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Legal Forms of Civil Circulation of Land

Introduction of proper land market in Ukraine, the abolition of the moratorium on sale of agricultural land in the near future requires serious attention not only from officials and local authorities, but also legislators and researchers in civil land relations. The task of the latter is to facilitate the elimination of contradictory provisions in the current legislation, which complicate and sometimes make impossible the practical realization of the land plots by the owner and user. This article discusses such problems in the process of concluding land legal transactions as limiting or blocking the scope of contractual forms of nature management, which will ensure the legal equality of the parties, their independence and initiative in the use of natural resources, the main of which is the land that is national riches of Ukraine and is under special state protection (art. 14 of the Constitution of Ukraine)

Key words: land market, civil circulation of land plots, legal forms of market circulation, transactions, contract, powers of land owner and land user, lease, neighborhood land easement, superficies, emphyteusis.

Formulation of a scientific problem. The current land law gives citizens and legal entities that have become owners of land plots as a result of land privatization or acquired land in private ownership on other grounds, a wide range of powers, including the authority to dispose of these plots through legal transactions. The legal basis for the functioning of a full and legal land market in the state is not yet fully formed. That is why the practical realization by land owners of their powers to dispose of land is often complicated by the presence of contradictory provisions in the land and civil legislation. The owners are allowed to disrupt lots improper use of officials of the executive authorities and local governments of separate legal requirements relating to the conclusion of transactions in land relations, the moratorium on the sale of agricultural land .

Analysis of studies of these issues. The article presents a fragmentary analysis of scientific works of such scientists, as M. V. Shulga, V. I. Semchik, N.S. Kuznetsova, O. V. Dzera, A. K. Sokolova, D. V. Haustova and others. Particular attention is paid to the works of P.F. Kulinich about land transactions and V. I. Andreytsev and V.V. Nosik on the concept of market circulation of land and its legal regulation.

The purpose of the study is to analyze the sufficiency and completeness of legal regulation of legal forms of realization of rights of landowners and land users, establishing the features of transactions that mediate the market circulation of land plots, identify shortcomings and unlawful restrictions in this area and to provide suggestions for their elimination of civilization areas and market circulation of rights to natural resources.

Presentation of the basic material and substantiation of the research results. Contracts in the area of nature are determined in the literature as a separate legal instrument which is a part of a complex system of legal regulation of contractual relations in this area. The most widespread and regulated are the contracts for the basic natural resource – land. It is noteworthy to study the theoretical and practical aspects of land transactions , conducted by P.F. Kulinich , in particular, a number of controversial and insufficiently clear provisions of land and civil legislation on the conclusion of such contracts.

The article primarily deals with the legal forms that mediate land-property relations in the area of land turnover and rights to them. First of all, we will note that the main features of subjective rights to land in Ukraine are related to the specificity of their object - land. Since the enamel plot, being an object about which subjective rights of both individuals and legal entities may arise, is characterized by significant features that distinguish it from other objects, land relations are reasonably regulated by the prescriptions of a separate branch of law – land law of Ukraine. The civil law regulates these relations only if they are not regulated by land legal norms. There are some exceptions to this general rule. Thus, according to Art. 131 of the Land Code of Ukraine citizens and legal entities of Ukraine, as well as territorial communities and the state have the right to acquire land ownership on the basis of mines, rents, gifts, inheritance and other civil agreements. The conclusion of such agreements in accordance with the above norm is carried out in accordance with the Civil Code of Ukraine, taking into account the requirements of the Land Code of Ukraine [2].

When regulating land and property relations, the legislator gives priority to the rules of the Civil Code of Ukraine. Features of land turnover are due to the specific features inherent in these objects of ownership and right of use. It concerns, in particular, the absolute immovability of the land plot, its fixed size and configuration, specific (individual) legal regime, purpose and use, certain natural qualities and physical properties. Land, being the subject of land relations, is an integral and major component of the environment, the main national wealth and at the same time real estate. Specificity of land turnover is connected, first of all, with the invariability of their location. The land cannot be objectively moved from one place to another. Recognition by civil law of land plots by real estate is based on the specificity of this object of nature. In the process of land circulation, the movement of this object does not occur, so it is more correct to speak not about the turnover of land plots, but about the circulation of rights to them. In the legal literature, the circulation of land is understood as the transition from one person to another person of the disposal (as part of the property right) or rights and ownership of the land [1, p. 224]. In addition, it is accepted that this turnover, being subject to legal regulation, takes place in certain legal forms and is characterized by certain legal consequences. One of the main and dominant legal consequences of such a turnover is the transfer of subjective land rights from one person to another. This applies, in particular, that one person (the media rights to land) transfers those rights to another entity, which acquires corresponding rights to specific land area in the manner prescribed by law.

Due to the nature of the legal acts regulating the land turnover and the legal facts land turnovers are distinguished into transferred, administrative, market, civil and mixed. It should be noted that in our study, the issue of civil land turnover, which is performed on the basis of civil transactions, is of interest. Unlike the administrative circulation of land plots, which is based on the transfer of rights to land plots on the basis of decisions of state authorities and local self-government bodies in accordance with their competence, determined by law, in civil circulation the transfer of the right to land from one person to another occurs by the conclusion by these persons of an appropriate transaction concerning a specific land plot.

In the context of civil circulation, an independent place is occupied by market circulation as a variant of it. The latter is divided into two subspecies: the market turnover that serves the alienation of land plots in the property, and the market of the right to lease land plots, and, an important legal feature of any land turnover, and more precisely the rights to them, is the transfer of these rights from one person to the other. The real full right to the land is the right of ownership of it. The rights of the owner of the land plot is the totality of the subjective powers granted to him by the law regarding the possession, use and disposal of the land plot. The irregularity of the subject of the land plot on the basis of the ownership right implies that the subject has the powers to own, use and dispose of the land, which together constitute the content of the ownership right.

In case of alienation of a particular land plot, all three of these named powers are transferred from one person – the owner who alienates the land to another person who acquires it. In this case, the land owner realizes, first and foremost, the key authority to dispose of the land plot, the essence of which lies in the legally enshrined ability of the land owner to decide its legal fate by committing actions that do not contravene the rules of current legislation. Thus, according to Art. 90 of the Land Code of Ukraine, the land owner has the right: a) to alienate the land on the basis of civil agreements; b) to inherit the land plot, etc. [3].

It is the change of the land owner that proves the fact that the rights to this land were circulated when the transaction was concluded. However, the landowner may dispose of it in such a way that he retains one of

the property rights – the right of disposal, and the rest of the rights – the right of ownership and the right to use the land – transfers to another person. As a result of such transfer by the owner of the powers attributable to him to own and use the land plot, the acquirer of these powers in full volume has the opportunity to monopolize physically own and use its consumer properties: to carry out construction, grow agricultural products, etc.

However, it is important to emphasize that the general rule in the transfer of rights to ownership and use of land takes place a change of the person who physically has the monopoly of land and uses its properties. The analysis of the land legislation shows that in some cases land transactions are concluded in such a way that only the right to use the land is transferred from one person to another. It is a matter of limited land use, for example, when installing a neighbor's land easement. A person in whose interest a neighbor's land easement is established shall acquire the rights of restricted use of another's land plot (right of passage, passage, etc.). In this case, the title owner or user does not lose the right to use it and continue to use this land at the same time as the person in whose interest a neighbor's land easement is established. In this case, the transfer of the right of restricted use of the land plot does not testify to the fact that the relevant right is circumvented.

It is known that, in accordance with the constitutional provisions and norms of the current Land Code of Ukraine, the circulation is ; land and rights to them must be exercised in certain legal forms specified by law. An important place among these forms is occupation. It should be noted that the current Land Code of Ukraine does not operate the term «transactions», but uses the terms «contracts» and «agreements» for the acquisition and termination of land rights. Yes, Chapter 20 of the Land Code of Ukraine is entitled «Sale of land or rights to them on the basis of civil contracts». According to Art. 142 of the Land Code of Ukraine, a voluntary waiver of ownership of a land plot is formalized by the conclusion of an agreement on the transfer of ownership of the land plot. As noted above, enterprises, institutions and organizations that carry out geological surveying, prospecting, surveying and other exploration work may carry out such work on the basis of an agreement with the landowner. Civil Code of Ukraine (Chapter 16) establishes general requirements for making the claim on turnover of land [6]. However, it should be noted that the legal regulation of land relations, in particular those that have land-property character, is provided not only by civil but also by land legislation.

The relation between the rules of civil and land law is considered to be the ratio of general and special rules. This means that in the event of disagreement between the rules of civil and land law, which simultaneously regulate the transfer of land rights, land law rules have priority. The priority of the land rules in the specified sphere of relations, which should provide the public legal basis of regulation, is the necessary basis for fixing a certain balance of public and private interests by land legislation.

From Art. 131 of the Land Code of Ukraine can be stated, that citizens and legal entities of Ukraine, as well as territorial communities and the state have the right to acquire land ownership on the basis of mines, rents, gifts, inheritance and other civil legal agreements. This rule emphasizes that the conclusion of such agreements is carried out in accordance with the Civil Code of Ukraine, taking into account the requirements of the Land Code of Ukraine. Thus, the civil law, when regulating relations concerning the conclusion of civil transactions concerning land plots, should take into account the land-legal requirements for the conclusion of civil transactions concerning land plots. Such requirements are enshrined in Art. 132 and other articles of the Land Code of Ukraine.

The analysis of the land-based regulations on the regulation of land agreements shows that their share prevails, is much larger than the share of the relevant civil rules. The composition of land transactions are not homogenous and called 'connection with h im can be classified into the appropriate group. Thus, among land transactions it is possible to distinguish a group of contracts aimed at the transfer of land to property. These are mine contracts, sales and donations that mediate the civil circulation of land.

A special place is occupied by a group of related land treaties – an annuity contract , life support, etc. These are the so-called allatorial treaties. Under these agreements, one party (the transferor) transfers the land to the other party (the transferee), and the latter, in turn, undertakes to keep the transferor, pay him certain sums or fulfill his orders for life. It is possible to distinguish transactions for land not related to the transfer of ownership of land. These are contracts aimed at the temporary use of land, for example, the use of land on lease (sublease).

Specificity of land contracts is determined by the purpose of land plots and their belonging to one or another specific category of land in Ukraine. For example, Art. 130 From the Land Code of Ukraine attach a comprehensive list of persons, who may be buyers of agricultural land for agricultural commodity production. Such buyers may be: 1) ukrainian citizens who have agricultural education or experience in agriculture or are engaged in commodity agricultural production; 2) legal entities of Ukraine, the constituent documents of which provide for agricultural production. This provision also specifies that the pre-emptive right to purchase agricultural land is granted to citizens of Ukraine who reside permanently in the territory of the respective local council where the land is sold, as well as the relevant local self-government authorities [2].

In the process of implementation of land reform, new contractual structures in the field of land relations are emerging and becoming more complicated. It is sufficient to note that according to Art. 127 of the Land Code of Ukraine public authorities and local governments according to their powers engaged on a contract basis sale of land parcels state or communal ownership or rights thereto (lease, superficies, perpetual lease) citizens, legal entities and foreign states on the grounds and in the order established by the Land Code. Among the treaties in the field of land relations also distinguish: an agreement on joint ownership of land; an agreement on assignment of a share in the ownership of the land plot; the founding agreement on the creation of a business company with the transfer of the land plot or the right to use the land plot to the statutory fund, etc.

The pledge of land or rights to them is also carried out on a contractual basis (Art . 133 of the Land Code of Ukraine) . These agreements regulate relations mainly in the sphere of market circulation of land and rights to them, land and other rights and obligations arising from the lawful actions of subjects. It is in the process of such circulation that land rights arise and terminate. This is not just about ownership of land. The contractual basis is also the basis for the use of land and land parcels (units) under lease or sublet.

Moreover, the provisions of the Law of Ukraine «On Land Lease» on renewal of the lease of the land plot are not consistent with the rules of the Central Committee of Ukraine on the procedure for renewal of the lease term. This raises problems of application of such rules, ambiguity of case law and requires improvement of the relevant legal requirements. Transaction, which can be acquired the right to use land their areas should be considered: the conclusion of lease (sublease) of land, the establishment of a land easement, contract the right to use someone else's land for agricultural needs (perpetual lease) or contract the right to use someone else's land for buildings. In addition, according to Part 1 of Art. 413 of the Civil Code of Ukraine the owner of the land plot has the right to make it available for use by another person for the construction of industrial, household, socio-cultural, residential and other structures and buildings. Such a right arises on the basis of a contract or will. It should also be borne in mind that according to Part 1 of Art. 133 According to the Land Code of Ukraine, the right to use the land may be pledged [2].

The so-called side contracts, which affect land relations, occupy an independent place [7, p. 213].

Yes, the emergence of land relations may be related to the conclusion of civil agreements on the transfer of ownership of a dwelling house, building or structure. By-laws may include an agreement for the use of hunting grounds, etc. All of the above requires scientifically sound assessments and predictions of the legal regulation of relevant relationships. The vast majority of contracts connected with land, types, contents and order are made determined from the Land Code of Ukraine, have civil law nature . Thus, the regulation of the relationships that are formed in the process of making and implementation can fulfill into civil requirements and methods of civil law. This also applies to the use of established civil law approaches to classifying contracts.

However, when considering contracts in the field of land relations, it should be borne in mind that by their legal nature, contracts with land are not only private-law related but also have public-law reallion. And, in particular, contracts concerning state-owned or communal-owned land. The conclusion and implementation of contracts for such land plots is necessarily mediated by the decision of the state executive authorities and local self-government authorities. It is in them that the issue of assigning a particular land plot to a certain category of land, establishing or changing the purpose of the land plot, approving a project of land allotment, etc., is solved.

As for land plots of private property, then in this case the contractual relations are also subject to public legal influence. This includes, in particular, the issuance of a state act on the ownership of land, the assignment of a cadastral number to a land plot and the state registration of land rights. It should also be emphasized that according to the current land legislation the transfer of rights to any land plot is connected with the obligatory carrying out of its monetary valuation.

Conclusions. The foregoing leads to the conclusion that the legal relations in the sphere of land relations requires an integrated approach to the use of regulations and methods as private law and public law character. In this case, legal support for the transfer of land or rights to them on a contractual basis should be carried out taking into account the fact that in this case, the rules of civil law are consistent with the rules of land legislation as general and special. As emphasized in Part 2 of Art. 131 of the Land Code of Ukraine, the conclusion of agreements on the acquisition of ownership of land on the basis of leases, rents, donations, inheritance and other civil-law agreements is carried out in accordance with the Civil Code of Ukraine, taking into account the requirements of the Land Code of Ukraine.

Contracts in the sphere of land relations have only private law character and are recognized as civil contracts, despite the fact that much of it is outside the direct regulation norms Civil Code of Ukraine. [5, p. 293] This is usually confirmed by reference to Art. 131 of the Civil Code of Ukraine, which stipulates that citizens and legal entities of Ukraine, as well as territorial communities and the state have the right to acquire land ownership on the basis of leases, rents, gifts, inheritance and other civil legal agreements regarding land plots.

There are other features of land transactions as compared to civil contracts. Yes, it should be borne in mind that the specific nature of the legal nature, such as contractual and non-contractual liability, due to the different nature of the duties present in the civil and land contract. In the first case, the obligation arises from the contract as a legitimate fact of the obligation, based on the autonomous will of the parties, in the second - in connection with the unlawful behavior of his party, which violated the absolute right of the subject of land and legal relations. It suggests that contract as a form of land transaction, you can walk the grounds of the obligation to recover the ground or damage to the environment. The only such ground is the fact of wrongful harm, that is, a tort. Thus, the analysis of the current legislation has made it possible to identify the most common features that characterize contracts in the field of land relations.

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Самчук-Колодяжна З. Правові форми цивільного обігу земельних ділянок. В статті розглядаються проблеми, що виникають в процесі укладення та виконання земельних цивільно-правових правочинів, передусім, тих цивільно-правових форм, що опосередковують земельно-майнові відносини в сфері ринкового обігу земельних ділянок та прав на них. В суспільстві висловлюється багато пересторог щодо запровадження купівлі-продажу земель

сільськогосподарського призначення, що мають ряд особливостей, які зумовлені не лише статусом та специфікою об'єкта, але й особливостями їх правового врегулювання. Законодавець надає пріоритет нормам цивільного законодавства, які при цьому повинні застосовуватись субсидіарно до норм земельного та природоохоронного законодавства. Проведений в статті аналіз повноти та достатності правового регулювання визначених чинним законодавством правових форм реалізації прав землевласників та землекористувачів, встановлення їх недоліків та неправомірних обмежень при укладенні земельних цивільно-правових угод дозволив встановити шляхи подолання відповідних стереотипів, пересторог та штучних заборон в сфері ринкового обігу земельних ділянок та прав на них.

Ключові слова: ринок землі, правові форми ринкового обігу землі, повноваження землекористувача та землевласника, оренда, сусідський земельний сервітут, суперфіцій, емфітевзис.

Самчук-Колодяжная З. Правовые формы гражданско-правового оборота земельных участков. В статье рассматриваются проблемы, возникающие в процессе заключения и исполнения земельных гражданско-правовых сделок, прежде всего, тех гражданско-правовых форм, которые опосредуют земельно-имущественные отношения в сфере рыночного оборота земельных участков и прав на них. В обществе высказывается много опасений относительно внедрения купли-продажи земель сельскохозяйственного назначения, которые имеют ряд особенностей, обусловленных не только статусом и спецификой объекта, но и особенностями их правового регулирования. Законодатель предоставляет приоритет нормам гражданского законодательства, при этом нормы земельного и природоохрannого законодательства должны применяться субсидиарно. Проведенный в статье анализ полноты и достаточности правового регулирования определенных действующим законодательством правовых форм реализации прав землевладельцев и землепользователей, установление их недостатков и неправомерных ограничений при заключении земельных гражданско-правовых сделок позволил установить пути преодоления соответствующих стереотипов, опасений и искусственных запретов в сфере рыночного оборота земельных участков и прав на них .

Ключевые слова: рынок земли, правовые формы рыночного оборота земли, полномочия землепользователя и землевладельца, аренда, соседский земельный сервитут, суперфиций, эмфитевзис.