



LEGAL REGULATION OF LEASE OF AGRICULTURAL LAND

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Summary

The article deals with the legal regulation of the lease of agricultural land in Ukraine. The main attention is paid to the state of scientific development of rental relations and to definition of the essence of the lease. Problematic issues of the lease of agricultural land contract are considered. Proposals on improvement of legal regulation of relations in the sphere of lease of agricultural land are formed.

Key words: lease, right to lease, rental relations, lease agreement, tenant, landlord, rent, lease object, owner of land, agricultural land.

Аннотация

В статье рассматриваются вопросы правового регулирования аренды земель сельскохозяйственного назначения в Украине. Основное внимание уделено состоянию научной разработки арендных правоотношений, определению сущности договора аренды. Рассмотрены проблемные вопросы заключения договора аренды земель сельскохозяйственного назначения. Сформированы предложения по совершенствованию правового регулирования отношений в сфере аренды земель сельскохозяйственного назначения.

Ключевые слова: аренда, право аренды, арендные правоотношения, договор аренды, арендатор, арендодатель, арендная плата, объект аренды, собственник земли, земли сельскохозяйственного назначения.

Formulation of the problem.

Ukraine is one of a few countries with rich resources of fertile agricultural land. About 22 billion hectares of agricultural land are used by agricultural enterprises, about 95% of which are leased from small landowners. Most of these landowners got land plot of 4.5 hectares during privatization. More than 70% of citizens who have acquired the right to land plot (share), give the land on lease. Market-oriented agricultural farms also intensively lease agricultural land of state and municipal property.

Today the rights of owners of agricultural land are limited. They cannot buy or sell their land. In the absence of agricultural land market in Ukraine the market of land lease is developing. That is why today the rent is one of the most common transactions with land for agricultural purposes.

Topicality of the research. It should be noted that in the science of agrarian law of former times land lease agreement was not investigated. In the Soviet period the lease legal relations were forced out of agriculture. There were no rules of law regarding agricultural lease either. One of the economic reforms in the late 80s of the last century was the “revival” of the lease relations. Rent became a mean of reforming of property relations in agroindustrial complex. In modern conditions we need to rent the land and, being part of a market economy, of course, the rent is intended to contribute to its

further development in the agricultural sector of the economy and in the economy as a whole.

The following Ukrainian scientists dealing with in the field of agricultural, land, environmental and natural resource law have dedicated their works to the issue of leasing relations in Ukraine: V.I. Andreytsev, I.I. Karakash, P.F. Kulinich, A.A. Pogribnyi, N.I. Titova, M.V. Shulga and others.

The analysis of the current agrarian, land and civil legislation of Ukraine shows that it does not fully solve the problem of concluding the lease agreement of agricultural lands. These circumstances prompted the author to a more thorough and deep study of this important issue.

The purpose of the article is a scientific reasoning of foundations of legal regulation in the lease agreement of agricultural lands, the review of the state of scientific elaboration of legal regulation of the lease of agricultural lands, ascertaining the essence of the lease agreement of agricultural lands, and the formation of the proposals on ways to improve the existing legal machinery.

Main body of the article. In agriculture the rent plays an important role as a form of exercise of the right of ownership and efficient land use. Countries with developed market economy, where land rent is the most common form of its use have great experience in rental relations. Germany, Britain, France, Belgium and the Netherlands have a lot of the lease

land. Here the farmers while expanding the farm traditionally prefer not to buy the land but to lease it. It costs them much cheaper and the farmers put the money which they saved into their production. Moreover, recently areas of sown have been limited in the EU countries and it is easier to regulate this process by means of the rent.

In general lease relations have a long history. The lease agreement is one of the classic contractual institutions known since the Roman law. After the 1917 revolution, when the land was nationalized, the possibility of land renting was included in the legislation that existed at that time. Since 1937 the lease of agricultural lands was prohibited. Since then, land and other natural resources were removed from civil circulation and all transactions that violated state property recognized invalid.

The first monograph dedicated to the lease of land in Ukraine, was the work of Professor A.A. Pogribnyi “Farms and rent” [1]. He examines the lease relation in it as a whole, as well as their role in farming, identifying their nature, content, types and forms.

The right to lease land was researched by Professor I.I. Karakash, who emphasized that the land lease is a sufficiently developed legal institution of modern land law [2, p. 62]. V.I. Andreytsev in a reasoned way insisted on the peculiarities of the land lease in agricultural production [3, p. 128].



M.V. Shulga thoroughly considered the issue of the land lease as «a specific form of its use» [4, p. 127].

Ukrainian civil law provides general requirements for the conclusion of lease agreements and land legislation, reflects the peculiarities of the given agreement concerning the lease of land. Therefore, relations connected to the lease of land are governed by the Land Code of Ukraine, Civil Code of Ukraine, the Law of Ukraine “On Land Lease” and other normative legal acts, as well as the lease agreement of land.

The lease agreement of land is the basic document that defines the relations of the lessor and lessee is the foundation for emergence of lease relations. According to the Art. 13 of the Law of Ukraine “On Land Lease” the lease agreement is a contract by means of which a landlord is required to give a land transfer the plot of land for payment in possession and use for a specified period, and the lessee is obliged to use the land in accordance with the terms of the contract and the requirements of land legislation [5].

The parties of the land lease contract are the lessor and lessee. Lessors of land are citizens and legal entities who own the land plots or authorized persons. Lessors of land which is regarded as municipal property are rural, village and city councils. Lessors of the land plots owned by the state are the executive authorities, which according to the law transfer land to the ownership or use.

The lessee of agricultural land can be citizens and legal entities of Ukraine, foreigners and stateless persons, foreign legal entities, international associations and organizations, and foreign governments.

According to the Art. 15 of the Law of Ukraine “On Land Lease” the essential terms of the land lease are: the object of the lease, the term of the lease, rent. The parties in the lease agreement of land may indicate other conditions.

So the first essential condition is the object of the lease. The objects of rent are land plots owned by citizens, legal persons, municipal or state ownership. When indicating the object of the lease the agreement must necessarily contain the cadastral number, location and size of land. The lease may include renting of some land plots owned by one landlord (and which regard to state and municipal

property as land plots in the possession of one of the executive authority or local government). The object of the lease of land is considered transferred by a landlord to a lessee from the moment of state registration of the lease, unless otherwise provided by the law.

As to the land plots (shares), their rent is one of the most common transactions with land shares today. Thus, the transitional provisions of the Law of Ukraine “On Land Lease” said: citizens which are the owners of certificates for the right to land (share) before release them in nature (on ground) have the right to enter into leases of agricultural land, the location of which is determined by the requirements of rational organization of territory and compaction of land use in accordance with these certificates. Tenants acquire the right to lease the land under lease land (share), agreement typical form of which is approved by the State Committee for Land Resources of Ukraine № 5 dated 17 January 2000 [6].

Another essential condition is the term of the lease. As a general rule the land lease term cannot exceed 50 years. However, regarding agricultural land the legislator sets the minimum term of lease contract. Thus, according to the Land Code of Ukraine and the Art. 19 of the Law of Ukraine “On Land Lease” the lease term of agricultural land for commercial agriculture, farming, subsidiary farming may not be less than 7 years.

At lease for commercial agriculture, farming, subsidiary farming agricultural land, which is reclaimed land and where hydrotechnical reclamation is carried out, the term of the lease of land is determined by agreement of the parties, but cannot be less than 10 years. The land lease agreement includes tenant’s commitment to invest in the modernization and development of appropriate drainage systems and objects of engineering infrastructure and promote their proper use.

Setting of the minimum term of lease in the area of agricultural land is expedient, because the stability of land use is essential in agriculture. The lessee is able to perform a long-term planning of land use. Land is used more efficiently and without excessive depletion.

In the lease of agricultural land located within the mining allocation granted for the development of oil or gas, the term

of the lease of land is determined by the timing of the start of construction of wells and production facilities associated with them, on the leased area or its part.

The person who manages a heritage, a part of which is agricultural land which is not under lease, has the right to give this land on rent for up to the moment of state registration of ownership of the heir to that land or the entry into force of a court decision on recognition heritage abandoned, and this is always stated in the lease of land. If the term of the lease of land ended on or after the death of the landlord, but before the state registration of ownership of land by a new owner (heir), such a contract is considered extended (renewed) up to the state registration of ownership of the heir or territorial society on such land.

The third essential condition is rent with an indication of its size, indexing, method and terms of payment, terms, procedure for its introduction and revision and liability for its non-payment. The rent for the land is the payment that a tenant gives to a lessor for the use of land under the land lease agreement.

Rents are collected in cash. By agreement of the parties payments for land may be made in kind. Payment in kind should meet the cash equivalent of value of goods at market prices on the date of the rent. The rent for the land of state and municipal property is carried out only in cash.

As to the order of the right to lease the land, it should be noted that the lease of land plots of state or municipal ownership is based on the decision of the relevant executive authority or local government according to their powers or contract of sale, the right to lease land area (in case of sale of lease rights) by means of concluding a contract of land lease or a contract of sale, the right to lease land. Lease of land plots which are of state or municipal property are carried out by the results of land sales.

Lease of land plots owned by individuals and legal entities is carried out under the lease agreement between the owner of the land and the tenant. The basis for the conclusion of the lease agreement can be civil contract on alienation of lease rights.

The right to lease the land can be alienated, it can be also sold on land sales, and pledged, inherited, put into the



authorized capital by the owner of land – up to 50 years, except cases determined by law.

Leased land plot or part of it can be transferred by the consent of the landlord into the possession and use to another person (sublease) without changing the purpose. The terms of the sublease land contract should be limited by the terms of the lease of land and do not contradict it. The term of sublease may not exceed the period established by the lease of land agreement. Land sublease contract is subject to state registration. The contract of sublease land should be notarized.

During the period of the lease agreement tenants of agricultural land can exchange their rights to use land by concluding agreements between the relevant sections of sublease, if it is provided by the lease agreement or with the written consent of the landlord.

Land lease is concluded in written form and in accordance with one party's wish may be certified by a notary. The right to lease the land is subject to state registration in accordance with the law.

Conclusions. It should be noted that in Ukraine leases regarding agricultural lands are developed well enough. However, analysis of lease relations provides grounds for singling out of certain negative tendencies in this area.

There are some problems associated with the official registration of the lease agreement, such as normative (laid directly in legal acts) and actual (related to non-fulfillment of laws). Registration of the lease of agricultural land is a complicated all-embracing procedure which is regulated in a contradictory way and requires significant financial and time costs. In addition, on March 5, 2015 changes were made to the law regarding the registration of agricultural lands. Thus, the state registration of proprietary rights derived from ownership on agricultural lands can be carried out regardless of notarial attestation of the contract, under which such a right arises.

State registration of the derivative proprietary right to agricultural land, the ownership of which arose and was executed in the prescribed order before January 1, 2013, is carried out simultaneously with the state registration of ownership rights to this land (except where the ownership of this land has registered in the state register of rights) on

the basis of application of state registration of rights and their encumbrances filed by the owner or receiver of the relevant derivative rights, or authorized persons. The state registration of ownership of land for agricultural purposes, in case of filing the application for state registration of rights and their encumbrances by the receiver of the derivative property rights to such land may be made without granting the document on the basis of which the right of ownership, arose on condition of availability of information on the registered land in the State Land cadastre and up to the automated transference to the State register rights records of property rights and encumbrances on the land from the State Land register [7].

A significant problem in the way to fixing the right of the land lease is the term of registration procedures. Based on the provisions of the current legislation a period of registration of rights, including the right to lease the land shall not exceed 14 working days. However, in practice, this procedure sometimes takes a month or more.

An important issue is also the lessee's of default of his obligations to the landlord to pay rent and the lack of an effective mechanism of influence of the lessor on the lessee (the mechanism of termination of the lease if tenant did not pay the rent in due time). This is due to the complexity and variability of national regulatory legislation, the difficulties of which are sometimes hard to understand including lawyers.

Thus, an analysis of the current legislation which is governing the lease of land now, indicates that a number of important and fundamental issues in this area are not always clearly regulated. Most legal requirements are not coordinated. This complicates the application of legal norms in law enforcement. Despite the continued existence of the special Law of Ukraine "On Land Lease" the application of its provisions is not perfect. The practice of law governing the lease of land and rights to them, testifies that some aspects of the lease relations are interpreted ambiguously by their participants. Thus, the legal principles of rent relations in land use in agriculture need to be further improved.

The solution of the problems of relations on lease of agricultural land can be next legislative provisions: legislative

strengthening of legal mechanisms and ways of further development of relations in the agricultural land use and ownership of agricultural land; improvement of the institute of lease of agricultural lands, which will increase the investment attraction and economic efficiency of agricultural land; sustainable land use, rational and effective use of land.

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