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Establishment of legal regulation in the field of securing the status of territorial communities as subjects of communal land ownership

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The article examines the formation of the right of communal ownership of land, the establishment of legal regulation in the field of consolidation of the status of territorial communities as subjects of communal ownership, the impact of decentralization processes on the legal regime of land of territorial communities and united territorial communities, and the definition of scientific approaches to the formation of a model of communal ownership of land in Ukraine. The author highlights the inconsistency of legislators in defining the principles of building the institution of communal land ownership, the lack of a well-grounded concept of communal property rights, and the legislative contradictions in approaches to creating sustainable local self-government in Ukraine based on the priority of land interests of territorial communities. The author pays special attention to the prerequisites for determining the constitutional status of territorial

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communities, legislative consolidation of the grounds for the formation of communal land ownership in the State and solving the problem of the absence of a definition of “right of communal land ownership” in the current legislation. The author focuses on the legitimization of the powers to exercise the right of communal ownership by addressing the issue of land and legal competence of territorial communities, improving their status as entities exercising the right of communal ownership of land directly or through local self-government bodies, and exercising the right of communal ownership of land in the manner prescribed by land law. The study found that the Constitution of Ukraine has provided the necessary prerequisites for the establishment of a fundamentally new land system in the area of communal ownership of community land. An important scientific task in modern conditions is to improve the legal regulation of the land and legal competence of territorial communities as subjects of communal land ownership for sustainable development of territories. It is determined that acceleration of administrative and land reforms will contribute to the full legitimization of amalgamated territorial communities and the establishment of territorial communities as equal subjects of land ownership

Keywords: territorial communities, decentralization, local government reform, communal land ownership

Introduction

The ambiguous, sometimes inconsistent, and contradictory processes of decentralization of power in the field of public administration lead to a lack of sustainability and consistency in the development of land property relations in Ukraine based on their equality. The still unformed concept of communal land ownership hinders the development of territorial communities of a new format, increases uncertainty in approaches to building an integral property resource of communities, and creates obstacles to the development of local self-government.

Improvement of the legal regime of lands of territorial communities, determination of the forms of exercise of the right of communal ownership of land, and scientific study of the land and legal competence of territorial

communities are key to the scientific substantiation of decentralization in reforming the relations of territorial organization of power and regulation of the legal status of territorial communities as subjects of communal property rights, and these are the unsolved scientific tasks which this publication aims to address.

Leading Ukrainian scholars have studied the problems of land ownership: V.I. Andreytsev, A.P. Getman, V.M. Yermolenko, P.F. Kulinich [1; 2], A.M. Miroshnichenko, V.L. Muntyan, V.V. Nosik [3], O.O. Pogribnyi, I.V. Semchyk, N.I. Titova, Y.S. Shemshuchenko, M.V. Shulga [4] and others. Some issues related to the emergence of the right of communal ownership of land in their scientific works were covered by G.I. Balyuk, D.V. Busuyok,

M.V. Voskobiynyk, O.A. Vivcharenko, Ya.Z. Gayetska-Kolotylo, N.V. Ilkiiv, I.I. Karakash, T.O. Kovalenko, T.H. Kovalchuk, I.O. Kostiasshkin, A.I. Ripenko, V.E. Rubanyk and others.

The purpose of the article is to study the formation of legal regulation of communal land ownership in Ukraine, the impact of land reform and decentralization reform on the consolidation of the legal status of territorial communities as subjects of communal land ownership rights, and to determine scientific approaches to the formation of a model of communal land ownership in Ukraine.

Results and Discussion

The transition from the Soviet centralization of the vertical management system of 70 years to the decentralization of power in independent Ukraine is of particular importance for the development of communal land ownership relations in the current environment. The realization of the right of residents of settlements to voluntarily amalgamate into communities to independently resolve issues of local importance solves the problem of building a constructive dialogue between the state as an integral institution and territorial communities as independent units in the structure of the administrative-territorial system, and promotes the establishment of communal property as a basis for the sustainable development of local self-government in Ukraine.

Studying the legal nature of the communal form of land ownership, M.V. Shulga [4] rightly points out that the Constitution of Ukraine has created the necessary prerequisites for the formation and establishment of

a fundamentally new land system, including in the field of land ownership, so on the basis of its study, a concept should be developed that should develop the fundamental provisions of the Constitution regarding the right to land ownership of territorial communities and reflect the main trends in the economic and social development of modern society.

A scientific study of the content of the right of communal ownership of land depends on the conceptual apparatus. The current legislation and the legislation of the previous historical period of the Ukrainian state do not contain a definition of “communal land ownership”, as well as no definition of “communal property”. However, this did not prove to be an obstacle to the formation of the institution of land ownership of territorial communities, which took place in the context of the establishment of the institution of communal ownership in Ukraine [5].

The introduction of local self-government in 1990 with the adoption of the Law of the Ukrainian SSR “On local councils of people’s deputies and local self-government” [6] marked the beginning of the search for a modern legal model of communal land ownership. It was in this law, in Article 7, that the term “communal property” was first used in the modern sense: “communal property is the basis of the local economy”. Also, the Land Code of Ukraine adopted in the same year clearly states that property in Ukraine has the following forms: state, collective, and private, which it recognizes as equal.

In our opinion, the “legalization” of the right to exercise the right of communal property in Ukraine should be associated with the adoption of the Decree of the Cabinet of

Ministers of Ukraine “Demarcation of state property of Ukraine between state-wide (republican) property and property of administrative-territorial units (communal property)” [7], which recognized its separation from the state form of ownership.

The complete further denationalization of land and property provides grounds for a constructive dialogue between the ruling elite and political agreements in the Constitutional Treaty between the Verkhovna Rada of Ukraine and the President of Ukraine The Law “On the Basic Principles of Organization and Functioning of State Power and Local Self-Government in Ukraine for the Period until the Adoption of the New Constitution of Ukraine”, which in Article 5 affirms property in Ukraine as national, communal and private. The Constitution of Ukraine adopted in 1996 in its current version became (and remains) a guideline for consolidating the national idea of establishing the communal form of land ownership in the state [1]. The ratification of the European Charter of Local Self-Government by the Verkhovna Rada of Ukraine on July 15, 1997, allowed to “cement” in the legislation the fundamental principles of organization and functioning of local self-government in accordance with the standards of municipal democracy, which were embodied in subsequent law enforcement acts of land legislation.

It should be noted that a territorial community as a subject of communal land ownership is a multi-level, complex, multifaceted political, social, and legal phenomenon.

The Law of Ukraine “On local self-government” [8] defines the right of communal property as the right of a territorial

community to own, expediently, economically, effectively use and dispose of property belonging to it at its discretion and in its interests, both directly and through local self-government bodies. In our opinion, this law narrows the powers of the territorial community by subjectivizing the content of the right of communal ownership of land, which is clearly defined in Article 80 of the Law of Ukraine “Land Code of Ukraine” [9]: the subjects of land ownership are territorial communities that exercise this right directly or through local self-government bodies – on communal land. Unfortunately, based on Soviet paradigms, the principle of the origin of communal property from collective property continues to be “cultivated” in academic circles and law enforcement practice. Such an approach is ideologically and scientifically erroneous and does not correspond to the modern concept of local government reform.

Recently, a type of land property, which has not been studied by the science of land law, has appeared in Ukraine – the land (territory) of united territorial communities, the legal regime of which is still in the process of formation. The introduction of the institute of amalgamation of territorial communities also gives rise to controversial legal discussions, which are the subject of scientific research by Ukrainian scholars: whether Ukrainian legislation includes amalgamated territorial communities in the circle of subjects of land property relations. Thus, there is no direct answer to these questions in the legal acts, which weakens the argumentation for the need for voluntary or administrative-compulsory amalgamation of territorial

communities in the context of the decentralization reform.

Continuing the legal uncertainty, the current land legislation does not regulate specific forms of direct realization of land ownership by united territorial communities. Analysing the legislation, it can be concluded that amalgamated territorial communities exercise the right of communal ownership of land by transferring communal land plots to individual ownership and use, providing them for permanent use or lease, as well as by emphyteusis, superficies and by allocating land for common use of community residents.

It is noted that there is still no clear legal model for redistributing the land powers of state authorities in favour of local governments of united territorial communities [2]. We believe that the priority approach to the formation of land legislation after the reform period should be the predominance of communal land ownership in the formation of the land fund of territorial communities.

It should be noted that the land legal personality of a territorial community implies that it has land rights, and the self-government bodies established by the community have land powers. Territorial communities exercise the right of communal ownership of land through local self-government bodies, and this method of exercising the right of communal ownership of land is the most common. However, the legal forms of exercising (realization) of land ownership by territorial communities remain poorly studied in the science of land law [10]. That is, with regard to the land competence of the subjects of communal land ownership, we

support the view that territorial communities can exercise the right of communal land ownership in two forms: directly and through their elected self-government bodies – village, town, and city councils [1].

The conclusions that “...although the law enshrines the right of communal ownership, its concept remains unproven” [3] are still relevant. This gives grounds to assert that it is difficult to interpret land legislation as normatively regulated and this creates obstacles to the introduction of a single model of communal land ownership and becomes a subject of political speculation. However, in the absence of a unified vision and approaches to the formation of the legal doctrine of communal land ownership, incomplete decentralization reform and “frozen” land reform, any proposals to amend the land legislation of Ukraine regarding the legal status of territorial communities as subjects of land ownership seem premature and harmful.

Conclusions

One of the important tasks of the current local government reform is to improve the legal regulation of the status of territorial communities in Ukraine. It is believed that the powers and resources gained as a result of decentralization have provided local governments with more opportunities for the development of their territories. However, the incompleteness and delay of administrative and land reforms hinder the processes of formation of territorial communities as equal subjects of property rights, thus making it impossible to fully legitimize the right of communal ownership of land. To solve these problems, it is optimal to enshrine in

the legislation the priority of land and legal powers of territorial communities within administrative-territorial entities. Further scientific development and research of the

legal status of the united territorial community and the legal regime of the lands of the united territorial communities are separate tasks of the land law science.

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Становлення правового регулювання у сфері закріплення статусу територіальних громад як суб'єктів комунальної власності на землю

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Анотація

У статті досліджується формування права комунальної власності на землю, становлення правового регулювання у сфері закріплення статусу територіальних громад як суб'єктів комунальної власності, вплив процесів децентралізації влади на вирішення питання правового режиму земель територіальних громад та об'єднаних територіальних громад, визначення наукових підходів до формування моделі права комунальної власності на землю в Україні. Актуалізовано непослідовність законодавців у визначення принципів побудови інституту права комунальної власності на землю, відсутність обґрунтованої концепції права комунальної власності, законодавчу суперечливість підходів до створення в Україні сталого місцевого самоврядування, заснованого на пріоритеті земельних інтересів територіальних громад. Приділено наукову увагу передумовам визначення конституційного статусу територіальних громад, законодавчому закріпленню підстав формування в державі комунальної власності на землю, вирішенню проблеми відсутності у чинному законодавстві визначення дефініції "право комунальної власності на землю". Зосереджено увагу на легітимізації правомочностей реалізації права комунальної власності через вирішення питання земельно-правової компетенції територіальних громад, удосконаленні їх статусу як суб'єктів, які реалізують право комунальної власності на землю безпосередньо або через органи місцевого самоврядування, здійсненні права комунальної власності на землю у способи, визначені земельним законом. За результатами дослідження встановлено, що Конституція України забезпечила необхідні передумови для становлення принципово нового земельного устрою у сфері комунальної власності на землі громад. Важливими науковими завданням в сучасних умовах є удосконалення правового регулювання земельно-правової компетенції територіальних громад як суб'єктів права комунальної власності на землю задля сталого розвитку територій. Визначено, що прискорення адміністративної та земельних реформ сприятиме повноцінній легітимізації об'єднаних територіальних громад та становленню територіальних громад як рівноправних суб'єктів власності на землю

Ключові слова: територіальні громади, децентралізація, реформа місцевого самоврядування, комунальна власність на землю