

ECONOMIC DEVELOPMENT SCIENCES

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Abstract. *The negative effects of extending the moratorium on the sale of agricultural land are considered. The main sellers of land under the moratorium are highlighted in the article. The necessity of lifting the moratorium is proposed. A scheme to overcome the moratorium on the sale of agricultural land is proposed and analyzed.*

Keywords: hereditary contract; land reform; land relations; lease of land; moratorium; the land market; the right to property.

1. Introduction

In recent years, processes of inefficient land use in Ukraine became deeper: large areas of unused, overgrown weeds lose their value as a primary means of agricultural production.

One of the major problems of land reform is the existence of moratorium on sale of agricultural land.

Inefficiency and breakdown of collective and state farm system proves that sustainable land use can not be fully realized outside the land market.

Implementation of lease relations for most agricultural land deprived peasant landowner rights to own and dispose their property.

One of the main objectives of land reform such as significant increase of efficiency and protection of land resources is not implemented.

Prohibition of sale of agricultural land distorts the nature of private land property: it seems it legally exists, but the cost is down.

The owner can not use the land as a tool to attract loans and investments. Without its mortgage the loans cannot be obtained.

Algorithm of economic policy is choiceless: reforms, private investment, and only on this basis — state financial support of the village. This is very important in terms of economy openness, especially in the country's accession to the WTO, as well as increased competition from Russia and Kazakhstan, that recently increase agricultural potential, and from Poland, Hungary and other countries in the EU, that have received a huge boost to agricultural transformation.

Legislation of Ukraine guarantees citizens' right to own, use and dispose real estate, including land.

It's right under Art. 41 of the Constitution of Ukraine, N 4 which states that no one shall be unlawfully deprived of property rights. The right to private property is inviolable [8].

The Civil Code of Ukraine in Section I, chapter 23 p. 319 declares that the owner owns, uses, disposes of its assets at their discretion [2].

The moratorium on the sale of agricultural land is inconsistent with these provisions; it is contrary to the content of Art. 1, Protocol 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms [3].

2. Analysis of studies and publications

Great attention to the issues, dedicated to the moratorium on the sale of agricultural land was paid by V.V. Gorlachuk [5], V.I. Fedorovych [4], R.I. Marusenko [7], A.G. Martin [6].

The analysis of scientific sources on the moratorium on the agricultural land sale gives reason to believe that the circulation of land without effective government regulation is not economically possible.

At the legislative level economic reform program for 2010–2014 “Prosperous Society, Competitive Economy, Effective State”, developed by the Committee on Economic Reforms under the President of Ukraine and the Cabinet of Ministers of Ukraine “On approval of the Concept of the State program of development of land relations in Ukraine for the period till 2020” N 743-r dated June 17, 2009 was devoted to the need for further clarification of land relations in Ukraine and implementation of outstanding land turnover.

Meanwhile, some issues still remain insufficiently studied and need further study, especially it concerns

market land reform at this stage, including a moratorium on agricultural land, the definition and implementation of property rights, land owners and land users.

The aim of the article is to analyze and study a method of overcoming the moratorium on the sale of agricultural land, including method to suit the subject of the agricultural market, set up a long-term activity in the agro-industrial complex.

3. Need in civilized land market

According to statistics more than 17 % of shareholders live outside the territorial communities and do not intend to engage in agricultural production and manage land assets, that leads to non-agricultural land and more than 30 % are pensioners, who do not have financial and physical capacity to engage in agricultural work.

Therefore, state shall give them possibility to dispose their land — their property and get some benefit from it. But in order to ensure such income and benefit, the state has no wild markets, but making real actions of such laws to make it profitable to sell their area and not to make harm to the country, future generations and not to make harm to agricultural products.

Also among the negative consequences of extending the moratorium on farmland buy-sale scientists note the major ones:

- concentration of most of the owned agricultural land by the least economically active part of the rural population (pensioners and those approaching retirement age);
- containment of consolidation (merger) of land as a result of unsustainable land ownership size, inclusions of other owners of small plots of land tracts farms, etc.;
- blocking the creation processes of large-market-commodity farm, which reduces the competitiveness of domestic agriculture in world markets.

Taking into account international experience, it may be noted that civilized land market needs both society and state as a whole.

The presence of active “shadow” market of agricultural land largely explains the “commitment” to the extension of the moratorium, because access of a few people to the alienation of agricultural land puts them in a privileged position.

With market legalization significant competition from foreign investors may appear.

It is necessary to consider that this can significantly increase the value of land.

Also it shall be taken into consideration that the vast majority of agricultural land is now used on a

rental basis and small rental lean makes their use practically free.

Thus, the practical impossibility of legal sell of agricultural land makes owners to lease them at a very low price. Today nearly half of agricultural land in Ukraine is in a long lease. Clearly, this situation is extremely beneficial for these “lessees”, which basically turn into major landowners and are the main lobbyists for extending the moratorium.

Under the moratorium the main sellers of land were local governments. Experts estimate that about 75 % of total turnover of the shadow land is made for their assistance [1].

Today private owners are not allowed to change the purpose of the farmland that earlier made it possible to sell their land as private households. In fact, this situation makes local government the only legal seller of agricultural land that they often use.

Thus, local governments are also not interested in lifting moratorium on agricultural land.

Moratorium practically brings no investment attractiveness of the agricultural sector. The land can not be subjected to collateral object, so that farmers do not have access to long-term credit and are forced to use short-term loans, which, in addition to high cost, make it impossible to “soften” the risks, associated with possible crop failures in some years and may lead owners into bankruptcy [6].

4. Legal way to avoid the moratorium

Since the state did not provide opportunities for citizens to dispose their land, landowners faced the need to avoid this prohibition.

Define general aspects to justify legal way to bypass the moratorium.

It should be noted that the moratorium has exceptions — agricultural land can be transmitted by inheritance and removed for public use.

The Constitution of Ukraine provides the right of property inheritance for citizens and allows every citizen to dispose his property in case of death.

This constitutional right is reflected in the Civil Code of Ukraine, which provides possibility for individual to dispose his property in case of death through the use of inheritance contract.

According to hereditary contract, one party (the purchaser) agrees to comply with the order of the other party (disposing) in the event of his death and shall be entitled to the property alienator.

Alienator hereunder may be conjoint, one conjoint or another person as purchaser — natural and legal persons.

To start purchaser and alienator conclude a contract for land lease (see Figure).

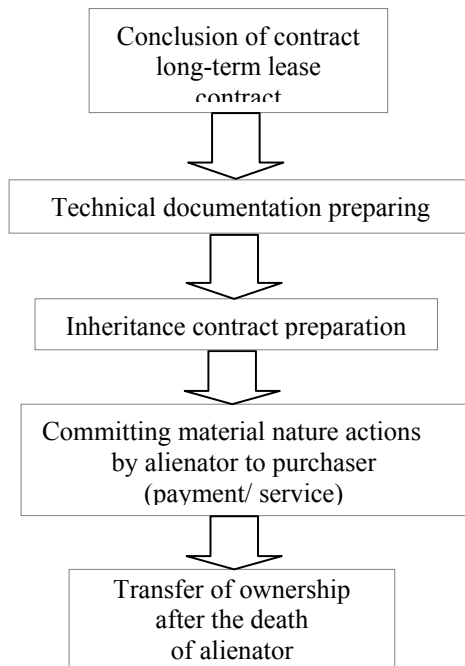


Fig. Scheme of moratorium avoidance on the buy-sale of farmlands

The contract for land lease is a contract, according to which the lessor must give for payment to the lessee land into possession and use for a specified term, the lessee shall use land in accordance with the contract terms and land legislation requirements.

The right to lease the land is a fixed date paid possession and use of land, based on contract, required the lessee for doing business and other activities.

Rental of land may be short — no more than 5 years and long-term — less than 50 years.

The lease is in writing and is subjected to notarization.

The next step is the production of technical documentation and registration of land lease contract, then the contract is concluded hereditary.

Ancestral agreement is in writing and certified by a notary.

The contract can be covered by property belonging to the spouses' joint matrimonial property, and property that is personal property of each spouse.

This contract may stipulate that the death of a spouse, inheritance passes to the second, and the death of another, his property passes to the purchaser under the contract.

The parties may specify in the contract and other conditions are not prohibited by law.

Purchaser under the contract may be hereditary obliged to commit any act of property or non-property as the opening and after opening the inheritance.

In case of death of disposing the purchaser becomes the owner of the property as defined in the succession agreement.

In order to implement the agreement on ancestral property, specified by the agreement, the notary, who witnessed this agreement, prohibits alienation.

Alienator is entitled to appoint a person to control the execution of the contract of inheritance after his death.

In the absence of such person, implementation inheritance contract controls notary at the place of opening the inheritance.

Ancestral contract may be terminated by the court at the request of the alienator for purchaser failure of his orders.

Agreement may also be terminated by the court at the request of the purchaser in case of failure executing the orders of the alienator.

5. Conclusions

Becoming an effective land market is the main prerequisite of high socio-economic efficiency of land relations, sustainable socio-economic development, improving living standards, ensuring food security, improving agricultural production.

The efficiency of land use depends on how properly land market will be organized.

Agricultural land market is essential condition and means for development of agricultural sector.

Analysis of the existing legal framework has allowed to identify main problems land use as private property and the ability to solve them.

It is determined that the measures to overcome the moratorium on agricultural land buy-sale are relevant in the current economic conditions.

Land is a commodity that is the object of sale, lease, and mortgage.

Involvement of lands or rights to use them in the market economy promotes business and investment activity increases the efficiency of land ownership in country, so the proposed method of alienation of land ownership has the right to live, but only for those subjects of legal relations that plan long-term land use as the title goes to them only after death of alienator.

Taking into account international experience, it may be noted that civilized land market is the guarantee of basic needs as a modern society and the state in general.

Creation of a fully-functioning agricultural land market will become the logical culmination of land

reform in Ukraine and provide increased productivity and efficiency of agricultural production, it is therefore appropriate to form land legislation taking into account both their own characteristics and priorities, and world experience.

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Висвітлено негативні наслідки продовження мораторію на купівлю-продаж земель сільськогосподарського призначення. Відмічено, що мораторій практично зводить нанівець інвестиційну привабливість аграрного сектора, відсутня державна фінансова підтримка села. З'ясовано основні продавці земель в умовах дії мораторію. Обґрунтовано необхідність скасування мораторію. Запропоновано та детально проаналізовано схему подолання мораторію на купівлю-продаж земельних ділянок сільськогосподарського призначення.

Ключові слова: земельна реформа; земельні відносини; мораторій; оренда земель; право власності; ринок земель; спадковий договір.

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Исследованы негативные последствия продления моратория на куплю-продажу земель сельскохозяйственного назначения. Отмечено, что мораторий практически сводит на нет инвестиционную привлекательность аграрного сектора, отсутствует государственная финансовая поддержка села. Определены основные продавцы земель в условиях действия моратория. Обоснована необходимость отмены моратория. Предложена и детально проанализирована схема преодоления моратория на куплю-продажу земельных участков сельскохозяйственного назначения.

Ключевые слова: аренда земель; земельная реформа; земельные отношения; мораторий; наследственный договор; право собственности; рынок земель.

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