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## CONSTITUTIONAL AND LEGAL REGULATION OF LAND AND AGRARIAN RELATIONS IN UKRAINE AND IN FOREIGN STATES

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### Summary

The article considers constitutional and legal regulation of land and agrarian relations in Ukraine and in other states. The study of constitutional norms of foreign states allows establishing the significance of the Constitution as a formation source for the principles of land system and agrarian policy of each state, as well as determining the most important issues in these areas, which the state seeks to resolve at the level of its Supreme Law. The completed study allows formulating the vector of further development of the land and agrarian legislation, which must be specified at the level of the Constitution of Ukraine.

**Key words:** constitutional and legal regulation of land and agrarian relations in Ukraine and in foreign states, Constitution as source of regulation of land and agrarian relations in Ukraine and in foreign states.

### Аннотация

В статье рассматривается конституционно-правовое регулирование земельных и аграрных отношений Украины и других стран. Исследование конституционных норм зарубежных государств позволяет определить значимость Конституции Украины как источника формирования основ земельного строя и аграрной политики каждого государства, а также выделить наиболее важные вопросы в данных сферах, которые государство стремится решить на уровне своего Основного Закона. Проведенное исследование позволяет сформулировать вектор дальнейшего развития земельного и аграрного законодательства, который должен быть определен на уровне Конституции Украины.

**Ключевые слова:** конституционно-правовое регулирование земельных и аграрных отношений Украины и зарубежных стран, Конституция как источник регулирования земельных и аграрных отношений Украины и зарубежных стран.

**Problem definition.** In the minds of modern society the Constitution is considered as no other but the Fundamental Law i.e. an essential legal attribute of any state, the main objectives of which consist in the regulation of relations between citizens and the state through the lens of determining the rights and obligations, the system of public authorities of the state, entrenchment of the basic principles on which the state is to found its activity and by which the society is to be guided in the course of its life.

Based on the aforementioned one could not disagree that the place of the Constitution in the national legislation of each country is considered as no other but as the supreme law of the state governed by the rule of law, which has a constituent power and thus stands above the state itself, which constitute the legal basis for the formation and implementation of public authorities [1].

### Recent researches and publications.

This approach has been taken into consideration and reflected in the works of scientists who researched the mutually causal influence of the Constitution of Ukraine

on the development of land and agrarian relations and the nature of land relations on the norm of the Constitution of Ukraine; among them V.I. Andreitsev, H.I. Baliuk, P.F. Kulynych, A.M. Myroshnychenko, I.I. Karakash, T.A. Kovalenko, V.V. Nosyk, A.A. Pohrebnoi, V.I. Semchyk, V.D. Sydor, N.I. Tytova, Yu.S. Sheshuchenko, M.V. Shulha, V.Z. Yanchuk etc.

In particular, the provisions of art. 13 of the Constitution of Ukraine which establishes the right of the Ukrainian people on the land, on whose behalf this right is implemented by state and local authorities, as well as art. 14 which provides for the possibility of acquiring such rights by the state, legal and natural persons [2], is mainly justified in the scientific literature by the uniqueness of the land as a natural resource, which is due to its natural properties and exceptional social value.

The aforementioned provisions of the Constitution of Ukraine, incurred as a result of the circumstances of our country's historical development, indicate the absence of randomness and declarative nature of



Articles 13 and 14 of the Constitution [2]. The social and political events that took place in Ukraine in late 2013–2014 years affirm the momentous impact of these regulations on the process of formation of the statehood of Ukraine and the identity of Ukrainian people.

Considering this it is perceived that the Constitution of every State establishes not only the reference format of legal relations to which all state actors must aspire, whereas State Constitution is the law that reflects and regulates the most important and problematic issues of a country's life. Analysis of the provisions of the Constitution of any state allows evidencing the public policy, including the one in agrarian and land sectors, as well as identifying the system of social values upon which relies the state and its people, and the most important issues which the state seeks to solve at the level of its Supreme Law.

Such conclusion is confirmed by analysis of the Constitutions of foreign countries, which can be used in the selection of new guidelines for the State Land and Agrarian Policy for Ukraine as well as other countries.

**Primary material outline.** System analysis of norms of the Constitutions of foreign countries with regard to the regulation of land and agrarian relations allows systematizing them in several groups.

*The first group of norms* includes the guarantees, which make up the economic and social foundations of life of each state and have a direct impact on the implementation and development of land and agrarian relations.

This group includes the regulations that govern the basic economic aspects of land and agrarian relations, and provide for the following:

- property is subject to State protection, which is acquired on the basis of the norms of law; the rights arising from it cannot be exercised to the detriment of the general interest (art. 13, art. 14, part 1-3, 7 art. 41 of the Constitution of Ukraine [2]; parts 1–3, part 6 art. 44 of the Constitution of the Republic of Belarus [3]; part 1 art. 21, 64, 233 of the Constitution of Poland [4], part 1 art. 17 of the Constitution of Greece [6], art. 27, 33, 34, 35, 37 of the Constitution of Egypt [7], art. 13 of the Constitution of Azerbaijan [9], art. 9, 127, 128 of the Constitution of the Republic of Moldova [10], art. 8–13 of the Constitution of the Republic of China [11]);

- no one shall be deprived of his property except in the public interest, duly confirmed, according to the law and subject to full compensation (parts 4–6 art. 41, part 3 art. 47 of the Constitution of Ukraine [2]; part 5 art. 44 of the Constitution of the Republic of Belarus [3]; part 2 art. 21 of the Constitution of Poland [4], art. 23 of the Constitution of Lithuania [5], parts 2–6 art. 17 of the Constitution of Greece [6], art. 35 of the Constitution of Egypt [7], art. 29 of the Constitution of Azerbaijan [9], part 2 art. 46 of the Constitution of the Republic of Moldova [10], art. 26 of the Constitution of Switzerland [8]), with exception of the directly specified cases (art. 10 of the Constitution of the Republic of China [11]).

Additionally this group of norms should also include the rules that form the basis of employment of citizens of each country, guaranteeing the right to work and free choice of employment, namely: part 3 art. 24, art. 43, 46 of the Constitution of Ukraine [2], art. 13–14, part 4. art. 32, art. 41–42 of the Constitution of the Republic of Belarus [3], part 2 art. 39, art. 48 of the Constitution of Lithuania [5], part 3 art. 8, art. 110–112 of the Constitution of Switzerland [8], art. 24, 33, 59, 65, 66 of the Constitution of Poland [4], art. 12, 13, 17 of the Constitution of Egypt [7], art. 22, 23 of the Constitution of Greece [6], art. 35–37 of the Constitution of Azerbaijan [9], art. 43–45, part 4 art. 50 of the Constitution of the Republic of Moldova [10], art. 8, 11, 14 of the Constitution of the Republic of China [11].

Securing these provisions in the Constitution indicates that the government is interested in a stable social, spiritual and economic development of its people, which is the foundation and guarantee for the development of land relations and agricultural sector in each country. However despite the overall semantic basis of these rules, the nature of the constitutional and legal regulation of this group has a purely individual character in each state.

*The second group of norms* includes the norms of a constitutional character that define the basic principles of land and agrarian organization and ensure the foundation of land and agrarian legislation of a particular state.

Thus the Constitution of the Republic of Belarus may serve as an example of the constitutional and legal regulation of land relations through creating the foundations of the land rule of law, as it provide that agricultural land shall be owned by the

state. The Law may also determine other objects that may only be owned by the state or provide special procedures of their transition into private ownership [3].

Articles 9 and 10 of the Constitution of the Republic of China provide that all uncultivated land and other natural resources are owned by the state i.e. constitute public property, with exception of the uncultivated land and other natural resources which in accordance with the law are collectively owned. The land in the cities is owned by the state. The land in rural and suburban areas is collectively owned, excluding areas that by law are state-owned; residential land plots and personally cultivated arable land and hills are also in the collective ownership. The state ensures the rational use of natural resources. Any appropriation or destruction of natural resources by either an organization or an individual is prohibited. All organizations and individuals using land must ensure sustainable land use [11].

According to the Constitution of Lithuania it is prohibited to drain the land, its minerals and water, to pollute the water and air, to cause radiation impact on the environment and impoverish the flora and fauna (art. 54 of the Constitution of Lithuania) [5].

The Constitution of the Republic of Moldova foresees that the State shall ensure the rational use of land and other natural resources in accordance with national interests (item «e» part 2 art. 126) [10].

Article 18 of the Constitution of Greece defines a fairly wide range of issues associated with the use of land and other natural resources, the regulation of which shall be made by special laws of Greece, including the issues such as:

- redistribution of land with the purpose of its most efficient use, as well as implementation of measures aimed at avoiding excessive strip farming and facilitating the reorganization of existing small land ownership;

- disposal of abandoned areas with the purpose of their use in the interests of national economy and support of the landless citizens.

By way of deviation from art. 17 of the Constitution of Greece it provides for the possibility of legal regulation and revocation of effective lease transactions with regard to agricultural land and other land ownership, redemption of ownership on agricultural land under crop (or planted) (part 2 art. 117 of the Constitution of Greece) [6].



The Constitution of Azerbaijan in Article 14 is content to provide that without prejudice to the rights and interests of any physical persons and legal entities natural resources belong to the Republic of Azerbaijan [9].

The Constitutions of a number of states lay out the foundations of the agricultural regime of the country. These include the Constitution of Poland according to which the basis of the agricultural system of the state is the family farming (art. 23) [4].

The Constitution of Egypt provides in Article 29 that agriculture is the main component of the national economy. The state is obligated to protect and expand the cultivated lands protecting them from capture. The state works towards the development of rural areas, improvement of the living standards of its people and protection from agricultural risks, as well as working towards the development of agricultural and animal production, and promotion of industries based thereon [7].

The Constitution of Switzerland provides in part 1, art. 104 that the Confederation ensures that the agriculture providing sustainable and market-oriented production makes a significant contribution to the supply of population with food, as well as reliable procurement of the population, the preservation of national resources and value of the rural landscape and the decentralized peopling of the country [8].

According to art. 8, 11 of the Constitution of the Republic of China rural communities, agricultural cooperatives and other forms of cooperative activities related to the sector of socialist economy are collectively owned by the working people. Workers who are members of rural economic associations have rights within the limits prescribed by law to cultivate plots of arable land and hills, designated for their personal use, engage in the issue of by-products and cultivate personal cattle. The State protects the lawful rights and interests of urban and rural economic collectives and encourages, guides and promotes the growth of the collective economy. Private households of the city workers and rural areas, operating within the limits prescribed by law, are a part of the socialist public economy. The State shall protect the lawful rights and interests of private households [11].

Article 13 of the Constitution of Belarus, provides that the State shall promote the development of co-operation [3].

Whether the country's Constitution has or doesn't have the norms of the second group of norms in its Constitution, allows identifying the importance of land and agrarian relations for the specific state, and also allows predicting the strategy of the state policy in this sector. Whereas each state in view of its historical, political, economic and mental peculiarities of the country and its people, as well as its resource potential, determines the required range of issues of land and agrarian nature that must be resolved through constitutional norms of constituent character.

*The third group of norms* includes the provisions of Constitution, which are directly related to the implementation of state policy in land or agricultural areas. They are designed to regulate certain issues which are very individual for each specific state, because of their social or national importance.

An example of such constitutional and legal regulation can be served by the provisions of the Greek Constitution, according to which the agricultural land of Patriarchal Monasteries of Aghia Anastasia Pharmacolytria in Chalkidiki, of Vlatadhes in Thessaloniki and Ioannis the Evangelist Theologos in Patmos with exception of sketes may not be subject to alienation. Similarly the property in Greece of the Patriarchates of Alexandria, Antiocheia and Jerusalem and that of the Holy Monastery of Mount Sinai may not be alienated either (part 8. art.19). Also article 105 of the Constitution of Greece regulates the status of the Mount Athos [6].

This group may include article 47 of the Constitution of the Republic of Lithuania, which provides the legal possibility to acquire ownership of inland waters and forests by foreign entities in accordance with the constitutional laws, as well as the land by foreign states for the establishment of their diplomatic and consular bodies [5].

The Constitution of the Republic of China on implementation of the constitutional norms provides that the State, acting in the public interest has the right to requisition land according to the law. No organization or individual shall have the right to appropriate, buy or illegally transfer the land. The right of land use may be transferred in accordance with the law (art. 10) [11].

The Constitution of Switzerland foresees the state assistance to agricultural farms through contribution to rural

incomes by means of direct payments with the purpose of achieving equitable compensation for manufactured products subject to environmental requirements; promoting through economically fit incentives the forms of production which are particularly close to nature, preserve the environment and animal life. In order to perform the inherent constitutional principles the States undertakes a range of commitments in the field of agriculture which are set forth by the Constitution, for the implementation of which the Confederation uses special funds from the agriculture area and general federal funds (part 3, 4 art. 104) [8].

The Egyptian Constitution on implementation of the previously established rules of the public policy in the agricultural sector provides that at the elections to the local council 50 percent of the total number of seats is intended for workers and farmers, and this ratio provides an appropriate representation of Christians and disabled persons (art. 180). The state provides the workers and farmers with appropriate representation in the House of Representatives, who are elected in the manner prescribed by law (art. 243) [7].

As one can see from the analysis of the norms of the Constitutions of different countries, each state determines its own relationship that should be covered by the constitutional and legal regulation. Since the rules of the Fundamental Law of the state constitute a vector of both internal and external development of the country and the people.

In this regard one should realize that the provisions of the Constitution of the State do not just regulate certain relations. They determine the existence of the state ideology and at the same time they unite with one goal the living of all the subjects of the state.

The Constitution of Ukraine so far does not reflect the norms of the third group, which would have contributed to the promotion of agricultural activity, based on the principle of sustained rational use of land, which should be the next step in the development of the agro-industrial state of Ukraine.

**Conclusions.** Studying the constitutional and legal regulation of foreign countries suggests a clear conclusion that the Constitution is an external form, which reflects the internal development of





the country. That is why the constitutional and legal regulation of land and agrarian relations is unique in its nature and unique in its content with respect to any State.

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## ВОЗНАГРАЖДЕНИЕ ЗА ВЫПОЛНЕННУЮ РАБОТУ: НЕКОТОРЫЕ ТЕРМИНОЛОГИЧЕСКИЕ ОСОБЕННОСТИ ЮРИДИЧЕСКОЙ ПРИРОДЫ ЭТОГО ПОНЯТИЯ

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#### Summary

The article is dedicated to clarifying of the terminological peculiarities of the legal nature of the term “remuneration for work”. It is grounded that the legal term “wages” and legal term “salary” differ from each other. It is proposed the remuneration for performing of work functions by the employee in accordance with rules of labor to indicate as “wages”.

**Key words:** wages, remuneration, salary.

#### Аннотация

Статья посвящена выяснению терминологических особенностей юридической природы понятия «вознаграждение за выполненную работу». Обосновывается, что правовые понятия «оплата труда» и «зарботная плата» не являются тождественными. Предлагается заработной платой считать вознаграждение за выполнение трудовой функции работника в соответствии с установленными нормами труда.

**Ключевые слова:** оплата труда, вознаграждение за труд, зарботная плата.

**Постановка проблемы.** В международном праве разработана система прав человека, которые трактуются как определяющие основы правового статуса физического лица. К этой системе сегодня принадлежат права, закрепленные во Всеобщей декларации прав человека 1948 г., Конвенции о защите прав человека и основных свободах 1950 г., Энциклике по правам человека (Rasem in terris) 1963 г., Международном пакте об экономических, социальных и культурных правах 1966 г., Международном пакте о гражданских и политических правах 1966 г. и так далее.

Совокупность прав, задекларированных в приведенных международных актах, получила свое отражение и в Конституции Украины 1996 г. К этим правам, кроме других, относятся право на жизнь и право на труд, являющиеся тесно между собой связанными. Ведь право работать и зарабатывать себе на жизнь является неотъемлемым от права на саму жизнь, поскольку последнее является реальным только тогда, когда материально обеспечено.

Право на труд является естественной потребностью человека своими физическими и умственными способностями обеспечивать свою жизнь.

Это право предусматривает как возможность работать по трудовому договору или контракту, так и возможность самостоятельно заниматься трудовой деятельностью.

Общественные отношения, возникающие в результате волевых действий физических лиц, реализующих свое право на труд, существенно различаются. Причина этого – многообразие форм реализации права на труд. Ведь выполнение работ или предоставление услуг по гражданским договорам, осуществление предпринимательской деятельности или осуществление независимой профессиональной деятельности, служба по контракту в Вооруженных Силах Украины или других законных военных формирования и правоохранительных органах, работа на основе трудового договора или контракта являются формами реализации права на труд, задекларированного в ст. 43 Основного Закона Украины.

Немалое количество форм реализации права на труд предполагает существование многих терминов и понятий, которыми обозначают вознаграждение за выполненную работу, оказанные услуги, службу и т. п.

В частности, в ст. 837 Гражданского кодекса Украины (далее – ГК