic of rational and efficient land use is revealed by such authors as O. Zaiets, Yu. Vlasenko and others [5]. Scholars emphasise the importance of environmental friendliness in the process of land reform. In this context, it is a question of legal regulation of land melioration and the use of pesticides and agrochemicals during land use.

Therefore, according to the above, it can be argued that the study of the legal nature of labor in the farm is relevant, given the uniqueness of the very form of land use [6; 7]. Researchers note that this uniqueness is due to the fact that it is created by uniting individuals on the basis of membership in a certain production and social group, the purpose of which is to make a profit through the production of agricultural products [8; 9]. This association is based on the fact that the citizen decides to acquire the status of a member of the farm, thereby assuming certain responsibilities due to the need to transfer his land for use to the specified entity, as well as mandatory labor participation in the activities of the farm itself.

Given the above, *the purpose of the study* is to determine the range of problematic issues of agricultural land use in accordance with the subjects of land relations, owners, and employees in particular.

FACTORS INFLUENCING MOTIVATION FOR TARGETED, RATIONAL, AND EFFICIENT LAND USE

It is worth starting with the fact that in Ukraine, relations arising over labour in the agricultural sector are formed under the influence of several factors that are closely related to each other. The first of these factors is the legal form of the economic entity that directly uses the land plot. The legislation that governs the use of land for the needs of agricultural production defines the list of entities that can carry it out. These include citizens, farms, agricultural enterprises and cooperatives, other legal entities whose main purpose is not to produce agricultural products, religious organisations, educational and academic institutions [10].

The analysis of the impact of the role of agricultural workers on the state of land use and protection should begin with farms, since today this is the most common and, ultimately, the most numerous forms of land use. Thus, according to the State Statistics Service of Ukraine, as of 2020, there are 47.6 thousand farms [11]. They process approximately 15.9 million hectares of agricultural land. Therewith, the number of farms is constantly increasing, as is the amount of land that these entities process (Fig. 1).

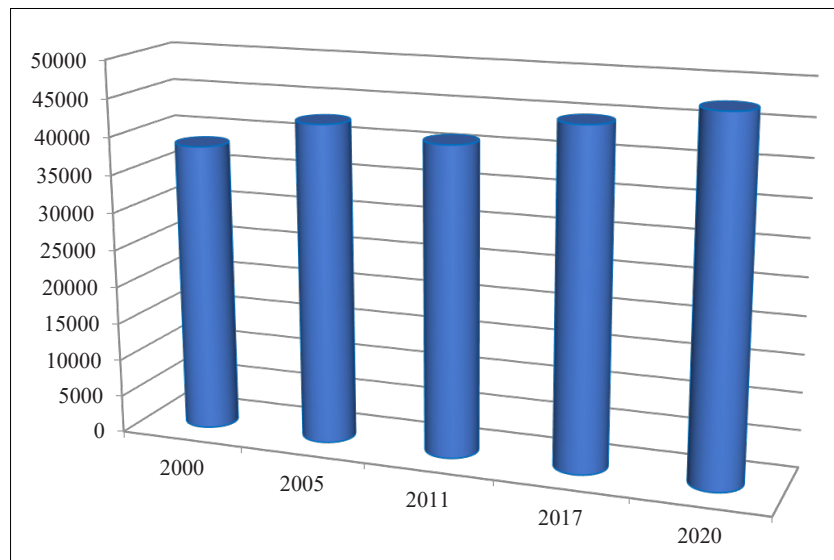


Figure 1. Statistics of changes in the number of farms on the territory of Ukraine for 2000-2020

Therefore, since the legislation governing the activities of farms determines the main division of labor into two types, in particular the work of members of the farm and the work of employees, it is advisable to consider the motivation for targeted, rational, and efficient land use in the context of the activities of each individual entity and in accordance with certain factors [12; 13]. Firstly, a farm member is not deprived of ownership of the land plot for the duration of performing certain legislatively prescribed types of labour, the need for which is caused by the status of a farm member. Ensuring the intended use of a land plot, taking measures to protect it, restore and reproduce it, and increase its fertility are the main responsibilities of the land plot owner. Consequently, a farm member who takes a personal labour part in the activities of this family and labour association is directly interested in having the land plots belonging to it used based on the provisions of Article 13 of the Law of Ukraine "On Farming" [8] and Article 32 of the Land Code of Ukraine [7] were restored, reproduced, and protected properly, and the extraction of useful properties from them took place pursuant to their intended purpose.

In case of labour of a farm member, upon performing any functions related to the implementation of agricultural land use, several factors can be traced to ensure the ownership and legality of the use of land plots [14; 15]. First of all, this is the right of ownership of a land plot, which did not cease after the transfer of the right to use it to a farm. Remaining the owner of the land and performing their labour function on it, a farm member is more interested than anyone else in ensuring that this land plot is not depleted, that the necessary fertilisers are applied in a timely manner to at least maintain the suitability of its condition and the possibility of further effective agricultural use, as a maximum – to increase fertility. A farm member, as

the land plot owner, is personally interested in ensuring that actions on its agricultural cultivation do not have an adverse impact on the overall condition.

To this end, the landowner will not allow excessive adoption of measures for the introduction of pesticides and agrochemicals, violations of crop rotation rules, and other violations of land or land protection legislation. To ensure such prevention, the legislation on the activities of farms gives the farm member the right to vote in making decisions concerning the nature and procedure for the use of land plots. It is essential that the control of a farm member over agricultural land use activities, preventing them from excessive application of pesticides and agrochemicals to the land plot, and ensuring environmental requirements also has a positive effect on the state of environmental safety.

The second factor influencing the behaviour of a farm member, which causes a positive attitude towards compliance with the requirements of the legislation in the process of extracting useful properties from a land plot, preventing its depletion, improving the condition and increasing fertility, is the common goal of uniting citizens in a farm. In this case, this refers to making a profit. There is no doubt regarding the statement that a large profit from crop-growing agricultural activities will be obtained with the correct use of the land plot, when the subjects of such use comply with all the necessary, scientifically sound requirements. The direct link between the profit and condition of the land plot acts as a fundamental factor in the farm member's labour, which directly affects his or her motivation for targeted, rational, efficient use of land, improving its condition, taking land protection measures, etc.

The situation with the second type of labour used in the activities of farms is somewhat different. This refers to the work of employees. The law establishes absolute differentiation between farm members and employees.

Thus, members of a farm cannot be persons who work in it under an employment agreement. In fact, the legislation does not allow persons in the status of an employee to be farm members. Such a prohibition directly affects the legal status of these entities. If the legal regulation of the work of members of a farm mainly uses acts of land, civil, and economic legislation, then the legal regulation of the work of a subject that performs its activities based on an employment agreement uses only labour legislation. This strongly affects both the characterisation of legal relations arising between an employee and a farm, and the motivation for targeted, rational, and efficient land use.

It is necessary to analyse the differences in the legal status of farm members and its employees, and based on this analysis, draw conclusions on the impact of such differences on the state of land use.

ANALYSIS OF DIFFERENCES IN THE LEGAL STATUS OF FARM MEMBERS AND ITS EMPLOYEES

Taking the previously obtained results of the study of the motivation of a farm member to target, rational, effective use of the land plot as a basis, they can be defined as a combination of factors, including the presence of a land plot in the ownership of a farm member, the possibility of influencing the decision-making of the farm in the field of land use and protection, personal interest in the most efficient use of the land plot to profit from agricultural activities, the desire to preserve the useful properties of the land plot and increase its fertility because the right of membership can be terminated, and the land plot will return from someone else's use.

All these factors are absolutely atypical of the employee's activities. Below, the study considers each of them separately. Thus, an employee does not act as the owner of a land plot that is used by a farm. In other words, the employee has no personal interest in proper and conscientious compliance with the requirements of the legislation on targeted, rational, and efficient land use. Their motivation here will be reduced only to formal compliance with the requirements of the relevant legislation in order not to impose personal sanctions for committing an offence in this area. Such motivation can hardly be considered appropriate to ensure the use of land as the main national wealth. The employee takes absolutely no part in the decision-making process of the farm in the field of determining the procedure for using and protecting land plots in the process of agricultural land use. Admittedly, it is possible to consider their opinion if they perform special functions in the farm related to their high qualifications, but the final decision is still up to the farm members.

In addition, it is unnecessary to include in the list of factors influencing the behaviour of workers and personal interest in the most efficient use of the land plot to profit from agricultural activities. As remuneration for their activities, a worker receives a salary, the amount

of which, if it depends on the profit of an agricultural enterprise, then only indirectly, while according to the requirements of labour legislation, it can in no way be reduced if the volume of profit of the enterprise decreases. Only the material aspect, expressed in the form of wages and the need to comply with the requirements of legislation in the field of land use and protection, act as motivation for employees to engage in their professional activities in the agricultural sector. There is doubt concerning the sufficiency of such motivation in comparison with farms members.

However, the situation is more critical when using land by corporate agricultural enterprises. There is a certain tendency for private, temporary interest to prevail here, which is associated with obtaining instant benefits from using a land plot for agricultural production, over public interest. The public interest in this case is to implement the constitutional provisions regarding the definition of land as the main national wealth, ensuring its use for its intended purpose, efficiently and rationally. Large agricultural producers are least interested in the long-term prospect of efficient land use, since the vast majority of their land is leased. The agricultural land market is just starting to form, and legal entities are factually deprived of the opportunity to be owners of such land. These entities use only hired labour in their activities, while this applies not only to the factual performers of work on the production of agricultural products, but also to the management of all links. It is logical that this management is the least focused on preserving the state of land, increasing its fertility, and improving its quality characteristics in the long term. The main purpose is to make a profit, while the performance of the duties of a land user prescribed by land legislation has signs of formality [16].

Profit-motivated agricultural producers resort to excessive use of plant protection products. This leads to a systematic deterioration in soil quality. Economic activity carried out on agricultural land is necessarily accompanied by changes in the quality characteristics of the soil layer, namely a violation of the balance of chemical elements and organic substances in the soil. To predict the results of agricultural activities, it is necessary to conduct periodic agrochemical surveys of soils on agricultural land. Such soil surveys in Ukraine have been conducted since 1966 with a frequency of once every 5 years. During this period, 10 full-fledged rounds of surveys were conducted to determine the quality indicators of soil condition, monitor their changes, and plan measures for the protection and rational use of agricultural land [17].

The authority to conduct agrochemical surveys of soils is currently assigned to the State Institution "Institute of Soil Protection of Ukraine" ("Derzhgruntokhorona"), formed in 2013 by reorganising the State Institution "State Scientific and Technological Centre for Soil Fertility Protection" ("Tsentrdzhrوديuchist") and regional

centres Krymderzhrodiuchist and Oblderzhrodiuchist. The results of surveys conducted by the State Institution "Derzhgruntokhorona" are published in National and periodic reports on the state of the natural environment, on the state of soils on agricultural land and in scientific reports of the National Academy of Sciences of Ukraine. Thus, by referring to the above-mentioned official sources, it is possible to track changes in the qualitative state of soils that occur in the process of economic use of agricultural land.

Among the main factors affecting the state of soil fertility, experts name the main chemical elements necessary for plant nutrition (nitrogen, phosphorus, potassium), as well as organic matter (humus), which ensures optimal air and heat conditions of the soil and improves its structure. It is by these indicators of soil fertility that it is possible to investigate changes in the physical and chemical properties of Ukrainian soils.

According to the results of 5, 6, and 7 rounds of agrochemical certification of agricultural land, over 1986-2000, the humus content in the soils of Ukraine decreased by 0.16% (from 3.35% as of 1986 to 3.19% as of 2000) [18]. Experts assess such scales of dehumification as considerable and associate them with many factors, namely with a decrease in the volume of organic and mineral fertilisers applied; a high degree of ploughing of agricultural land; violation of the rules of crop rotation and structure of sown areas; high intensity of agricultural tillage.

Over the past two decades, the humus content in the soils of Ukraine has somewhat stabilised. Its percentage in the soil ranges between 3.14-3.16% [19]. The slowdown in the rate of dehumification between 2001 and 2021 was achieved thanks to the technology of embedding nutrient residues of agricultural crops in the soil, which are a source of humus reproduction in soils. According to the information presented in the National Report on the State of the Natural Environment in 2019, in some regions of Ukraine (Vinnytska, Zhytomyrska, Zakarpatska, Lvivska, Poltavska, Rivnenska, Ternopil'ska, and Chernihiv'ska Oblasts), there is a positive balance of humus in the soil, which is ensured by an increase in the volume of ploughing plant residues (straw, green manure, etc.), as well as the cultivation of green mass with its subsequent ploughing [20].

Unlike the organic component of the soil, the nutrient chemical elements in its composition cannot be retained solely by wrapping plant residues. To maintain the balance of nitrogen, phosphorus, and potassium, it is necessary to apply mineral fertilisers to the soil. Consequently, for decades, the dynamics of the content of nutrient chemical elements in the soil composition has changed depending on the intensity of implementation of chemical land reclamation measures. Thus, thanks to intensive measures of chemical land reclamation during the 1970s-1980s, the level of soil supply with chemical elements necessary for plant nutrition

systematically increased, as a result of which the first half of the 1990s brought a maximum increase in the content of chemical elements in the soils of Ukraine. On average, this figure reached 112-114 mg of nutrient chemical elements per 1 kg of soil [13].

Since 1991, land reclamation programmes have been almost completely discontinued at the state level. As a result, since 1996, there has been a steady tendency to reduce the content of nutrient chemical elements in the composition of Ukrainian soils. A considerable part of agricultural products of plant origin was produced due to the loss of natural soil fertility. As a result, during 2005-2011, the State Institution "Tsentrdzrodiuchist" recorded the lowest indicators of nitrogen, potassium, and phosphorus content, which at their minimum level amounted to 107 mg per 1 kg of soil [21]. Since 2012, the downward trend in the concentration of chemical elements in the soils of Ukraine has not changed, but the dynamics of reducing their content has considerably slowed down compared to previous years. If in 2008 the losses amounted to 130 kg per 1 ha of the surveyed land area, in 2009 – 129 kg/ha, in 2010 and 2011 – about 110 kg/ha. From 2012 to the current year, the loss rates of mobile compounds of nutrients and chemical elements on average in the country range between 70-72 kg/ha [21]. This is explained by an increase in the introduction of mineral fertilisers into the soil at the expense of agricultural enterprises and at the expense of local budgets, as well as changes in climatic conditions (warming), which affected the metabolism of nutrients in the soil. According to the State Statistics Service of Ukraine, the total number of agriculture workers is annually decreasing. Thus, in 2010, 738.5 thousand people were employed at agricultural enterprises, in 2015 – 581.8 thousand people, in 2017 – 574.2 thousand people, in 2018 – 559.6 thousand people, in 2019 – 541.9 thousand people [11; 22].

However, according to official data, over the past 10 years, the number of agricultural employees working on hired labour terms for individuals-entrepreneurs has increased (from 1.9 thousand people in 2010 to 3.4 thousand people in 2019) [11]. Such a direct correlation between the number of employees in the agricultural sector and the deterioration of the state of land use proves the need to reform these legal relations by adopting appropriate changes in legislation that would be aimed at prioritising the provision of agricultural land to those entities that perform a labour function as its owners or users, and not as hired workers.

CONCLUSIONS

Thus, it can be concluded that entities that use hired labour are not focused on preserving the state of agricultural land, improving the quality characteristics of such land, ensuring its most rational and efficient use, which is conditioned upon their status of not owners, but users of land plots, lack of personal interest in the long-term sustainable use of land. On the contrary, the

use of land by its owners and enterprises with personal labour participation of members is focused on environmentally balanced land use, increasing soil fertility, and improving the quality characteristics of land plots.

In this regard, when adopting appropriate norms aimed at reforming land relations, it is necessary to provide more preferences to farms, private farms, agricultural cooperatives, and citizens who produce agricultural products on their land plots individually. However, subjects where the main focus is on the use of hired labour should be particularly monitored for compliance with legislation in the field of land protection, as well

as compliance with environmental requirements in their activities.

At first glance, it may seem that the problem of motivating persons who factually cultivate agricultural land and managers of agricultural enterprises to rational, efficient, and environmentally balanced land use, the use of hired labour and the labour of members of farms, agricultural cooperatives and private farms lies exclusively in the plane of corporate and labour law. However, this statement is erroneous, since unsuccessful approaches to the process of agricultural production directly affect the state of the natural environment.

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Правові проблеми використання сільськогосподарських земель власниками та найманими працівниками

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Анотація. Стаття присвячена дослідженню проблем додержання вимог законодавства при використанні сільськогосподарських земель в Україні залежно від того, хто безпосередньо здійснює вилучення корисних властивостей із таких ділянок: наймані працівники сільськогосподарських підприємств, або власники цих земель – фермери, члени сільськогосподарських кооперативів, громадяни, що одноосібно провадять агровиробничу діяльність. У статті наводяться приклади впливу діяльності найманих працівників та праці власників сільськогосподарських земель на стан землекористування, додержання вимог екологічної безпеки, погіршення та покращення якості земельних ділянок. Дослідження правових проблем цільового, раціонального та ефективного використання земельних ділянок, забезпечення вимог до збереження навколишнього природного середовища, біологічного різноманіття та екосистем, що розкриті у статті, надають можливість зробити висновки про те, що сучасний стан розвитку правовідносин щодо використання земельних ділянок найманими працівниками та власниками землі потребує реформування. Це обумовлено тим, що наймані працівники не вмотивовані до покращення якості земель та їх ґрунтів, додержання вимог екологічної безпеки, збереження біологічного різноманіття у екосистемах, куди входять відповідні земельні ділянки. Оскільки головна мотивація полягає у отриманні певної вигоди, а санкції за недодержання вимог законодавства у сфері охорони земель неефективні, використання найманої праці у сільському господарстві досить часто характеризується як недбале та халатне ставлення до використання земель і забезпечення екологічної безпеки. Натомість, власник або користувач земельної ділянки, що використовує її як фермер, член кооперативу, підприємець тощо, вмотивований не тільки на отримання прибутку у даний момент часу, а й покращення її якісних характеристик, забезпечення екологічної безпеки, збереження екосистемного біологічного різноманіття, оскільки це виступає фактором стабільності отриманні прибутків від сільськогосподарської діяльності, що здійснюється на певній ділянці й в майбутньому

Ключові слова: екологічна безпека, біологічне різноманіття, екосистеми, якість ґрунтів, право користування земельними ділянками, сільськогосподарська діяльність, земельне законодавство