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Land use and protection: legal regulation and foreign experience

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ABSTRACT

The purpose of the research is to analyze land use and protection global trends in the activities of state bodies. *Main content.* The global trends of state administration of land use and protection were investigated. It was revealed that the use of the land resource potential in the countries of the world is carried out taking into account the environmental safety requirements provided for in the strategic documents of the land sphere. Taking into account the European integration intentions of Ukraine, tools were proposed for the development of rural areas based on the ecosystem approach. *Methodology:* Materials and methods research based on the analysis of documentary sources. The basis is the dialectical method of cognition of the facts of social reality, on which the formal legal and comparative legal approaches are largely based. *Conclusions.* The EU and the world countries experience gives reasons to assert that the priority task of state administration of land use and protection (land administration) is an ecosystem approach to the conservation and reproduction of land and other natural resources, which is implemented by maintaining a joint agricultural policy, creating funds to support farmers, providing technical assistance, developing national, targeted programs and long-term development plans. For the European Union countries, the development of strategic documents for the development of the land sector for 5-10 years is a general trend.

KEY WORDS: benchmarking; environment safety; international practices; land protection; land use; natural resources; pattern; public administration of land use and protection; successful experience.

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Uso y protección del suelo: regulación legal y experiencia extranjera

RESUMEN

El propósito de la investigación es analizar las tendencias globales de uso y protección del suelo en las actividades de los organismos estatales. Contenido principal. Se investigaron las tendencias globales de la administración estatal del uso y protección de la tierra. Se reveló que el aprovechamiento del potencial del recurso suelo en los países del mundo se realiza teniendo en cuenta los requisitos de seguridad ambiental previstos en los documentos estratégicos del ámbito territorial. Teniendo en cuenta las intenciones de integración europea de Ucrania, se propusieron herramientas para el desarrollo de las zonas rurales basadas en el enfoque por ecosistemas. Metodología: Investigación de materiales y métodos a partir del análisis de fuentes documentales. la base es el método dialéctico de conocimiento de los hechos de la realidad social, en el que se basan en gran medida los enfoques jurídicos formales y jurídicos comparados. Conclusiones. La experiencia de la UE y los países del mundo da razones para afirmar que la tarea prioritaria de la administración estatal del uso y protección de la tierra (administración de la tierra) es un enfoque ecosistémico para la conservación y reproducción de la tierra y otros recursos naturales, que se implementa manteniendo un política agrícola, la creación de fondos para apoyar a los agricultores, la prestación de asistencia técnica, el desarrollo de programas nacionales específicos y planes de desarrollo a largo plazo. Para los países de la Unión Europea, el desarrollo de documentos estratégicos para el desarrollo del sector de la tierra durante 5-10 años es una tendencia general.

PALABRAS CLAVE: evaluación comparativa; seguridad ambiental; prácticas internacionales; protección de la tierra; uso de la tierra; recursos naturales; patrón; administración pública del uso y protección de la tierra; experiencia exitosa.

Introduction

Less and less unused land remains in global agriculture. Only five countries have such potential - Brazil, USA, Russia, Canada and Australia (Novakovska, 2016). This notwithstanding, agricultural land in economically developed countries is a subject of focus and protection; they are protected by authorities at all levels and serve as the main capital of agricultural producers, a place of investment (Misakov, 2018).

It's happening due to the effective system of state administration of the use and protection of land (land administration), which ensured the flow of investments for the development of rural areas while ensuring the state land ownership rights, formed a socially fair system of payment for land, taking into account the quantitative and qualitative

characteristics of land plots. It also made it possible to establish a system of land control, ensure adequate functional requirements for farms, the ability to freely dispose of land and products produced on it, receive loans from banks against the security of land owned, use the land, transfer it to lease, by inheritance on its own initiative.

The use of land and resource potential in these countries is based on criteria that take into account the requirements of environmental safety, compliance with guarantees of land rights, ensuring the effectiveness of their use and protection.

In world practice, environmentally friendly land use is proposed to be carried out in the following sequence: one third of the territory should be conservation; the second third should have limited, state-controlled economic use while preserving the natural landscape, and, only others should be domesticated for intensive use while preserving the environment and human health (The United Nations Millennium Declaration, 2005; Martínez Prats et al. 2019).

Land conservation measures in the developed countries of the world are introduced thanks to the policy of rural development, which is based on the conduct of a joint agricultural policy, the creation of funds to support farmers, the provision of technical assistance, the development of national, targeted programs and long-term development plans. For the European Union countries, the development of strategic documents for the development of the land sector for 5-10 years is a general trend.

The purpose of the research is to analyze land use and protection global trends in the activities of state bodies.

1. Literature review

Domestic scientists and practitioners, especially in terms of ensuring the development of rural areas through the adoption of national decisions based on the experience of other countries, are actively studying this issue.

These scientists have made a significant contribution to the study of international practices in the legal regulation of land protection: Ilyina Maria, Demyanenko Mykola, Vlasov Volodymyr ect. At the same time, domestic scientists pay insufficient attention to the use of international practices in solving the problems of legal regulation of irrigated and drained lands. However, the implementation of a joint agricultural policy with the EU

countries based on solving the socio-ecological and economic problems of rural areas requires additional research.

The Fund also provides technical assistance for the development, implementation and monitoring of the implementation of activities within the framework of national programs, mainly at the request of the governments of the Member States of the Union. The volume of this assistance varies. Countries that joined the EU in 2004 (Estonia, Latvia, Lithuania, Malta, Hungary) received 3.9% each, and France, Great Britain, the Netherlands, Czech Republic, Ireland - from 0.1 to 0.8%. (Ilyina, 2015).

For example, in the Netherlands, municipal plans are the basis for the development of community land use and land administration. Land management activities in the country are an important component of the regulation of the economy and environmental management. Currently, more than 570 projects have been developed on an area of 2.4 million hectares, i.e. covered more than 75% of the territory (Demyanenko, 2007).

The program for the revitalization of rural areas in Poland (before accession to the EU), provided for compensatory surcharges for afforestation of agricultural land and for the maintenance of plantations. The financial assistance was one-time and was carried out in the following order: after a year - for afforestation, after 5 years - a prize for guardianship, after 20 years - a prize for afforestation. A differentiated approach was applied to the amount of payment, which depended on the configuration of the site and the type of forest plantations (coniferous trees - 1018-1207 euros per 1 ha, deciduous trees - 1184-1397 euros per 1 ha). This compensation was provided to agricultural producers on condition that they afforest at least 3 hectares of agricultural land (Vlasov, 2005).

2. Materials and Method

Materials and methods research based on the analysis of documentary sources. the basis is the dialectical method of cognition of the facts of social reality, on which the formal legal and comparative legal approaches are largely based.

With the help of the dialectical method the modern conceptual base and questions of legal technologies as tools of increase of use and protection of land are formulated. The formal-dogmatic method contributed to the development of the authors' explanation of the current state, problems, problems and practical role of legal technologies for further

development and improvement of land use and protection. The formal-legal method made it possible to propose directions and types of use of legal technologies as prospects for increasing the use and protection of land.

3. Results and discussion

The Economic Commission for Europe is an international organization that was the first to comprehensively consider the issues of public administration of land use and protection (land administration) in Europe. A working group on land administration was created to coordinate agriculture.

The European Agrarian Fund for Rural Development and funds from national budgets are involved in financing national programs for the development of rural areas. In particular, at present and until 2020, the strategy of the Common Agricultural Policy of the European Union (hereinafter EU CAP) provides financing for the common agricultural market, direct subsidies to agricultural producers and stimulating rural development. The EU CAP by its activities fully confirms the ability to keep the economies of European countries at the same level of development.

In the United States, Canada, Japan, China and most developed countries of the European Union, the role of the state in land administration has been increasing over the past decades. All types of land management documentation in most cases are developed with the participation and control of state and local authorities, taking into account public interests. On the basis of the developed and approved documentation, land use planning, zoning of the territory, state regulation of land relations through economic, legal and organizational measures at the state, regional, local levels and at the level of land tenure or land use are carried out.

In recent years, foreign scientists have been proving the need for state administration of the use and protection of land (land administration) - as the basis for the implementation of the state's land policy. This means that the implementation of the basic principles of land policy to enhance the role of land capital in the land use economy without combining the functions of land use management and land management is impossible.

Countries that in recent years have strengthened the state administration of land use and protection, using the land management mechanism, have practically no problems in the

allotment of land plots for state and public needs, maintain an optimal ratio between agricultural, forest, nature conservation, settlement lands, prevent the withdrawal of agricultural land for non-agricultural needs, carry out a system of environmental protection measures. Such actions have a positive effect on the economic growth of these countries (by attracting investments, loans, increasing the land productivity).

Land management activities in developed foreign countries are carried out on the basis of approved project documentation for land management in various areas. In Sweden, Denmark, Japan - to improve the design of the farm area. Landscaping of the territory is carried out in Germany, Czech Republic, Slovakia and Austria to improve the ecological state. Australia, USA, Canada, China, India use an integrated approach to the implementation of environmental protection measures. With the aim of the economic recovery of farms, the EU countries are introducing measures to organize the rational use and protection of land, a feasibility study for the organization of production, taking into account the quality condition of land plots. In the EU countries, the USA, Canada, land management activities are aimed at supporting the land market. Land consolidation works are carried out in Germany, the Netherlands, the Scandinavian countries, Poland to improve the conditions for the operation of agricultural enterprises. The enlargement of farms is carried out in the EU countries, the USA, Canada and other countries in order to provide a differentiated mechanism of support and functioning (Demyanenko, 2007).

In the European Union, rural development policy is an important area given that 56% of the population in 27 countries live in rural areas, which make up 91% of the total area of the Union. The development of rural areas received significant support after the publication of the EU Communiqué "The Future of Rural Society" as a comprehensive mechanism for ensuring rural development. Thanks to this program, at the local level, small, highly specialized projects were implemented to solve local problems (Khrystov, 2019).

First of all, the restoration of rural areas and the work creation (Ilyina, 2015).

In Salzburg (Austria) in 2003, a conference on rural development was held at which its main directions of development for 2007-2013 were determined. This measure allowed the governments of the EU member states to independently allocate their own resources for the development of rural areas and to simplify the financing procedure through a single fund (Leheza, 2020).

Of the total amount of funds of the EU member states, 10% were allocated to stimulate innovation, research, entrepreneurship. To improve landscapes, preserve territorial balance, develop organic agricultural production and reduce benefits for payment for the use of land resources, funds were envisaged that reached 25%. For the implementation at the local level of small, highly specialized projects in order to solve specific local problems provided for by the LEADER program - 5% (for the new EU member states, this share reached 2.5%) (Ilyina, 2015).

In the European Union, during 2012-2020, the European Agricultural Fund for Rural Development (EAFRD) allocated 96 billion euros for the development of rural areas, of which 32% was used for convergence. The permanent EU member states (15) received 61% of the total funding, the rest from 12 to 39% (most of the funds were provided to Poland - 14%, Italy and Germany - 9% each (Rural Development in the European Union. Statistical and Economic Information Report, 2013).

In 2012-2020, the EAFRD made payments to EU countries for the development of rural areas for such events: a) agroecological activities - 23.1 billion euros (24%); b) modernization of farms 11.6 billion euros (12.1%) and support for newly created - 2.9 billion euros (3,0%); c) increase in added value of products - 5.6 billion euros (5,8%); d) infrastructure development of farms - 4.8 billion euros (5.0%); e) local (local) strategies for rural development - 4.1 billion euros (4.3%); f) for the basic needs of rural residents - 3.7 billion euros (3.8%); g) for the rehabilitation and development of the village - 3.4 billion euros (3.5%); h) for primary afforestation of agricultural land - 1.7 billion euros (1,8%) (Rural Development in the European Union. Statistical and Economic Information Report, 2013).

In the United States, in order to improve the use of land, the state imposes a differentiated land tax. The state has the right to restrict the freedom of owners in the use of land and property resources at their discretion (for example, in case of violation of sanitary standards, causing environmental and economic damage, etc.). In addition, the state, in the case of using land for other than its intended purpose, for non-use of them, in general, returns to itself the right of ownership of the land. In large cities, land use is regulated by zoning.

The Government of Latvia has adopted the Land Policy Guidelines to bring legislation in line with EU best practices. A land management law is currently being drafted, the concept of which was approved in 2010, which provides: regulate the principles of land use and the

responsibility of landowners and land users; determine the powers of state and local authorities in the field of land relations; prevent further land degradation and contribute to the preservation of their quality condition; ensure land monitoring; create a land fund and introduce land consolidation. The land fund will be used as: a) a compensation fund in case of land acquisition for public needs; b) a reserve fund for the development of public infrastructure (roads, communications), improving access to land plots and land consolidation (Land Banks and Funds – Instruments for Rural Development, 2012). In almost all countries of the European Union and the United States, without exception, the Constitution enshrines the fundamental principles of regulating land and property relations, introduces severe restrictions related to the targeted use of land of various categories, as well as rules for municipal and agricultural land use, demarcates the economic and legal procedures for the sale of land and their redemption from private individuals for state needs and the achievement of national security (Vegeera, 2011).

The system of state administration of land use and protection is divided into three types - classical, transitional and complex multifunctional. Western European countries (France, Germany, Austria, Italy, Spain, etc.) used the classical system for assessing land for the purpose of taxation. When assessing the quality of agricultural land, the yield of agricultural crops on arable land and the productivity of forage lands are taken into account. Here the principle "from the general to the particular" is implemented in the land policy of the state and the state integrated approach to land management is supported.

The transitional period in the system of state administration of land use and protection is associated exclusively with individual land plots and their spatial data. As a result, when making management decisions, it is impossible to fully take into account the territorial, economic, environmental and social requirements. This system originated in the USA, Australia, Canada and in some developing countries and is based on the "from particulars to generals" principle.

Complex multifunctional systems of state administration of land use and protection began at the end of the 20th century and at the beginning of the 21st century in the countries of the European Union, North American states and the CIS countries. These systems contain multipurpose cadastre, e-management and modern geographic information and navigation technologies. The solution of land use development issues is considered in a dialectical unity

according to the principle "from the general to the particular" or "from particulars to generals". At the same time, integrated multifunctional land administration systems (LAS) recognize land management as the main mechanism for land administration, provide functional relationships between the LAS infrastructure, spatial data infrastructure, spatial information about the activities of the state, municipal and private sectors.

State administration of the environmental impact on the economic interests of the subject of land ownership or land use in countries with market economies includes: provision of tax incentives, preferential loans, subsidies and donations to business entities.

Tax concessions are provided for environmentally friendly activities (production of ecologically clean agricultural products, anti-erosion organization of the land use territory, maintenance of the biodiversity of the territory). Concessional loans are provided at interest rates for environmental investments. Subsidies for the implementation of environmental programs of national and regional importance (conservation and expanded reproduction of land resources). Subsidies for farming in a particularly limited mode, growing products without pesticides.

Agrarian relations in developed countries are built on incentive levers, with the direct implementation of the rules for the use and protection of land. If business entities violate the norms of land use, their rights in some part are terminated. In the United States, for example, they are deprived of the possibility of concluding government contracts, the provision of subsidies or borrowed funds, etc. Funding for measures to reduce land pollution, in most countries, in case of non-compliance with the requirements, non-fulfillment of the conditions put forward for obtaining a loan, is terminated (Novotorov, 2009).

The countries of the European Union receive subsidies for the control of land pollution, maintenance of stable landscapes, compliance with environmental protection measures, uniform standards for the use of chemicals. To ensure the sustainability of agricultural landscapes in Denmark, Austria and other EU countries, each landowner is obliged to withdraw from economic circulation 10-13% of the land (Teremets, 2012). In Spain, the Law on the Protection and Improvement of Agricultural Lands (1953) obliges owners to apply agricultural practices in accordance with the norms determined by the Ministry of Agriculture. In Germany, in particular in its western part, an annual soil survey has been carried out for many decades, including tests for the content of nitrates (Volkov, 2010). If the

norm is exceeded, the business entity pays a large fine and may go bankrupt due to the ban on the sale of products. In the United States, 20% of taxable profits are allowed to be invested in priority areas (soil and water conservation measures, modernization) without paying tax on capital invested.

Tax rates for environmental pollution in EU countries are 60 times higher than domestic one. In countries with developed economies, in the implementation of environmental protection measures, attention is paid to justifying the feasibility of their realization and stepwise implementation. The share of prospecting, design work and work regarding the scientific justification of these activities is from 40-60% of the total cost of their implementation. While in Ukraine this indicator ranges from 1-6% (Alimov, 2015).

The system of economic levers of environmental policy in Ukraine needs to be improved, because it is not sufficiently developed. The experience of foreign countries shows that we must strengthen both the instruments for land administration, and the means supporting it to achieve success in sustainable land administration. The instruments includes: a) state system; b) planning of land use development; c) economic and legal methods of state regulation of land relations and the land market; d) ensuring guarantees of land ownership, land tenure and land use, land taxation. Supportive means include: a) registration of rights to land plots, b) land cadastre, c) measures for the assessment, accounting, use and inventory of land, etc (Leheza, 2018).

To improve the system of economic leverage, we offer: 1) to perfect mechanisms for returning funds to agricultural land tenure and land use that use innovative technologies for the conservation and protection of soil; 2) simplify the procedure for granting subsidies, grants, benefits for land users at the expense of local budgets (from payments for land and from compensation for losses of agricultural and forestry production); 3) improve the mechanism for stimulating the rational land use.

Conclusion

1. The experience of the EU and the world countries gives reasons to assert that the priority task of state administration of the use and protection of lands (land administration) is an ecosystem approach to the conservation and reproduction of land and other natural resources, which is implemented by maintaining a joint agricultural policy, creating funds to

support farmers, providing technical assistance, developing national, targeted programs and long-term development plans. For the European Union countries, the development of strategic documents for the development of the land sector for 5-10 years is a general trend.

2. It has been proved that private owners should become the main organizations that implement the environmental policy of the state for the protection of land and carry out effective environmental management as they are entitled to as property or use rights to land plots. In view of this, it is necessary to develop a program to stimulate the private sector of agricultural producers at the state level.

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