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Problems of land law in the studies of Kharkiv lawyers in the 1920s

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The article draws attention to the little-studied area of historical and legal science, in particular, the issue of the emergence, formation and development of the land law science in Ukraine. The relevance of this area of research is emphasized in terms of possibility of finding the options (that already existed in the past) for solving the modern land-legal problems. It is stated that this article allows performing at least two tasks: the first one is the analysis of theoretical views on the problems of land law of Kharkiv lawyers of the 1920s, and the second one – the introduction of the little-known scientific works on this problem into scientific circulation, which allows reproducing the features of legal research of that time in the field of land law. It was analyzed the scientific achievements of Kharkiv scientists,

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such as L.S. Dubinskiy, O.L. Malitskiy, M.F. Matvievskiy, O.M. Odarchenko, S.E. Sabinin. Most of their scientific works are little known both in the historical-legal science, and in the land-legal science. The analysis of presented publications is a solid foundation for the conclusion about existence of the Kharkiv branch of science of the land law in the 1920s, which later has become the basis for the formation of corresponding scientific school

Keywords: land law, history of land law, science of land law, history of science of land law, Kharkiv school of land law

Introduction

The relevance of any historical and legal research is indicated by the ability to draw historical parallels with the modernity and to find the already existing solution to the problems of legal regulation. The land law is no exception, and its modern issues already have a corresponding analogue in the past. It is known that the land law has been relatively widely studied in the 1920s. First of all, it is worth noting that the lawyers of law faculties were taught this course at that time, mainly as a special section of administrative law. Thus, the scientists-administrativists were engaged in scientific developments in the field of land law, who studied the Land Code, additional laws and sentences of the Higher Land Control Commission. The Kyiv lawyers conducted very active studies of the relevant issues within the activities of academic institutions. Thus, the employees of the Commission for the study of Customary Law of the National Academy of Sciences of Ukraine (NASU) had significant achievements in the relevant issues. Subsequently, the studies of modern land law were con-

centrated in the sub-section on issues for the study of actual land law of the Commission for the Study of Customary Law, in the agrarian section of the Commission of Soviet Law and in a special section on the issues of studying the principles of the Land Code with the same commission [1].

The Kharkiv school of administrative law was quite powerful, so the issue of land law was actively investigated in the public law section of the Research Department "Problems of Modern Law" of the Faculty of Law of the Kharkiv National University of Economics [2]. While the lawyers of the Odessa Research Department "Modern Legal Problems" rarely raised the issues of land law, at least, there was not found the relevant topic in the approved plans for scientific research [2].

The subject of the science of land law has not yet received the proper level of distribution in modern historical and legal research. At the same time, there is no comprehensive approach to revealing the features of contribution of individual scientific schools of the land law,

which have been undoubtedly functioned in the recent past within the territory of modern Ukraine. The Kharkiv school of land law is one of such scientific centers.

Therefore, the purpose of the article is to analyze theoretical views on the issues of land law of the Kharkiv lawyers of the 1920s, the introduction of little-known scientific works on this problem into the scientific circulation, which will allow reproducing the features of legal research of that time in the field of land law.

Results and Discussion

Professor A.F. Yevtykhiev [4; 5] was one of the most famous Ukrainian administrators of that time. Today, his works on administrative law are widely known, but as for the subject of land law, it became possible to find only his brochure "Land Law", which was published in Kharkiv in 1924. Instead, he supervised the work of graduate students who studied the problems of land law.

In the spring of 1922, A.F. Yevtykhiev became the scientific mentor of the graduate student Alexey Odarchenko. The young researcher focused his scientific research in two directions: 1) the basic principles of self-government and 2) the land law [1]. It is worth noting that scientific work of the graduate student was productive. He produced a number of publications on administrative law regarding the issues of decentralization of local government, the boundaries of administrative discretion, the organization of local authorities, their

competence and functionality in comparison with the Western European local authorities. His work on the systematics of administrative law [6] was extraordinary, in which he expressed his position on the system of administrative law and the directions of its reform (which was completely ignored by Soviet science). Subsequently, the young scientist prepared the work "Relationship between law and administrative order in the Soviet law", and after the public defense of this work, he was transferred to the research staff of the department.

The attributive feature of any theoretical provisions is considered the preservation of their significance for future researchers for an indefinite time. The specified scientific work by O.M. Odarchenko [6] fully corresponds to this feature, as evidenced by the repeated periodic appeal to it by the scientists of administrative and legal direction. Thus, thirty years later, Ts.A. Yampolska [7] turned to these conceptual provisions, and eighty years later – R.S. Melnik, who laid the ideas of O.M. Odarchenko [6] as the basis for the formation of a new structure of administrative law [8].

The theory of land law became another area of scientific interests of A.M. Odarchenko [6], the contribution to which was non-voluminous. The article "Legislative protection of land plots from fragmentation" is one of these works, which was published by scientist in 1925 in the Moscow publishing house "Law and life". The legislative aspects of preventing

the negative trend of excessive parceling of agricultural land is the main leitmotif of this publication, that is, the topic is also relevant for the modern agro-sphere. According to O.M. Odarchenko, at the beginning of revolution, there were 3.2 million peasant farms in Ukraine; then in 1923, there were already 4.5 million ones, and in 1925 – 4.9 million [9]. For comparison, land parceling became the result of agrarian and land reform in the 1990s, which resulted in almost 7 million owners of parcels in Ukraine as a whole (which indicates the historical commonality of the issue raised). Further, O.M. Odarchenko [9] reveals the causes of the phenomenon of land fragmentation, their socio-economic and political basis, as well as the negative significance for agricultural management. The reasons for growing in the number of farms due to their size were rooted primarily in the general economic conditions, and in particular, in the shortcomings of tax system, which sometimes made it profitable to split the plot (taxation according to the number of livestock per farm made fictitious divisions profitable). Ultimately, the scientist comes to conclusion that the farms' fragmentation itself is socially dangerous only in the case of fragmentation to such an extent that does not allow conducting a rational economy. The author sees one of the ways out of this situation in the powers of provincial authorities of government, granted by the Land Code, regarding the establishment of norms for the plot fragmentation. At

the same time, he proposes to extend this practice to the decision of individual communities and even households on a voluntary basis, but for a certain period and with the agreement of two-thirds of the society; and for the individual households – with the agreement of all full-fledged members. However, these decisions had to be subject to further registration by the volost executive committees [9].

Based on the above-mentioned, it is advisable to draw historical parallels with the modernity. In the modern agricultural production, there is also a threat to the rational and efficient land-use of farms and their existence, which may arise in the case of division of farm lands, for example, in the case of inheritance or withdrawal of members from the farm, which amount to more than 30 thousand farms (as a numerous organizational and legal form of agricultural production) with 4.8 million hectares of the own lands. Therefore, the fragmentation of farmland ownership first threatens the existence of both individual farms and this peasant form of management, and also can causes unnecessary social tension. To avoid the described situation, a special government decree [10] was adopted, aimed at optimizing the process of farms' fragmentation, considering the regional features of agricultural land-use. Regarding another proposal by A.M. Odarchenko [9] about the expansion of land rights of rural communities and individual households, it is advisable to indicate the ongoing land

decentralization, according to which most of the land powers are transferred to territorial communities.

The historical digression (implemented by O.M. Odarchenko [9]) into the land policy of Germany, Austria, France, the USA and England in terms of preventing the processes of fragmentation of land ownership of agricultural producers as a global problem is really interesting. This review is definitely of scientific interest both for the historians of law and for specialists in the field of land law.

The next one is the article "The idea of land right in its past and present", which was published in 1926 in the same scientific publication mentioned above. In this publication, O.M. Odarchenko [9] tried to trace the development of European ideas, which (in his opinion) led to the emergence of right of the universal labor land-use. As a result, he has come to the paradoxical conclusion that bourgeois law does not aim to satisfy all personal needs and individuals do not have the right to demand goods or services from the state on the grounds that they are necessary for their existence. In contrast to this, the scientist cites the need (proclaimed by the socialist Fourier) to replace the primitive communal economic rights of widespread hunting, fishing, fruit harvesting and cattle grazing (due to the impossibility of their application) by the right to work. Moreover, according to the researcher, the right to work (more precisely, the opportunity to apply the own labor) was inextricably

linked in Russia with the idea of obtaining land, which alone could give the peasant the opportunity to exercise his right to work and take advantage of the results of the latter one [11]. Unfortunately, in contrast to the previous article, it is already traced from the first pages a politicized attempt to move from an improperly substantiated conclusion about the failure of bourgeois law to provide for individual and social needs in "pushing" the idea of progressive labor land-use compared to the European land ownership. However, the period of the so-called "dictatorship of the proletariat" broke even this rather theoretically untenable model of land-use, because during the requisitioning of agricultural products, the peasants were deprived of any right to the results of their hard work.

Building a chain of forms, transitional from the labor land-use – (the labor egalitarian land-use – socialist agriculture (the requisitioning of agricultural products was one of its the important elements) – tax in kind – the land nationalization), A.M. Odarchenko [11] expressed the opinion that the autonomy of peasant economy was even more clearly manifested with the publication of law on the unified agricultural tax, especially after the abolition of its natural form and leaving only the cash method of payment [11]. There is a rather untenable attempt to justify the nationalization of land amid the egalitarian land-use compared to the bourgeois relations of land ownership.

At the same time, the author allows himself to “juggle” facts, by arguing that jurisprudence distinguishes three main forms of ownership: public, private and mixed, which should include property that is considered a private property, but due to its social significance, placed under the state control. Further, the author tries to substantiate the advantages of the model of state ownership of land on the examples of Turkey, Mexico, New Zealand and Ancient China. At the same time, the author summarizes that public ownership of land is established in the interests of the workers themselves, united in a collective (state), and the latter ones have the right to demand land plots for themselves only for the purpose of their cultivation, which is given the public importance [11]. From the side of conditions of expressing the own thoughts that are free from the ideological “isms”, the modern researcher cannot fail to notice the identification of public and state forms of ownership of land in order to disguise the consequences of land revolution, which has been carried out in the interests of rigid nationalization of land and agrarian relations, rather than in favor of the peasants. The artificially given examples of economically backward countries of that time look unconvincing. Finally, the identification of state with the collective of workers reaches the highest level of illogicality, and the latter ones are endowed with the right to demand land from the state, that is actually from themselves.

Unfortunately, it is worth admitting the scientificity’s degeneration into the pseudo-scientificity for the sake of ideological and political platform of the ruling communist elite, which is a characteristic of totalitarian ruling regimes.

Along with this, the graduate student Andrey Dedusenko also worked on the issues of land law. He showed research abilities while writing his student’s graduation work “Legal foundations of a new land system”, which he defended as a graduate of the law faculty of the Kharkiv Institute of National Economy in 1922. In October 1924, A.F. Dedusenko was enrolled as a graduate student of the research department “Problems of Modern Law”. Professor A.F. Yevtykhiev also became his scientific supervisor. A.F. Dedusenko was interested in the French school of administrative law and researched the land law and agricultural policy in Russia and Western Europe. During the first six months of work in graduate school, he completed the topic “On the procedure for resolving land disputes.” In 1925-1926, he studied the main trends in post-war agricultural legislation in foreign countries, in particular, the issues about the institution of land-use, the organization of public service for the promotion of agriculture, the regulation of agricultural production through the administrative provisions. His achievements also includes two published books: “Agronomic Assistance to the Population of Ukraine” and “Principles of Organizing Agronomic Assistance to the Population” [1].

O.L. Malitskiy created several publications in legal magazines on land and legal topics. He studied the reform of land judicial commissions [12], he prepared a report "Issues of Peasant Law" (1924) for the Ukrainian Law Society (ULS), in which he explored the property status of members of the peasant household [13]. M.F. Matvievskiy [14] published a separate work "The rights of farm laborers in labor peasant farms". The rest of his works were about the taxation of peasant farms.

Among other Kharkiv lawyers, it is worth noting Professor S.E. Sabinin [15], who prepared the report "Collection of Legal Works on the Study of Legal Forms of Land Ownership in the Ancient World". L.S. Dubinskiy [16] wrote about the features of compensation for damage in case

of causing death to a member of the peasant household.

Conclusions

The study of theoretical views on the issues of land law of Kharkiv lawyers in the 1920-s determined a comprehensive understanding of the existing scientific center, which became the basis of the Kharkiv school of land law. The introduction of the above-mentioned little-known scientific works on this issue into the scientific circulation made it possible to reproduce the features of legal research of that time in the field of land law. At the same time, this is only the initial stage of scientific research in this area, which provides for their continuation within certain time intervals.

References

- [1] Mikhnevich, L.V. (2019). *Legal education and science in Ukraine outside classical universities (19th century – 30s of the 20th century)*. Kyiv: Fourth Wave.
- [2] Mikhnevich, L.V. (2016). Department of Problems of Modern Law: experience of the organization of legal science in the early Soviet era. *Business, Economics and Law*, 5, 102-106.
- [3] Mikhnevich, L.V. (2016). Experience of the Odessa research department “Modern legal problems” (1923-1930). *Business, Economics and Law*, 10, 124-129.
- [4] Kasyanenko, Yu.Ya., Havrylenko, O.A. & Belik, V.P. (1999). *Oleksandr Fyodorovych Yevtykhiev. Legal encyclopedia. Volume 2: D-I*. Kyiv: Ukrainian Encyclopedia.
- [5] Usenko, I.B. (2003). Volume 5: Police and administrative law. In: *Oleksandr Fyodorovych Yevtykhiev. Anthology of Ukrainian legal thought* (pp. 452-454). Kyiv: Publishing House “Legal Book”.
- [6] Odarchenko, A.N. (1926). The problem of systematics of administrative law. *Law and Life*, 4-5, 57-67.
- [7] Yampolska, T.A. (1956). About the place of administrative law in the system of Soviet social law. *Soviet State and Law*, 9, 92-102.
- [8] Melnyk, R. (2007). To the issue of updating the system of administrative law of Ukraine. *Legal Informatics*, 3(15), 52-56.
- [9] Odarchenko, A.N. (1925). Legislative protection of land plots is fragmented. *Law and Life*. 9-10, 62-67.
- [10] Decree of the Cabinet of Ministers of Ukraine No. 1908 “On approval of the minimum sizes of land plots, which are formed as a result of the division of the land plot of the inherited farm. Inherited”. (2003, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1908-2003-%D0%BF#Text>.
- [11] Odarchenko, A.N. (1926). The rights to the land in its past and present. *Law and Life*, 6-7, 3-8.
- [12] Malyskyi, A. (1924). Reform of land judicial commissions. *Bulletin of Soviet Justice*, 17, 535-437.
- [13] In the Ukrainian Law Society. Questions of peasant law (Meeted on May 21). (1924). *Bulletin of the Soviet Jurisdiction*, 17, 557-560.
- [14] Matvievskyi, M.F. (1929). *The rights of hired workers in working peasant farms*. Kharkiv: Legal Department of the Ukrainian SSR.
- [15] List of works of a valid member of the department. Central State Archive of Higher Authorities and Administrations of Ukraine. 166, 2, 476:61.
- [16] Dubinsky, L.S. (1927). 409 Residential complex in the Christian courtyard. *Bulletin of Soviet Justice*, 8, 285-286.

Проблеми земельного права в дослідженнях харківських правознавців 1920-х років

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Анотація

У статті звернено увагу на малодосліджену сферу історико-правової науки, якою є питання виникнення, становлення і розвитку науки земельного права в Україні. Підкреслюється актуальність цього напрямку дослідження з боку можливості знаходження вже існуючих в минулому варіантів вирішення сучасних земельно-правових проблем. Констатується, що репрезентована стаття дає змогу досягти виконання щонайменше двох завдань, першим з яких є аналіз теоретичних поглядів на проблеми земельного права харківських правознавців 1920-х рр., а іншим – введення в науковий обіг маловідомих наукових праць із вказаної проблеми, що дозволяє відтворити особливості тогочасних правових досліджень у сфері земельного права. Проаналізовано наукові здобутки харківських науковців, якими є Л. С. Дубінський, О. Л. Маліцький, М. Ф. Матвієвський, О. М. Одарченко, С. Є. Сабінін. Більшість з їхніх наукових праць є маловідомими як в історико-правовій, так і в земельно-правовій науках. Аналіз представлених публікацій є вагомим підставою для висновку про існування в 1920-х роках харківського осередку науки земельного права, який став основою формування в подальшому відповідної наукової школи

Ключові слова: земельне право, історія земельного права, наука земельного права, історія науки земельного права, харківська школа земельного права
