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MAJOR TASKS AND PRINCIPLES OF LAND LEGISLATION AND LAW

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In the article major tasks and principles of land legislation and law are investigated. Land and legal rules are aimed to create intolerance for violators of the land law, increase respect for nature and its resources. Land legislation establishes behavior standards and attributes or prohibits certain actions, contributes to public justice. Principles of the land legislation of Ukraine regulate the most important issues of the land policy and in concentrated form reflect the socio-economic nature of the land relations. The essence of the principle of combining the specific features of the land usage is a territorial basis, natural resource and the main asset of the production. The principles can be divided into constitutional, general and special. Major principles for formation of the land legislation and law are proposed.

Keywords: land relations, land legislation, land law, land recourses, rational land use, land protection.

Ukraine has enormous national wealth of land, which can be a strong base for the solution of socio-economic and political problems in the country. That's why today the most acute problems are concentrated in the sphere of the land relations.

Transformation of land relations, along with the positive effect of the development of different forms of land ownership, has found some dangerous trends in the national economy, which ignore the role of the state. Acute problems of the irrational land usage, the question of the land taxation, regulation of land relations in a market economy pose new methodological, conceptual and theoretical research tasks in the field of the land policy. Under the new conditions, modern Ukraine needs complete and effective land relations, formation and regulation of which are the purpose of land legislation. The concept of the objective and tasks of the land legislation and law are sometimes are clumped together. It is necessary to compare these concepts and to determine the place of each of them in the land legislation and law, as well as implications of their development. Furthermore, in the absence of a clear, systematic understanding of the objective and tasks of the current land legislation and law it is important to analyze the existing definition of the objective and tasks, to give their classification and suggest precise formulation for further development of the land laws [1, p. 19].

In the legal practice of creating laws that regulate the land relations after the adoption of the Land Code of Ukraine, a trend appeared according to which neither clear guidelines nor the ways of achieving them were set to regulate the most important of public land relations. Outlining the scope of freedom of behavior of the land relations, the mechanism of land legislation and law gives a possibility to differentiate and integrate a variety of interests in land purchase and the usage of their useful properties which are formed in a society; to resolve in a civilized way land disputes, to find compromise in the process of solving conflicts. This is the general social essence of the land law – on one hand, while establishing the basic law of the land rights and freedoms, the government gives a possibility to act, and on the other – restricts the freedom of the individual, setting the rules of proper (or, conversely, improper) behavior. The

rights of citizens determine the meaning, content and application of the laws, the activities of the legislative and executive authorities, local authorities and provide justice. The constitutional duty of the legislative, executive and judicial authorities to respect and ensure respect for human civil rights is one of the most important legal principles to protect them.

Land and legal rules are aimed to create intolerance for violators of the land law, increase respect for nature and its resources. Land legislation establishes behavior standards and attributes or prohibits certain actions, contributes to public justice.

The correlation of the objective and tasks of land laws and rights lies in the secondary character of tasks as to the purpose because tasks are defined by and subject to objective laws of the land. The task of the land legislation and laws is one of the varieties of social problems of society. Such tasks are aimed to achieve the goal of the legal regulation of the land relations.

Determination of the main tasks of the land legislation and law is a fundamental principle insured by the Constitution. Today, the focus of the legislator while determining objectives of the land legislation is focused on protecting the individual, his or her rights and freedoms, because accords to the second paragraph of the Art. 3 of the Constitution, the establishment of human rights and freedoms is the main duty of the state [2].

Land legislation and law designed to ensure a comprehensive approach to the regulation of the public land relations to implement the rights of citizens on the land.

The main objectives of the land legislation and law are the creation of the necessary legal conditions to maximize the fulfillment of interests of the participants of the land relations, as well as the regulation of land relations in order to create conditions for sustainable usage and protection of the land, equal development of all forms of the land ownership and management, conservation and restoration of the soil fertility, improvement of the quality of the environment, protection of the citizens, enterprises, institutions and organizations' rights on the land. Norm driven identification of the objectives of land legislation and law plays a certain role in its building (the adoption of new normlegislative acts and reviewing applicable

ones), and more importantly, can be taken into account when interpreting its provisions if they are not clear or ambiguous.

The task of the modern land law in accordance with the second paragraph of Art. 4 of the Land Code of Ukraine is to regulate the land relations to ensure land rights of citizens, local communities and the state, rational usage and protection of the land [3]. It's outlined in the second paragraph of Art. 4 of the Land Code of Ukraine, the number of tasks of the land legislation is unduly narrow.

Specifically, the task does not include the restoration of the land (although land legislation contains many provisions clearly aimed at this task), the task of ensuring environmental safety (although most restrictions of rights to land guarantee it) and others. Therefore, the tasks of the land laws and rights can be defined as the regulation of the land relations in order to create conditions for sustainable usage and protection of the land, equal development of all forms of land ownership and management, conservation and restoration of soil fertility, improvement of the environment, protection of citizens, enterprises, institutions and organizations on the land.

Ensuring rational usage of the land is done by fixing the respective rights and responsibilities of landowners and land users; combining measures of economic incentives for the efficient land use and measures of legal liability for violation of the land management. Rational usage of the land is provided in a variety of ways: economic, organizational, technical, legal.

Land legislation ensures only a general principle of the rational usage of the land, but not formulated requirements, which ensure efficient usage of the land. Mishandling should be considered the usage of the land, which leads to a reduction or elimination of its beneficial properties.

The fundamental objectives of the land laws and rights at the present stage of its development are: the creation of the optimal conditions for exercising the legal right of every citizen to the land and the duty to protect the land as a major national wealth, care for the land, a legal provision to reduce the negative impact of economic and other activities on state lands, creation of legal conditions for the organization and development of the land of education, as well as the legal basis for the formation of the land and legal culture, the definition of the legal framework of public policies on land usage and protection, providing a balanced solution of socioeconomic problems, strengthening law in the usage and protection of land.

Principles of the land legislation and law are assumptions, principles and requirements set forth by the Constitution of Ukraine, Ukraine HCC, laws and other acts of land laws that are caused by the needs of the social development, form the basis of the land system of Ukraine, and are the basis for the functioning and development of the land legislation and focused on the tasks of land legislation and law, which are required for both legislative and for judicial enforcement.

Principles of the land legislation and law perform the following functions: form the base of the land policy, directly regulate the land relations,

define the benchmarksof the land legislation development, ensure the stability of the legal regulation of the land relations. Principles of the Land Legislation of Ukraine arising from general principles of the law are of the fundamental importance; they regulate the most important issues of the land policy and in concentrated form reflect the socio-economic nature of the land relations.

Principles of Land Legislation characterized by land and legal standards are enshrined in the fundamental law of the land acts of land and legal norms, which is (or should be based) on all current land legislation.

Principles of the land law are caused by the common law doctrine of general and scientifically sound basic principles, assumptions that define the characteristics of emergence, development and operation of the Land Law and is the basis for the development of the science of land law, embodying values that contribute to justice and legal behavior subjects involved in the land relations. In our opinion, the principles of the land law relate to both content and form, that they are a single entity, and their separate study is allowed only in order of the scientific abstraction, for the convenience of the research of the specific problems, such as problems of legal regulation. Principles of the land law as a part of the basic principles of legal regulation of the land relations are formed on the basis of the provisions of the land laws. Anchored in acts of the land laws, they become standards, principles, ie legislative decrees that express and reinforce the principles of the land law.

Given the importance of the principles of the land legislation and law as the guiding principles, we can assume that they are fixed primarily in acts of the land legislation. The principles can be divided into constitutional, general and special.

Constitutional principles are universal, inherent to all sectors of the domestic law; the general principles are the result of the implementation of the constitutional principles. Constitutional and general principles are reflected in the land law, assuming the character and content of the special land legal principles. Defining the directions of the legal regulation in general, constitutional norms and principles are establishing principles of law-making and enforcement outline the framework for designing appropriate mechanisms at the same time.

The constitutional principles of land law and legislation include:

- 1) the highest legal force of the Constitution of Ukraine; the compliance of laws and other legal acts with the Constitution;
- 2) the direct effect of its provisions;
- 3) recourse to the courts to protect the constitutional rights and freedoms of men and citizen;
- 4) recognition of human life and health, privacy and security as the highest social value;
- 5) the state's duty to ensure the rights and freedoms of the person;
- 6) recognition of the land as a property owned by the Ukrainian people.

As reproduced in art. 5 of the Land Code of Ukraine and other acts of the land law, constitutional principles are transformed into general legal principles, which include:

1) a combination of the specifics of the land usage as a territorial basis, natural resources and basic means of production;

2) ensuring equality of the land ownership rights of citizens, legal persons, local communities and the state;

3) non-interference by the state in the exercise of their rights of possession by citizens, legal persons and local communities, use and disposal of the land, except as stated by the law;

4) ensuring the rational usage and protection of the land;

5) guaranteeing the land rights;

6) priority of the environmental safety requirements.

The system of the special principles is structurally built by the scheme of the land law. The special land laws principles include:

1) the principle of ecological well-being of the environment in the process of the land usage;

2) the priority of the interests of the Ukrainian people as the subject of the land ownership;

3) efficient usage of the land;

4) state control over the land usage and protection;

5) division of the land by the intended purposes;

6) the normative establishing of the legal regime of land appropriate categories;

7) priority of the agricultural land compared with other types of lands;

8) the reality and guarantee of the rights of holders to own land;

9) a variety of the forms of the land ownership and equality of their subjects;

10) the land existence in civil circulation;

11) paying for the land usage;

12) state regulation of the land relations;

13) protection of the rights and legitimate interests of the land relations;

14) the stability of the land usage [4, p. 44-45].

The essence of the principle of combining the specific features of the land usage as a territorial basis, natural resource and the main asset of the production, that land as an object of the land relations is considered by the law not only as a basic means of production and territorial basis, but also as an element of the environment, which is inseparable from other natural resources.

Ensuring equality of land ownership rights of citizens, legal persons and state – is one of the independent principles. It is based on provisions of the current legislation on the equal ownership of the land. This means that the terms and the way of the implementation of the owners' rights is the same for all subjects; their subjective rights are protected equally. State's noninterference in the subjects' exercise of the rights of possession, disposal and usage of the land, except as provided

by law – is the result of the democratization of the land relations. Establishment of this principle is associated with the expansion of the rights of the land owners and land users, the development of their independence.

Rights of the land owners and land users to farm land are a guarantee that the state should not interfere in the activities of carriers of land rights to exercise their powers. Exceptions to this rule are cases prescribed by the law. In particular, the forced termination of land rights of an owner or a land user while they violate the existing land laws [5, p. 125].

The rational usage of the land requires the interconnection to achieve the desired effect, which is obtained from the economic exploitation of the land at the minimal cost while maintaining and improving the land during its usage. This principle is closely and inextricably linked with such principles as targeted land usage and stability, permanence of the land rights.

Guaranteeing of the land rights is in the fact that the Land Code provides guarantees of the land ownership and land usage rights. Land rights of subjects, as well as their guarantees are announced and ensured by the Constitution.

Formation of the land legislation and law should be made on the basis of the principles that form:

1) the principle of the constitutional development of the law of the land, which is that the development of the legislation or other regulations designed to regulate land relations should be based on and in accordance with the Constitution of Ukraine;

2) the principle of the priority of the legislative regulation of land relations means that the original land legal rules can be formed only by the laws;

3) the principle of continuity in the development of the land law stipulates that the development of the land laws should be done by the amendment to existing legislation, rather than replacing them with new legislation for the same subject of the legal regulation;

4) organizing principle of the land law, which involves the formation of the legislative blocks for further integration into codified act that completes the process of the systematization of the land laws;

5) the principle of land law development in accordance with the generally recognized principles and norms of the international law based on the constitutional provision on the recognition of the existing international treaties ratified by the Supreme Council, is part of the national legislation of Ukraine;

6) the principle of proper Legislative Drafting suggests that the formation of the draft legislation should be made on the scientifically accurate basis.

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ОСНОВНІ ЗАВДАННЯ І ПРИНЦИПИ ЗЕМЕЛЬНОГО ЗАКОНОДАВСТВА І ПРАВА

Анотація

У статті досліджено основні завдання та принципи земельного законодавства та права. Земельно-правові норми спрямовані на формування нетерпимості до порушників земельного законодавства, підвищення поваги до природи та її ресурсів. Земельне законодавство встановлює стандарти поведінки або забороняє певні дії, сприяє суспільному правопорядку. Принципи земельного законодавства України регулюють найбільш важливі питання земельної політики і в концентрованому вигляді відображають соціально-економічну природу земельних відносин. Принципи базуються на поєднанні особливостей використання землі як територіального базису, природного ресурсу і основного засобу виробництва. Ці принципи можуть бути розділені на конституційні, загальні та спеціальні. Запропоновано основні принципи формування земельного законодавства та права.

Ключові слова: земельні відносини, земельне законодавство, земельне право, земельні ресурси, раціональне використання земель, охорона земель.

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Аннотация

В статье исследованы основные задачи и принципы земельного законодательства и права. Земельно-правовые нормы направлены на формирование нетерпимости к нарушителям земельного законодательства, повышение уважения к природе и ее ресурсам. Земельное законодательство устанавливает стандарты поведения или запрещает определенные действия, способствует общественному правопорядку. Принципы земельного законодательства Украины регулируют наиболее важные вопросы земельной политики и в концентрированном виде отражают социально-экономическую природу земельных отношений. Принципы основаны на сочетании особенностей использования земли как территориального базиса, природного ресурса и основного средства производства. Эти принципы могут быть разделены на конституционные, общие и специальные. Предложены основные принципы формирования земельного законодательства и права.

Ключевые слова: земельные отношения, земельное законодательство, земельное право, земельные ресурсы, рациональное использование земель, охрана земель.