

Sibilla BULETSA* – Roman OLIYNYK**
Non-residents as subjects of land relations in Ukraine

Abstract

Ukrainian lands have always attracted interest from foreign investors as a means of production and investment. The tendency to increase such interest does not change for quite a long time. According to Articles 18-20 of the Land Code of Ukraine, each land plot, regardless of the form of ownership or use, has a specific purpose, depending on which the status of the land plot is determined as the object of civil rights. Extremely topical issue is the right of ownership of land to non-residents, both physical and legal persons. The purpose of the article is to analyze regulatory and legal regulation of the peculiarities of acquiring ownership of land plots by non-residents, identifying gaps in legislation.

Keywords: land law, land tenure, Ukrainian law, cross-border acquisition

1. Formulation of the problem

Ukrainian lands have always attracted interest from foreign investors as a means of production and investment.¹ The tendency to increase such interest does not change for quite a long time.

Taking into account the fundamental importance for any country of land as a strategic asset,² the regulation of property relations and the use of land occupies a separate place, apparently, in all developed legal systems. According to Articles 18-20 of the Land Code of Ukraine, each land plot, regardless of the form of ownership or use, has a specific purpose, depending on which the status of the land plot is determined as the object of civil rights.³ Extremely topical issue is the right of ownership of land to non-residents, both physical and legal persons.⁴

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* doctor of juridical science, professor, Uzhhorod National University, Faculty of Law of State Higher Educational Institution, Chair of the Department of Civil Law and Process, e-mail: sibilla.buletsa@uzhnu.edu.ua

** senior lecturer, Uzhhorod National University, Faculty of Law of State Higher Educational Institution, Chair of the Department of Civil Law and Process.

¹ See furthermore Buletsa, Oliynyk & Sabovchuk 2019, 89.

² See for example Baturan & Dudás 2019, 64; Budzinowski & Suchon 2017, 94; Csák 2018, 5–6; Csák, Kocsis & Raisz 2015, 34–35; Holló, Hornyák & Nagy 2015, 56–57; Hornyák et al. 2017, 37–40; Olajos 2017, 91–92; Raisz 2017, 68; Szilágyi, Kocsis & Raisz 2017, 160–161.

³ Land Code of Ukraine of 25.10.2001 number 2768-III. Information from the Verkhovna Rada of Ukraine. 2002. No. 3. Art. 27.

⁴ Cf. Szilágyi 2017, 157.



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2. Analysis of recent research

The question of the statute of non-residents as subjects of land relations in Ukraine has always been a scientific interest for such researches as L. A. Bondar, A. A. Hetman, V. G. Goncharenko, I.I. Karakash, O. O. Pogribny, V. I. Semchik, and others.

The purpose of the article is to analyze regulatory and legal regulation of the peculiarities of acquiring ownership of land plots by non-residents, identifying gaps in legislation.

3. Presenting main material

The right of ownership of foreign citizens and stateless persons is regulated by the Civil Code of Ukraine (hereinafter the Central Committee of Ukraine) and the Land Code of Ukraine (hereinafter the Criminal Code of Ukraine). Foreign citizens are subjects of land relations, in particular, subjects of ownership of specific land.

In accordance with Part 2, 3 of Art. 374 of the Civil Code of Ukraine, foreigners, stateless persons may acquire ownership of land (land plots) in accordance with the law. Foreign legal entities, foreign states and international organizations may be subjects of ownership of land (land) in cases established by law.⁵

The Criminal Code of Ukraine in Art. 80 clearly defined the circle of subjects of ownership of land, and in Part 2 of Art. 81 defined the conditions under which foreigners and stateless persons can acquire ownership rights to non-agricultural land plots within the boundaries of settlements, as well as to non-agricultural land areas outside the settlements where the objects of real estate belonging to them are located on the right of private ownership, in the following cases: their acquisition under a contract of sale, rent, donation, mines, as well as other civil-law agreements; the redemption of land plots, where the objects of immovable property owned by them are located on the right of ownership; acceptance of the inheritance.

According to the provisions of the Criminal Code, citizens of foreign states and stateless persons are limited in some areas of land relations in Ukraine.

Thus, citizens of foreign states and stateless persons cannot acquire land by way of free privatization, they cannot acquire private land for agricultural purposes, and if they have inherited an agricultural land plot, such a land plot is subject to alienation for one year (Article 81 of the Civil Code of Ukraine).

At the same time, the LC of Ukraine allows foreigners and stateless persons to register the rights to land plots on lease terms (with some exceptions provided for in Part 2, Article 93 of the CC). For example, such an opportunity is provided in Part 2 of Art. 35 of the Law of Ukraine on the acquisition by foreigners and stateless persons on the terms of lease of land for individual or collective gardening.

Also, foreign legal entities may act as subjects of land legal relations. They can be both owners and users of land plots. As far as foreign legal entities are concerned, part two of Article 82 of the Criminal Code of Ukraine states that foreign legal entities may

⁵ The Civil Code of Ukraine dated January 16, 2003 No. 435-IV. Information from the Verkhovna Rada of Ukraine, 2003. № 40–44. Art. 356.

acquire ownership rights to non-agricultural land: (a) within the boundaries of settlements in the case of acquisition of real estate objects and for the construction of objects associated with the conduct of business in Ukraine; (b) outside of settlements in case of purchase of real estate objects.

Consequently, for the purpose of business activity, non-residents may acquire the built-up land plots in case of acquisition of the objects of real estate located on them and unbuilt (free) land plots, but necessarily - for construction of objects connected with the implementation of economic activities. And outside of settlements, such enterprises will be able to acquire land plots in their property only if they acquire immovable property located on them.

Also, the LC of Ukraine determines the procedure for the acquisition by foreign investors of land plots in different categories of owners. Thus, for the purchase of land in the state or a territorial community, the consent of the relevant authorities is needed⁶ [3, art. Art. 116, 127, 128]. At the same time, acquisition of land plots from natural or legal persons-owners does not require approval.

Sale of land plots of state and communal property or rights to them (lease, superficies, emphyteusis) on a competitive basis in the form of an auction is carried out in the cases and in accordance with the procedure, which is regulated by Chapter 21 of the Land Code. Thus, land plots of state or communal ownership or rights to them (lease, superficies, and emphyteusis), including those with objects of real estate of state or communal property located on them, may be sold by individual lots on a competitive basis (land tenders), except for cases, established by Part 2 of Art. 134 ZK.

The contract of sale, lease, superficies and emphyteusis of the land plot between the land auction organizer and the winner of the auctions is concluded directly on the day of the bidding, except for the cases provided for in Article 29, Art. 137 ZA. In case that the winners of the tenders of foreign countries or foreign legal entities are recognized, the contract of sale of land of non-agricultural use is concluded after obtaining the approval of the Verkhovna Rada of Ukraine or the Cabinet of Ministers of Ukraine regarding the sale of land plots to these persons and in accordance with the procedure established by law. In case of the refusal of the Verkhovna Rada of Ukraine or the Cabinet of Ministers of Ukraine in such an agreement, the tenders for this lot are deemed to have not taken place. If the winner of several lots is purchased, the contract is concluded separately for each of them.

The Land Code clearly defines the restrictions on acquiring land of agricultural land by non-residents and stateless persons. So, according to Part 5 of Art. 22 Land Code agricultural land cannot be transferred to the property of foreign citizens, stateless persons, foreign legal entities. In the case of obtaining agricultural land for the mentioned persons as an inheritance such lands should be alienated within one year from the moment of their receipt, as discussed in Part 4 of Art. 81 and Part 4 of Art. 82 of the Land Code. Consequently, Ukrainian legislation allows foreign citizens and legal entities as well as stateless persons to inherit agricultural land, but during the year after acquiring ownership of such land they are obliged to sell or give these lands to Ukrainian citizens, legal entities – residents of Ukraine, the state either to the territorial

⁶ Land Code of Ukraine of 25.10.2001 number 2768-III. Information from the Verkhovna Rada of Ukraine, 2002. No. 3. Art. 27.

community or to transfer it free of charge to a state or a territorial community, and in return to receive it for rent.

It should be emphasized that currently Ukraine has a moratorium (ban) on the sale of agricultural land (currently set before January 1, 2020, but it will probably continue to exist). At the same time, non-agricultural land and rights to it may be subject to civilian turnover, subject to various contracts. That is, this land can be bought, handed over for use, borrowed from it in financial institutions by transferring it to a mortgage.

At the same time, draft laws are being periodically worked out, which should weaken existing restrictions on the acquisition of agricultural land by non-residents. In particular, a draft Law on agricultural land turnover No. 5535 of 13.12.2016 was prepared, which was included in the agenda of the tenth session of the Verkhovna Rada of Ukraine of the eighth convocation in February 2019, but has not yet been considered.⁷ The final provisions of this draft law stipulate that foreigners, stateless persons may acquire agricultural land from January 1, 2030. It is also proposed to supplement Article 22 of the current Land Code of Ukraine with paragraph e) in the following wording: "e) foreigners and stateless persons - for the conduct of personal farming, commercial agricultural production, and farming."⁸ Also, it is proposed to delete part four of Article 81 of the current KK, which obliges foreigners, as well as non-citizens of agricultural land, to inherit during the year.

The next innovation in favor of foreigners in the draft law is to propose an article 130 in the following wording: "1. Purchasers of agricultural land designated by the Law of Ukraine 'On turnover of agricultural land' may be: a) citizens of Ukraine; b) territorial communities in the person of local self-government bodies;⁹ c) the state represented by the executive authorities in accordance with the powers specified in Article 122 of the Land Code of Ukraine; d) legal entities of all forms of ownership, registered in accordance with the legislation of Ukraine; e) foreigners, stateless persons."¹⁰

Thus, the bill envisages expansion of the circle of subjects of ownership of agricultural land plots, as foreigners, stateless persons, and legal entities registered under the legislation of Ukraine, founders or co-owners, who may be foreigners, stateless persons.

4. Conclusions

Draft Law on Agricultural Land Turning No. 5535 of 13.12.2016, is designed to open the market for agricultural land and bring it to the international level by introducing foreign ownership rights to land data. It also provides for the removal of any restrictions on the ownership of these lands by non-residents, except for the use of their intended purpose. The indicated should contribute to the growth of investments in the field of commodity agricultural production.

⁷ Draft Law "On the turnover of agricultural land" dd. 12/13.2016 No. 5535.

⁸ Draft Law "On the turnover of agricultural land" dd. 12/13.2016 No. 5535.

⁹ See Brusentsova 2016

¹⁰ Draft Law "On the turnover of agricultural land" dd. 12/13.2016 No. 5535.

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