



UDC 349.42

DOI: 10.31548/law2021.03.05

Legal principles for deregulation of agricultural business in Ukraine

Olena V. Hafurova*

Full Doctor in Law, Professor

National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

Svitlana I. Marchenko

PhD in Law, Associate Professor

Taras Shevchenko Kyiv National University
01033, 60 Volodymyrska Str., Kyiv, Ukraine

Article's History: **Abstract**

Received: 9.05.21

Revised: 28.06.21

Accepted: 15.08.21

The article is devoted to the analysis of legal issues on the deregulation of agricultural business in Ukraine. The historical aspects of deregulation of the economy of Ukraine are researched. It was analyzed the legislation and special literature on the issues regarding the deregulation of agricultural business, it was allocated and characterized the main measures of deregulation of the agricultural business in Ukraine. The attention is paid to the need of ensuring a balance of the public and private interests in the agrarian sector of economy when determining the boundaries of deregulation of agribusiness. Based on the analysis of the current legislation and the practice of its application, it has been concluded that deregulation of agricultural business in Ukraine is of universal character, since it covers all elements in the structure of agricultural legal relations. This allows considering it as one of

Suggested Citation:

Hafurova, O., & Marchenko, S. (2021). Legal principles for deregulation of agricultural business in Ukraine. *Law. Human. Environment*, 12(3), 40-45.



*Corresponding author

Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

the basic principles in the mechanism of legal regulation of institutional and functional support of agricultural relations

Keywords: legal regulation, agrarian sector, agrarian business, deregulation, State agrarian register, public administration, optimization of public administration

Introduction

According to O.H. Bondar [1], Ukraine has become a scene of numerous reforms of different content, significance and areas of implementation since its independence. This is a completely natural phenomenon, since the state is developing the new socio-economic structure, the legal system, the organizational and legal mechanisms of public administration, the system of local self-government, the humanitarian sphere, etc. [1]. The deregulation of agricultural business is one of the key reforms in the agrarian sector, which is one of the main elements of the new development model of Ukraine in the modern conditions, as well as an integral part of European integration. According to the Decree of the President of Ukraine dated January 12, 2015 № 5/2015 “On the Sustainable Development Strategy “Ukraine-2020”, the deregulation is not a goal in itself, but it is a necessary tool with the mission to radically improve the business climate and investment climate in Ukraine; it is also a factor in creating new workplaces and improving the qualitative standards of living.

This problem was raised, in particular, in the works of scientists in the field of agrarian law, such as: H.A. Grigorieva, V.M. Ermolenko, H.S. Kornienko, M.A. Kopytsa, V.V. Nosik, A.M. Stativka, V.Yu. Urkevich and others.

The purpose of the article is to highlight the legal issues of deregulation of the agricultural business in Ukraine through the analysis of current legislation and scientific

sources, highlighting the main approaches to deregulation of agricultural business and determination of the main directions.

Results and Discussion

The modern deregulation of agricultural business is due to a number of objective and subjective factors, including: the decentralization of power, the presence of an excessive number of requirements for agricultural producers and licensing procedures in the field of agricultural production, the high proportion of the shadow agricultural economy, the need to form a highly effective and competitive agricultural sector of the economy on the domestic and foreign markets, ensuring the economic and food security, fighting against corruption and raiding in the agricultural sector, completing the agrarian and land reforms, adapting and harmonizing the agricultural legislation to the level of EU legislation and WTO requirements and other factors, which indicate the need to review the state role in regulating the agricultural relations. The separate elements of the deregulation of economic activity in general and the agricultural business were enshrined in the Law of the Ukrainian SSR “On the economic independence of the Ukrainian SSR” dated August 3, 1990 № 142-XII and the Concept of transition of the Ukrainian SSR to the market economy dated November 1, 1990, in which the deregulation manifested as a decrease in the overregulation of economy and a certain liberalization of the market.

Later, the role and importance of state in the legal regulation of agro-sphere, the level of its influence on the development of agrarian relations and the boundaries of intervention were constantly changing at each historical stage of the development of agrarian relations. This is about the following evolutionary directions in the development of agrarian relations: the formation of new organizational and legal forms of management in agriculture, the denationalization and privatization of lands, the restructuring of non-state agricultural enterprises, the development of agricultural market infrastructure, gaining the WTO membership, etc.

The active processes of deregulation in the economic sphere in Ukraine began with the adoption of the Decree of the Cabinet of Ministers dated January 28, 2015 № 42 "Some issues of deregulation of economic activity". The main goal of the reform of deregulation of the economy of Ukraine was as follows: the deregulation of entrepreneurial activity, bringing the Ukrainian legislation in line with the European legislation, as well as entering the top-30 of the Doing Business rating by 2020. The ultimate goal is to attract the local and international investments to the economy. Today, it is possible to observe a steady trend of improving business conditions. In particular, in 2014-2019, Ukraine rose in the ranking by 24 positions (2014 – 112th place; 2017 – 76th place; 2019 – 71st place). Now, Ukraine occupies 64th place, and according to government forecasts in 2021, Ukraine can rise by at least 10 positions in the Doing Business ranking [2].

At the same time, despite the positive developments in the field of legal regulation in the Ukrainian economy and the agricultural sector, the regulatory environment remains "complex, sometimes contradictory,

as well as has many outdated norms that do not make sense both from the economic perspective, and from the point of view of common sense" [3].

In the dictionaries and specialized literature, the deregulation (from de... and the Latin "regula" – norm, rule) is interpreted as the abolition of norms, rules, forms and methods of regulation; cancellation or reduction of state regulation in a certain area of public relations; reducing state control over business, for example, for stimulation of free competition on the market. Deregulation of the economy is considered as a set of measures of state influence on the mechanism of social reproduction, and a decrease in the administrative and legal regulation of economic relations, as one of the main directions for reforming and optimizing the state management of the economy, which implies a gradual departure from the direct regulatory role of the state [3].

There is no definition of the term "deregulation" in the Ukrainian legislation. The normative legal acts, which are adopted in the field of deregulation of the agricultural business, do not always operate with this concept; but this term is used in the regulatory legal acts as a synonym for deregulation and it is understood as a simplification of conditions for doing business (Resolution of the Cabinet of Ministers of Ukraine dated January 28, 2015 № 42 "Some Issues on Deregulation of Economic Activities", the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Simplification of Business Conditions (deregulation)" № 191-VIII dated February 12, 2015). Decree of the President of Ukraine dated July 23, 1998 № 817 "On some measures to deregulate business activities" in order to reduce the interference of state authorities in the business activities, regulated

the procedure for carrying out inspections of their financial and economic activities by the regulatory authorities. Analysis of the content of these legal acts confirms the thesis expressed in the economic literature that deregulation in the agrarian sector should be interpreted as a change in the form of state influence, rather than a “reducing the degree of state influence on the economy”, as it is usually misunderstood [4]. The essence of deregulation of the agricultural business lies in the creation of appropriate conditions for self-regulation of the market based on the transparent business relations and fair competition, rather than in a simple abolition of all measures of state regulation, which involves the active cooperation of civil society, experts, farmers and entrepreneurs, etc. [3].

Exploring the legal nature of agricultural business in Ukraine, H.S. Kornienko [5] focuses on the role of state in the need to ensure the adaptation of agricultural producers to the system of global competition in the field of agribusiness by applying the methods and means regarding the following: stabilization of agricultural legislation, its systematization, support for the small and medium-sized agricultural businesses, the formation of a system of land market transparency, the dissemination of information-educational activities, the protection against raiding, etc. The author also highlights the deregulation as a type of state support, which consists in deregulating the Ukrainian market of agricultural products and prohibiting the discrimination of rights of its owners. In particular, it is prohibited to introduce any administrative, quantitative or qualitative restrictions when moving the agricultural products and products of its processing throughout the territory of Ukraine (Article 14 of the Law of Ukraine “On the

State Support for Agriculture of Ukraine” as amended in 2020) [6].

At the present stage of development of agrarian relations in the legislation of Ukraine, the following measures (trends) of deregulation of the agrarian business can be distinguished:

- *simplification of the conditions for doing agribusiness in certain sectors of agricultural production* (in the field of grain production – it was canceled the obligation to obtain a quarantine certificate, the period for issuing a phytosanitary certificate was reduced to 24 hours, it was canceled the licensing activities of grain fumigation that is exported, etc.; in the field of plant protection – it was canceled the mandatory certification of plant protection products, including pesticides and agrochemicals, it was canceled the licensing of trade of pesticides, it was canceled the licensing regime for importing plant protection products and the procedure for their registration was improved, etc.; in animal husbandry – it was canceled the obligatory receipt of a number of permit documents, in particular: permission to import the livestock products; operational permit for the processing of fishing products; manufacturer’s certificate of the quality of fishing products, it was canceled the licensing of livestock breeding activities, it was improved the procedure for identifying animals, etc.);

- *optimization of the use of agricultural land in the agricultural business and the opening of land market* (it was simplified the procedures for conclusion and registration of land lease agreements, it was shortened the list of essential terms of the rental agreement and all integral annexes to the rental agreement were canceled; it was set a minimum rental period of land for agricultural purposes – seven years, etc.);

- *introduction of digitalization of the agricultural business as an effective tool for fighting against corruption* (the creation of electronic system for public procurement Prozorro, a unified state information system – the State Agricultural Register, and others.) [7];

- *optimization of the institutional support of agricultural business* (restoration of the profile ministry, creation of the State Service on Food Safety and Consumer Protection, creation of the consultative-advisory agencies – the Business Ombudsman Council to improve business activities and the Business Ombudsman, and others).

Conclusions

Thus, in the legislation of Ukraine, the deregulation is understood as a set of measures aimed at simplifying the conditions for doing business; improving the procedure for inspections of agribusiness entities by regu-

latory authorities, optimizing the use of agricultural land in the agricultural business and opening the land market, digitalizing the agricultural business and optimizing the institutional support of the agricultural business.

In terms of agricultural law, the deregulation of agrarian business (by its legal nature) is universal in nature, since it covers almost all elements in the structure of agricultural legal relations, which allows considering it as one of the main principles in the mechanism of legal regulation of the institutional and functional support of agrarian relations.

When determining the boundaries of agribusiness deregulation, it is necessary to ensure a balance of public and private interests in the agrarian sector of the economy, considering the inter-sectoral, complex nature of relations that arise in the field of agribusiness; the inextricable link with the social and environmental components is the feature of the above-mentioned relations.

References

- [1] Bondar, O.H. (2021). *Development of organic agricultural production and land decentralization: the issue of correlation. Organic production: law and business.* Zaporizhzhia: Helvetica Publishing House.
- [2] Shmyhal. In the Doing Business-2021 rating, Ukraine can rise at least 10 positions. (2021). Retrieved from <https://www.epravda.com.ua/news/2020/07/29/663479/>.
- [3] Deregulation of the agricultural industry and EU standards. Careful selection. (2021). Retrieved from <https://www.euointegration.com.ua>.
- [4] Xenofontov, M.M. & Ivanko, A.V. (2015). Deregulation of economic activity in the agrarian sector of the economy: Stages, special features, mechanism. *Economic Thought*, 21(2), 122-127.
- [5] Kornienko, H.S. (2021). *Theoretical and legal foundations of formation and development of agribusiness in Ukraine.* Kharkiv.
- [6] Besedina, O. (2021). "Creeping" deregulation: Why the economy of Ukraine still remains regulated. Retrieved from <https://voxukraine.org/uk/zakruchuvannya-gajok-chomu-ekonomika-ukrayini-dosi-ye-regulovanoyu/>.
- [7] Encyclopedia of modern Ukraine. (2021). Retrieved from http://esu.com.ua/search_articles.php?id=26092.

Правові засади дерегуляції аграрного бізнесу в Україні

Олена Вікторівна Гафурова

Доктор юридичних наук, професор

Національний університет біоресурсів і природокористування України
03041, вул. Героїв Оборони, 15, м. Київ, Україна

Світлана Іванівна Марченко

Кандидат юридичних наук, доцент

Київський національний університет імені Тараса Шевченка
01033, вул. Володимирська, 60, м. Київ, Україна

Анотація

Статтю присвячено аналізу правових питань дерегуляції аграрного бізнесу в Україні. Досліджуються історичні аспекти дерегуляції економіки України. Проаналізовано законодавство та спеціальну літературу з питань дерегуляції аграрного бізнесу, виокремлено та охарактеризовано основні заходи дерегуляції аграрного бізнесу в Україні. Звертається увага на необхідність забезпечення балансу суспільних та приватних інтересів в аграрній сфері економіки при визначенні меж дерегуляції агробізнесу. На підставі аналізу чинного законодавства та практики його застосування зроблено висновок про те, що дерегуляція аграрного бізнесу в Україні має універсальний характер, оскільки охоплює всі елементи в структурі аграрних правовідносин, що дозволяє розглядати її як один із основних принципів у механізмі правового регулювання інституційно-функціонального забезпечення аграрних відносин

Ключові слова: правове регулювання, аграрна сфера, аграрний бізнес, дерегуляція, Державний аграрний реєстр, публічне адміністрування, оптимізація державного управління
