

Non-residents as participants in land legal relations in Ukraine

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1. Formulation of the problem

Ukrainian land has always aroused the interest of foreign investors as a mean of production and as an object of investment. The tendency of increasing such interest has not changed for quite a long time, and in the short term there is no prerequisites for reducing the interest in land.

Taking into account the fundamental importance of land as a strategic asset for all countries, the regulation of property relations and the use of land occupies a separate place, apparently, in all developed legal systems.

According to the Articles 18-20 of the Land Code of Ukraine, each land plot, regardless of the form of ownership or use, has a specific earmarking, due to which the formation of the land plot as an object of civil rights is carried out [3, p. 79]. Extremely topical issue is the land ownership of non-residents, including both physical and legal persons.

2. Analysis of recent research

The issue of the status of non-residents as participants in land legal relations in Ukraine has always been of interest to scientists. Such researches as L.O. Bondar, A.P. Getman, V.G. Goncharenko, I.I. Karakash, O. O. Pogribny, V. I. Semchik and others devoted their works to the study of this problem.

The purpose of the article is to analyze the legal regulation of features of acquiring land ownership rights to non-residents, to identify gaps in legislation, and to analyze the draft law "On the Circulation of Agricultural Land" regarding the possibility of acquiring ownership rights for agricultural land by this category of persons.

3. Description of the main material

The land ownership of foreign citizens and stateless persons is regulated by the Land Code of Ukraine. Foreign citizens serve as the participants in land legal relations, in particular, the subjects of the right of ownership to specific land plots.

Land Code of Ukraine, Art. 80, clearly defined the circle of individuals, who can be a land owner, and 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, and also to non-agricultural land areas outside the settlements where the objects of real estate, which belong to them on private property rights are located, in case of:

- their purchase under the contract of sale, rent, donation, mines, as well as other civil contracts;
- redemption of land plots, where the objects of real estate, which belongs to them on the right of ownership are located;
- acceptance of the inheritance.

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

Thus, citizens of foreign states and stateless persons can not acquire land plots by free-of-charge privatization, they can not acquire the private property of agricultural land, and if they have received an agricultural land plot through inheritance, such land need to be alienated within one year (Article 81 of the Land Code).

At the same time, the Land Code allows foreigners and stateless persons to register the rights to land plots on a lease (with some exceptions provided in Part 2, Article 93 of the Land Code). For example, such an opportunity is explicitly provided in Part 2 of Art. 35 of the Land Code, and it concerns the acquisition by foreigners and stateless persons of land for the purpose of conducting individual or collective horticulture on a lease.

Also, foreign juridical persons can act as participants in land legal relations. They can be both owners and users of land plots.

Part 2 of Article 82 of the Land Code stipulates that foreign legal entities may acquire ownership of non-agricultural land:

- a) within the boundaries of settlements in the case of acquisition of real estate objects and for the construction of objects related to the implementation of entrepreneurial activity in Ukraine;
- b) outside of settlements in case of purchase of real estate.

Consequently, for the purpose of business activity, non-residents can acquire the built-up land plots in case of purchase 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. However 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 Land Code of Ukraine defines the procedure of the purchase of land plots by foreign investors from different categories of owners. Thus, for the acquisition of land from the state or territorial community, the consent of the relevant authorities is required [3, p.p. 116, 127, 128]. At the same time, acquisition of land plots from individuals or legal entities does not require approval.

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

The contract of sale, lease, superficies, and emphyteusis of the land plot between the land auction organizer and the winner of the bidding is concluded directly on the day of the bidding, except for the cases provided in Part 29 Article 137 of the Land Code. This case, in particular, stipulates that if the winner of the bidding is foreign state or foreign legal entity, the contract of sale of land of non-agricultural purpose is concluded after obtaining the approval of the Parliament of Ukraine or the Cabinet of Ministers of Ukraine for the sale of land plots to these persons in cases and in accordance with the procedure, established by law. In case of the refusal of the Parliament of Ukraine or the Cabinet of Ministers of Ukraine in such an agreement, tenders for this lot are considered as such as have not taken place. In the case of the purchase of multiple lots, the contract is concluded separately for each of them.

The Land Code clearly defines the restrictions on the acquisition of agricultural land for non-residents and stateless persons. Thus, according to Part 4 of Art. 22 of the Land Code agricultural land can not be transferred to the property of foreign citizens, stateless persons, foreign legal entities. In the case of obtaining agricultural land for the above-mentioned persons, such lands should be alienated within one year from the moment of their receipt, as stipulated 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 one year after acquiring ownership of such land is obliged to sell or donate these lands to Ukrainian citizens, legal entities – residents of Ukraine, to the state either to a territorial 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 there is a moratorium (ban) on the sale of agricultural land in Ukraine (it is currently set until January 1, 2019, but it is likely to be prolonged). At the same time, the land of non-agricultural use and rights to it can be the object of civilian turnover, the scope of various contracts. Thus, this land can be bought, transferred for use, it is allowed to take a loan in financial institutions, transferring land to a mortgage.

One of the requirements of the International Monetary Fund for continuation the lending program for Ukraine is the lifting of the moratorium on land sales and land reform, i.e. the lifting of the moratorium and the launch of the land market. In connection with this, a Draft Law on the Circulation of Agricultural Land No. 5535 dated January 13, 2016 was prepared [2]. The final provisions of this draft law stipulate that foreigners, stateless persons may acquire agricultural land from January 1, 2030. Also, it is proposed to supplement Article 22 of the current Land Code of Ukraine with paragraph e) in

the following wording: "e) foreigners, stateless persons - for the conduct of personal farming, horticulture, commercial agricultural production, and farming" [2]. It is also proposed to delete part 4 of article 81 of the current Land Code, which obliges foreigners, as well as stateless persons, in case of inheritance of agricultural lands, to alienate such land during the year.

The next innovation in favor of foreigners in the draft law is the suggestion to expound article 130 in the following wording:

"1. Purchasers of agricultural land designated by the Law of Ukraine "On the Circulation of Agricultural Land" could be:

- a) citizens of Ukraine;
- b) territorial communities represented by the local self-government bodies;
- 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" [2].

Thus, the draft law forecasts expanding the range of individuals and entities, which could own the agricultural land plots, including foreigners, stateless persons, and legal entities registered under the legislation of Ukraine, founders or co-owners who could be foreigners, stateless persons.

4. Conclusions

The Draft Law on the Circulation of Agricultural Land No. 5535 dated January 13, 2016, which was to come into force on July 1, 2017, opens the market of agricultural land and brings it to the international level by introducing foreign ownerships to these lands. It also provides removal of all restrictions regarding the ownership of these lands by non-residents, except for their use for their intended purpose. This should help to increase investment in commodity agricultural production area.

But it should be emphasised that now the average level of income of agricultural business and citizens of Ukraine is much lower than the average income level of agribusiness in the countries of the European Union and is much lower than the income of citizens of the European Union. Meanwhile, the analyzed Draft Law of the Circulation of Agricultural Land No. 5535 from 13.12.2016, as we have already mentioned above, opens the market of agricultural land, which will eventually lead to the displacement of small and medium agricultural non-competitive national commodity producers from the food market. Accordingly, in our opinion, in order not to harm the national interests, this market of agricultural land should be opened when the level of incomes of agricultural producers, Ukrainian citizens on average will be able to compete with the level of incomes in the countries of the European Union.

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