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Problems of legal forms of management in the agricultural sector

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The subject of this paper was the analysis of individual issues of legal forms of management in the agricultural sector. The purpose of this study was to identify and characterize the main trends in the development of legal forms, analyse the problems of legal forms of agricultural production and formulate proposals for their solution. During the study, the main trends in the development of legal forms of Ukraine in the aspect of business deregulation and the opening of the agricultural land market were identified. The role and significance, types, legislative, and doctrinal approaches to determining the legal form of agricultural production were also covered. Based on the analysis of legal literature, national legislation and the practice of its application, the problems of certain legal forms of agricultural production (farms, collective agricultural enterprises, etc.) were analysed. According to the results of this paper, it was found that the principle of equal forms of ownership and management in agriculture

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is violated in Ukraine. Priority of practical importance is the definition and legislative approval of legal forms of land production because this will contribute to the choice of the form of conducting business in the agricultural sector from categories. The materials of this paper can be of practical value for further researchers, as well as act as an essential resource as a solution to a relevant issue that was presented in the subject of this paper

Keywords: legal forms, business entities, agricultural production, agricultural sector, farms, collective agricultural enterprise

Introduction

Natural resources relations can be defined as a set of complex social relations concerning the use and reproduction of individual natural resources in their inextricable connection with other elements of the environment. Currently, in legal doctrine, apart from the subject of legal regulation of natural resources law, the definition of the object of natural resources legal relations and, specifically, the definition of the legal nature of climate resources and their place in the modern system of natural resources legal relations, causes a lot of discussion. This is explained by the lack of a comprehensive study of the theoretical foundations of natural resources legal relations, the complexity of the subject of legal regulation, and the variety of scientific approaches to understanding the objects of natural resources law.

In the presence of numerous scientific opinions on this phenomenon, the problem of forming a unified approach to understanding the object of natural resources legal relations stays relevant. Since, as fairly noted by V.M. Yermolenko, an object in the structure of legal relations forms internal functional connections that are better amenable to legal regulation, and this undoubtedly contributes to the establishment of legal relations as a separate system [1, p. 11].

In this regard, Yu.O. Vovk once pointed out that the subject of natural resources law is united through the unity and inextricable connection of all natural resources that are objects of legal regulation. At the same time, it is quite multifaceted, as it is expressed in the diversity of the specified relations, caused by different types of natural objects, regarding which social relations exist [2, p. 10].

Scientific articles of such prominent representatives of domestic and foreign legal science as H.V. Anisimova, Yu.O. Vovk, V.M. Yermolenko, B.V. Yerofeiev, M.D. Kazantsev, I.B. Kalinin, I.I. Karakash, O.S. Kolbasov, M.V. Krasnova, V.V. Petrov, Yu.S. Shemshuchenko, and other scientists investigate the objects of natural resources and environmental legal relations, including the legal nature of climate resources. However, many aspects of the raised issues are not fully addressed, which determines the relevance of the specified subject under study.

The purpose of this paper was to investigate the scientific approaches to the characterization of objects of natural resources legal relations, to establish the legal nature of climate resources, and their place in the modern system of natural resources legal relations.

Materials and methods

The experimental theoretical framework of this study included the papers of leading researchers in the field of agrarian economic, civil, and other branches of law, such as M. Ya. Vashchyshyn, O. V. Hafurova, V. M. Yermolenko, T. O. Kovalenko, I. M. Kucherenko, V. V. Nosik, O. O. Pohribnyi, V. I. Semchyk, I. V. Spasybo-Fatieieva, A. M. Stativka, N. I. Tytova, V. Yu. Urkevych, V. I. Fedorovych, M. V. Shulha, V. S. Shcherbyna, V. Z. Yanchuk, and others. Notably, the theory of agrarian law has numerous studies covering the legal analysis of individual legal forms of agricultural production, while there is no complex study of all modern forms of agricultural production. There are practically no studies of the legal status of collective agricultural enterprises, private-leased agricultural enterprises, state-owned agricultural enterprises, associations in agriculture, etc.

During the study, the following methods were used: theoretical (analysis; synthesis; concretization; generalization) and empirical (investigating the practices of educational organizations, researchers, and authors, regulatory and educational and methodological documentation).

The study of the problem was conducted in the following stages:

1. Firstly, there was an introduction to the possibilities of the subject to start development in the agrarian sphere and an introduction to organizational rights as an entrepreneur. The laws of Ukraine and what they prescribe regarding the legal form of agricultural activity were also analysed.

2. Secondly, the legislative definition and doctrinal approaches to the legal form of an entrepreneur were developed, which would allow determining and establishing

the factors of activity of the future form of management.

3. Thirdly, the experimental theoretical work was completed, the obtained theoretical and practical conclusions were clarified, and the results were summarized and systematized.

Results and Discussion

The choice of a particular legal form implies the possibility of freely choosing the form of entrepreneurial activity in the field of agriculture because the legislative lack of a clearly outlined legal form of a business entity creates issues with its state registration or necessitates the adaptation of the status to another legal form, which does not correspond to the valid will of the founders and violates their rights or the rights of the legal entity itself.

The current legislation establishes the determining role of the legal form in the legal status of a business entity. Thus, according to the requirements of Article 90 of the Civil Code of Ukraine (CCU), information about the legal form of a legal entity must contain its name, the corresponding name must be indicated in the constituent documents (Articles 87, 88 of the CCU), i.e., the legal form is part of the name of the legal entity. Similar requirements are prescribed in item 16 of the Law of Ukraine No. 755-IV "On State Registration of Legal Entities, Individual Entrepreneurs, and Public Organizations" dated May 15, 2003 (the Law of Ukraine "On State Registration..."). Upon the state registration of a legal entity, a registration card is filled out, the first column of which must describe the legal form, which is one of the main pieces of information about the legal entity to be entered in the Unified State Register of Legal Entities,

Individual Entrepreneurs, and Public Organizations based on the corresponding law.

A change in the legal form of a legal entity is the termination of a legal entity by transformation (Article 108 of the Civil Code of Ukraine).

In the legislation of Ukraine, there is no unified approach to legal forms of management (production). Along with the term "legal form of business", various regulations, namely the Economic Code of Ukraine, the Civil Code of Ukraine, the Law of Ukraine No. 755-IV "On State Registration of Legal Entities, Individual Entrepreneurs, and Public Organizations" dated May 15, 2003 use such synonymous terms as: "organizational and legal form of a legal entity", "legal form of an enterprise", "organizational forms of entrepreneurship", "organizational forms of non-commercial economic activity", "organizational form of a business entity", "legal form of a business entity", etc.

The definition of the term "legal form of business" is contained in the State Classifier of Ukraine "Classification of Legal Forms of Business" DK 002:2004, approved by the Order of the State Committee of Ukraine on Technical Regulation and Consumer Cooperation No. 97 of May 28, 2004 (State Classifier), according to which, this is a form of economic (specifically, entrepreneurial) activity with a corresponding legal basis that determines the nature of relations between the founders (participants), the regime of property responsibility according to the obligations of the enterprise (organization), the procedure for creation, reorganization, liquidation, management, distribution of received profits, possible sources of financing activities, etc. The object of classification is

the legal forms of legal entities and their separate subdivisions (branches, representative offices), as well as individuals-entrepreneurs who do not have the status of a legal entity.

In the legal literature, there are different approaches to the term "legal form of management". As a rule, the legal form is considered as "a set of interconnected elements (characteristics)", "a set of requirements for a certain type of organization" [3], "a way of internal organization of corporate relations, as well as to a certain extent the external manifestation of connections" [4], "a set of organizational elements established by the legislative norms" [5], "the order of organization and activity of a legal entity" [6], "a certain model based on which its activities will be conducted in the future" [7]. V.M. Yermolenko, researching the specific features of legal forms of private agricultural production, emphasized the combination of two constituent elements: "organizational form" and "legal form" and proposed to define "the organizational and legal form of a private agricultural enterprise as an optimal combination of structural subdivisions formed by unification means of production and human labour within enterprises of a certain type for the production, processing, and sale of self-produced agricultural products (organizational form), established and regulated by the corresponding law and local legal norms (legal form)" [8]. Summarizing the available approaches to the legal form of business, M.R. Avetyisian substantiated that the legal form of management constitutes a legal model of economic activity, the content of which consists of interrelated organizational and property elements [9].

Analysis of the legislative definition and doctrinal approaches to the legal form of a

legal entity suggests that its choice is determined by such factors as the purpose and subject of the future form of business; composition and number of participants, their influence on the activity of the business entity; legal status of the participants, scope of property rights and obligations of the participants; specific features of the legal regime of property (requirements for the minimum size of the authorized capital and the formation of other economic funds, the presence, or absence of restrictions on the alienation of a share in the capital); specific features of land legal relations; system of management bodies; features of taxation, etc.

According to Article 45 of the Economic Code of Ukraine, entrepreneurship in Ukraine is conducted in any legislatively prescribed organizational forms, at the choice of the entrepreneur. According to the Law of Ukraine "On State Registration..." (Part 2, Article 16), the legal form of a legal entity is determined per the classification of legal forms of business, approved by the central body of executive power, which ensures the formation and implementation of national policy in the field of technical regulation.

Among the legal forms of management that are provided for by the state classifier, the following can operate in the agricultural sector: a farm, a private enterprise, a collective enterprise, a state enterprise, business companies, a holding company, an agricultural production cooperative, an agricultural service cooperative, an individual-entrepreneur. Agrarian legislation consolidates in separate laws the special legal status of farms, collective agricultural enterprises and agricultural cooperatives. Other forms of management operate based on general

legislation, which does not consider the specific features of the agricultural sector. Thus, the development of market relations and the country's agricultural potential gave an impetus to the creation of new agricultural formations, which were integrated into holding-type associations in the process of functioning. Modern agricultural holdings operate according to the principles of specialization, concentration, automation, diversification with a closed production cycle [10], but there is no special legislative regulation of their activities. The legal and economic literature proves the need to develop and adopt a special law of Ukraine "On Agricultural Holding Companies (Agricultural Holdings) in Ukraine" [10; 11].

The Law of Ukraine "On Collective Agricultural Enterprise" stipulates the legal status of collective agricultural enterprises, while the State Classifier contains a clause that "the current legislation does not prescribe the creation and state registration of new enterprises and organizations with such legal forms". This contradicts both the norms of the Law of Ukraine "On Collective Agricultural Enterprise" and the norms of the Economic Code of Ukraine and indicates that the principle of equality of ownership and management in agriculture is violated in Ukraine. According to the Preamble of the Law of Ukraine "On Collective Agricultural Enterprise", which was amended in 2012, – the law guarantees the inadmissibility of state interference in the implementation of the economic functions of a collective agricultural enterprise, restriction of its rights and interests by state authorities. The law ensures equal rights of collective agricultural enterprises with state-owned enterprises, farms,

and other business entities. According to Article 31 of the Economic Code of Ukraine, the prohibition of the creation of new enterprises or other organizational forms of business in any sphere of economic activity, as well as the establishment of restrictions on the implementation of certain types of economic activity or the production of certain types of goods to limit competition is recognized as discrimination of economic entities by authorities. Guarantees of the rights of the collective agricultural enterprises (CAE) are consolidated in Articles 47 and 62 of the Economic Code of Ukraine, according to which the state guarantees everyone, regardless of their chosen legal form of entrepreneurial activity, equal rights and equal opportunities for attracting and using material, technical, financial, labour, information, natural, and other resources, and equal responsibilities. Furthermore, Article 63 "Types and organizational forms of enterprises" stipulates that enterprises operating based on collective ownership (collectively owned enterprise) may operate in Ukraine. Although there is no legal ban on the creation of a CAE, the registration and functioning of a legal entity in such a legal form has not been carried out in practice recently. This is explained by a number of conflicts and gaps contained in the Law of Ukraine "On Collective Agricultural Enterprise" (regarding the legal regime of the property of the CAE, the legal regime of land, issues of membership, internal management, etc.)

According to the Law of Ukraine "On Farming" dated June 19, 2003, farming is defined as a form of entrepreneurial activity of citizens who have expressed a desire to produce marketable agricultural products, to carry out their processing and sale

for obtaining profit on land plots provided to them as ownership and/or use, including for rent, for farming, commodity agricultural production, private rural farming, in accordance with the law. The Preamble of the Law emphasizes that this is a progressive form of entrepreneurial activity of citizens in the field of agriculture of Ukraine. As of October 1, 2021, the number of farms in Ukraine was 48,609 (excluding the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol). This is evidenced by the data of the State Statistics Service. It is reported that in 2021, 806 farms were created in Ukraine [12].

In the early 1990s, when the farming movement in Ukraine was being restored, the progressiveness of such a legal form was ensured by providing rural farms with land plots with an area of more than 50 hectares. After the allocation of agricultural lands and the opening of the land market, land relations in farms acquired a new meaning. Therewith, the family nature of farms allows asserting that this legal form stays a priority not only in Ukraine, but also in the world. Ukraine has prepared a draft law on recognizing farms as the basis of the agricultural structure of Ukraine. On November 23, 2018, the Constitutional Court of Ukraine recognized the Draft Law in the case concerning the agrarian system of Ukraine (Opinion No. 4-v/2018) on November 23, 2018 as constitutional, and issued an Opinion in the case based on the constitutional appeal of the Verkhovna Rada of Ukraine regarding the compliance of the draft law on amendments to Article 41 of the Constitution of Ukraine concerning the implementation rights of Ukrainian citizens to

land, preservation of ownership of agricultural land in the hands of Ukrainian citizens and sustainable development of villages based on farms (reg. No. 6236) according to the requirements of Articles 157 and 158 of the Constitution of Ukraine. The declaration on the rights of farmers and other people working in rural areas was approved on December 17, 2018. The UN General Assembly has declared the next ten years the decade of family farming in the world. The right to land is recognized as the main right of the peasants as a fundamental human right that provides means of livelihood and serves as the basis for the exercise of all other rights of the peasants, and its observance is guaranteed by the state. Ukraine voted at the UN General Assembly for this declaration but has not yet ratified it [13].

The presence of numerous court cases, including the legal opinions of the Supreme Court regarding farming as a separate legal form, indicates the need to improve the legislation on farms. Thus, by the Resolution of the Cassation Commercial Court of the Supreme Court of August 8, 2018 in case No. 911/3215/17 [14], it was determined that a farm according to its legal form is neither a business partnership nor an institution nor a production cooperative, but created as a legal entity in the form of a farm as prescribed by the Law of Ukraine "On Farming". Since the Law of Ukraine "On Farming" contains numerous gaps regarding the legal basis of membership, internal management, property and land relations, termination of farming, etc., the Supreme Court formulated legal opinions on the specified issues in the following resolutions: Resolution of the Cassation Commercial Court of

the Supreme Court of Ukraine dated March 7, 2018 in case No. 911/436/17 [15]; Resolution of the Grand Chamber of the Supreme Court of Ukraine dated February 18, 2020 in case No. 918/335/17 [16]; Resolution of the Grand Chamber of the Supreme Court of Ukraine dated June 23, 2020 in case No. 922/989/ [17]; Resolution of the Grand Chamber of the Supreme Court of Ukraine dated November 20, 2019 in case No. 368/54/17 [18]; Resolution of the Cassation Civil Court of the Supreme Court dated March 18, 2020 in case No. 390/43/18-ц [19] etc.

Conclusions

Thus, based on the conducted study, the following conclusions can be drawn. A clear definition and legislative consolidation of legal forms of agricultural production is of great practical importance, since it will contribute to the free choice of the form of implementation of entrepreneurial activity in the agricultural sector. The development of agricultural legal relations in the sphere of legal forms indicates the multitude of business entities in the agricultural sector and the discrepancy between the legislation on legal forms of agricultural production and modern realities. The legal literature and legislation do not have a unified approach to the concept of the legal form of management. Types of legal forms are consolidated in the sub-legislative act of the regulation, which contradicts the norms of agricultural legislation. The imperfection of agricultural legislation on legal forms leads to an increase in the role of acts of judicial authorities in regulating agricultural legal relations concerning legal forms of agricultural production.

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Проблеми організаційно-правових форм господарювання в аграрній сфері

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Анотація

Тематика дослідження полягала в аналізах окремих проблем організаційно-правових форм господарювання в аграрній сфері. Метою дослідження є виокремлення та характеристика основних тенденцій розвитку організаційно-правових форм, аналіз проблем організаційно-правових форм ведення аграрного виробництва та формулювання пропозицій щодо їх вирішення. В ході проведення дослідження було визначено основні тенденції розвитку організаційно-правових форм України в аспекті дерегуляції підприємницької діяльності та відкриття ринку земель сільськогосподарського призначення. Також було розкрито роль та значення, види, законодавчі та доктринальні підходи до визначення організаційно-правової форми аграрного виробництва. На підставі аналізу юридичної літератури, національного законодавства та практики його застосування проаналізовано проблеми окремих організаційно-правових форм ведення аграрного виробництва (фермерських господарств, колективних сільськогосподарських підприємств та ін.). Згідно з результатами статті, було виявлено, що в Україні порушується принцип рівності форм власності та господарювання у сільському господарстві. Пріоритетне практичне значення має визначення та затвердження на законодавчому рівні організаційно-правових форм справи земельного виробництва, адже це посприє вибору з категорій форми проведення підприємницької діяльності у аграрній сфері. Матеріали статті можуть становити практичну цінність для подальших дослідників, а також виступати важливим ресурсом в якості вирішення актуальної проблеми, яка була представлена в тематиці статті

Ключові слова: природоресурсне право, природоресурсні правовідносини, природні ресурси, кліматичні ресурси, клімат
