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ON SOILS' PROTECTION UNDER LAND-LEASE CONDITIONS

The purpose. To determine pressing questions and state of development of the legislation in Ukraine, to analyze the international and domestic experience of protection of soils. Methods. Aspects of legislative adjustment of legal protection of soils in Ukraine during leasing of lands of agricultural assignment are surveyed, features of normative-legal adjustment of preservation of edaphic resources in different states of the world are studied. Results. Positive foreign experience of some countries is probed and presented. It is shown as during leasing of lands of agricultural assignment in Ukraine the interested subjects can practically care about the state of soils at the level of signing agreements. Application of measures of protection of edaphic resources at that level is one of scientifically-practical and socially useful results. Conclusions. For legislative adjustment of legal protection of soils in Ukraine it is necessary for parliament to adopt the Law "On preservation of soils and protection of their fertility", and also to approve other acts in the yielded sphere. Considering urgency of the problem of protection of soils as a whole, special attention is given to the necessity of supervisory control over the state of soils during leasing of lands of agricultural assignment.

Key words: legislative adjustment, legal protection of soils, international experience, domestic experience, supervisory control of state of soils.

By the year 2015 (proclaimed by the United Nations as the International Year of Soils), the problem of soil resources' conservation and protection has become especially significant for Ukraine. In some countries of the world, soil resources are not always in their best conditions either. At the same time on the level of individual states and interstate institutions, European and international communities are making every effort to encourage landowners and land-tenants not only to realize the degree of responsibility for soil, but

also to perceive certain material incentives as a reward for their soil-protection activities as well. This paper is dedicated to problems of soil protection during the land plots' leasing period. In Ukraine, the land-rental relations are regulated by the relevant "On the Land Lease" Law [6]. It is the very leasing relationship as one of the modern types of land resources' management that imply great risks against preserving soils in Ukraine in their normal status. Thus to-date, according to Article 15 of the Law of Ukraine "On the Land Lease", the essential conditions of the 'Model Land- Lease Contract' are: (i) an object of leasing (mentioning its cadastral number, land-plot location and dimensions); (ii) time-term of lease contract/ agreement; (iii) rental payment with indication of its amount and indexation; (iv) method and terms of payments; (v) time and method of payment transfers and revision, and (vi) responsibilities (fines) in case of non-payment. Due to consent by contractual parties, document of a land-lease agreement may specify some other conditions.

In this manner, the land-owner (lessor) is largely deprived of possibility and mechanisms of monitoring / control over the use of his (but temporarily tenancy- leased by the lessee) property. Judging by quantitative value of chernozem soils' quality potential, Ukraine is one of the world- leaders (the second-best after Russian Federation). However, the present-day Ukrainian lease agreement documents still omit indications of soil status and soil-fertility. This drawback requires resolute practical changes in regard of Article 15 of the Law of Ukraine "On Land Lease"; in particular, to supplement the current list of essential land lease conditions with requirements to: (i) monitor/control the status of leased soil; (ii) protect/ conserve the leased soil; and (iii) restore the leased soil fertility (if necessary).

An ability of soil to ensure a certain (factual) degree of productivity under changing climatic conditions, alongside achievement of required level of soil management culture, is known as effective soil fertility. Upon a single tillable plot of land (i.e., a crop rotation field), there may exist more than one subtypes of soils which altogether may represent a complex and

heterogeneous terrain in terms of soil fertility index. It is for this very reason that in legislative context, the notions “earth” or “ground” should be strictly distinguished from the notion “soil”, never to be identified [1]. The Ukrainian statesmen must comprehend the importance of statistical account of soil qualitative status and soil fertility potential indices. After all, a good soil cover with high fertility potential is a basis for the civilized and high-quality living standard of a nowadays’ society. This is the very land, with its particularly valuable soil cover, that we must cherish, protect, conserve and elaborate [1]. Still, this issue is a matter of care not only for society, but of governmental agro-policy as well. To this end, based on Article 14 of the Constitution of Ukraine, land is the major national wealth that is under special protection by the Ukrainian state.

Analysis of recent research and publications

Let us focus on practical state-legal aspects for a while. Problems of legal soil-protection, legislative norms of soil-protection and soil fertility enhancement have not yet received proper legislative consolidation. Long-lasting irrational and debilitating agriculture practices have led to dramatic decline in soil fertility. Indicators of critical status of soil quality index are recorded in the “National Report on the Soil Fertility of Ukraine”, in official statistical annual communiqués, and in many sciential publications dedicated to the soil fertility status. Active measures on legal soils’ protection and legislative support to enhancing their fertility are needed hardly. Otherwise, adversary environmental consequences will lead us to ecological catastrophe.

Having analyzed the latest publications on the topic under study, and after a brief insight review of the past, we have to note that in the Soviet era, the whole land asset was in governmental ownership. In the USSR from 1917 to 1990, land plots were lended/ leased to citizen individuals and legal entities for temporary use exclusively [4]. Since 2002, with the entry into force of the Land Code of Ukraine [5], the lease instrument has become a major right to manage/ use the land plots.

Analysis of topical studies, research and publications gives an impression that certain scholars are inclined to concentrate their main focus rather on a tenancy-lease agreement initiated by a landlord (*landowner*) or land-tenant (*lessee*) with a relevant subject. It is the written lease-contractual document where all forms and features of land use, and peculiarities of each land plot to be leased, may be reflected. According to findings and statements by practicing lawyers [10], the present-day Ukrainian land legislation is overburden with so many contradictory amendments that it is sometimes very difficult to define 'who is who', and 'what is what'. Unfortunately and as a rule, every new change in the Land Code (or in other relevant law) entails even more problems and inconsistencies. Regarding type land lease contracts, there exists a "Model Lease Agreement" approved by the Cabinet of Ministers of Ukraine (adopted on March 3.2014), which is almost unchanged today. In opinion of authors of this document, implementation of efforts for protection and conservation of soil through conclusion of land lease agreements is one of its scientific, practical and socially beneficial results! That is, an idea embodied into juridical conclusions or proposals for interested parties, may become a real legal norm. Examining the content of this "Model Agreement" (approved and adopted by Decree of the Cabinet of Ministers of Ukraine) [9] raises many practical questions. This model formula contains some apparent uncertainties and inconsistencies which open possibilities to enter into its text desirable terms and conditions at someone's own discretion. And indeed, the practical jurisprudence sometimes allows something that is not directly prohibited by the law. Hence, we can adhere to our major goal, - just to implement those practical efforts for soils' protection that belong to our competence. That is, for the purpose of practical soils' conservation during the land plot leasing period, landowners and land tenants can specify necessary soil fertility items in Section 2 ("The Lease Object") of the "The Model Land Lease Contract". Necessary conditions for ensuring soil status protection (plus soils' fertility restoration to their initial state, etc.) are worth of being recorded in other sections of the Lease Agreement. Later on, these

records can be substantially expanded, taking into account each individual case of lease relations between the contractual parties. If an object of lease is a certain plot of land with its corresponding soil features, it would be logical to supplement the content of that contract- section with terms and conditions of soil preservation at its original state as well.

Terms and conditions of land lease contracts defined by the updated Law edition are not only an object of consideration, but also a prerequisite for practical actions. Landlords who are truly interested in preserving and further rehabilitating leased soils, can attentively study relevant land-legislation rules and obtain practical competent conclusions. Beside essential terms and conditions of land lease specified in Article 15 of the Law of Ukraine "On Land Lease", some more points may be indicated in the land lease agreement upon consent of parties.

In case if a land lease agreement envisages some efforts aimed at protection and improvement of a leased object, a special item shall be included into the 'Leasing Agreement', regarding reimbursement to the lessee for the costs of his efforts.

International experience

The problems of soil protection/ conservancy are solved in different ways around the world. It is worth recalling some basic principles of "European Soil Policy": (i) monitoring on a unified basis; (ii) assistance to the farmer only if one meets the soil protection standards; (iii) independence from forms of land-ownership etc. In Belgium, for example, the land ownership is a private deal, while in the Netherlands, governmental ownership covers the prevailing part of land-plots. It is remarkable that owing to advanced agro-technologies in both of these European countries, a very high efficiency of agrarian sector has been achieved.

In Poland, the "Environmental Protection Act" defines the notions of earth-surface and soil-cover, and also provides for natural compensation (i.e., list of activities to restore nature- equilibrium) in case if somewhere, soil-status would be deteriorated as a result of human activity. The Polish

legislator has instituted a legal norm which obliges one to take into account the need to protect soils early at the planning stage. Such protection involves either maintaining the soil quality per appropriate standards, or reproducing the quality of soil and earth; at least to the required standards in case if a given quality level is insufficient. It is an important fact that status of soils is controlled by governmental environment monitoring agencies. In the context of environmental pollution spread-out, the legislative norm of Article 336 states a puzzling paradigm: “...*a subject who, for crop farming, uses earth or soil whose quality exceeds the limited values specified by the Standard, shall be punished with a relevant fine...*”. Due to legal provisions for soil quality standards, a given soil will be reckoned as contaminated, if at least one of its constituent substances (specified in the Regulation List) exceeds the specified limit. At Poland-state level, soil research activities are conducted by the Soil Science and Plant Growing Institute.

Soil studies can also be carried out by Voivodship Inspector Agencies™ for environment protection within voivodship networks, taking into account various specific needs of a given region.

Hence, the soil environment in Poland is safeguarded by both national and European legal norms simultaneously. In Polish legislature (as generally in the whole Europe as well), the problem of soil protection is regulated not by a single specific law, because in Poland, the soil topicality is in-thesis mentioned in a large number of intermediate normative & legal acts that relate to all environmental components inclusively [2]. An important document that highlights economic mechanism of soil protection and soil fertility restoration is the “Rural Territories Development Program- 2014 – 2020”. Over €13.5 billion from the European Agricultural Fund for Rural Development, and numerous Public Funds in Poland, have been allocated for this Program implementation.

An actual issue in the nowadays' Ukraine is the task of de-centralization of authority powers in the land sector. The relevant experience gained by the Netherlands would be useful for Ukraine as well. Thus in 2007, twelve

provinces of the Netherlands Kingdom were delegated functions of governing their rural areas development. For over 80 years of its existence, the Dutch Land & Water Administration of the Netherlands Kingdom (the DLG) has accomplished a significant scope of service for lease and sale of state-owned land-sites. To-date, the Netherlands has no state-owned land, except for the territory reserved by the Ministry of Defense. Since March 2015, the DLG Agency has been dismissed from the office, and now its functions are performed by local power authorities across the country. In the Netherlands, widely used is the mechanism of long-term financial compensation to those farmers who, as a result of farming consolidation (i.e., merge of small farms into consortiums) had received land plots of a worst quality or a smaller size.

According to soil-experts' opinion, the American land-lease experience would be interesting to Ukraine because the Ukrainian land legislation is based on American principles in this area [8]. However, the American land management system is complicated by the lack of a uniform nationwide land-cadastral instrument, alongside the specific legislature peculiarities of each North American state alone. Another interesting feature of American experience for Ukraine is a certain economic method of influence, characteristic of the United States lifestyle. There are too many regulation bans and prohibitions in Ukraine. In the United States, potential land users that would wish to set forth a desired land-management form are just requested to pay relevant (quite legal though significant) taxes to the local county- budget.

Conclusions

Despite serious imperfection of Ukrainian land-legislation, which has no special laws on soils' protection, we must initiate a resolute start with what is in our power. One of practical conclusions is a finding that necessitates possibilities for improving the contents of land lease agreements, so as to provide conditions for monitoring the status of leased soil. There is no doubt that other conclusions regarding the preservation of the country's potential

and protection of soils are urgently needed by the Parliament to adopt a special Law of Ukraine "On the Conservation of Soils and Protecting Their Fertility". It is this law that will ensure the preservation of the country's unique soil cover.

This idea was emphasized by delegates of the 9th Congress of Ukrainian Soil Scientists and Agro-chemists' Society in their open collective appeal to the Supreme Governmental authorities, in anticipation that urgency of solving the problems of using, preserving and reproducing the soil fertility potential (as the most valuable natural treasure of Ukraine) would be correctly understood [8].

Amidst the complex set of tasks being very important for solving the problems of economically rational use of agricultural land, we consider the following first- priority efforts:

- adoption of the Law of Ukraine "On the Conservation of Soils and Protection of Their Fertility";
- elaboration of the Concept and the National Program for the Protection of Soil Fertility;
- elaboration of the Concept and the Governmental Program of Large-Scale Soil Survey;
- adoption of changes and additions to Article 15 of the Law of Ukraine "On Land Lease";

namely, to supplement the current list of essential items of the "Model Land Lease Contract" with terms and conditions of :

- monitoring-control on status of soils,
- protection and conservation of soils and (if necessary) -
- restoration of soils' fertility.

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