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### **JUDICIAL PROTECTION OF LAND TITLE: ECHR PRACTICE**

The article deals with the ECHR judgement «Zelenchuk and Tsytsyura v. Ukraine». The position of the ECHR on the land moratorium in Ukrainian legislation has been analyzed. Conclusions regarding the possible use of the mentioned judgement in national judicial practice have been made. The significance of the judgement in the light of the requirements of the moratorium cancellation has been studied.

**Key words:** *land ownership, land title, right to land, land moratorium, compensation, ban, cancellation.*

There is no doubt that land has always been a specific and important object of legal relations. Establishment of private right to land has a long and contradictory history. Nowadays legal science sets that the beginning of new era social relationships connected with land possession started with the adoption of the Ukrainian Constitution.

The science of land law has always paid special attention to Article 14 of the Constitution. The last states that land is the main national wealth that is under the special protection of the state. According to the requirements of this article ownership of land is guaranteed. This right is acquired and realized by citizens, legal entities and the state exclusively in accordance with the law [1].

However, land title and other legal relations connected with the process of acquisition of rights to land, its use and turnover still need clear legislation to be adopted and applied. Today, when one analyses legal reality comes to conclusion that citizens in their majority practically have no opportunity to effectively realize their rights. It means that a big number of rules, laws and other legal acts defective or contain mostly declarative provisions.

It forces citizens to go to court to protect their rights and legitimate interests. However, the national judicial authorities are not always able to apply the law correctly, or do so with significant violation, which in turn leads to a violation of the rule of law. In such cases, Ukrainians, having exhausted all possible national means of protecting their rights, are forced to seek help from international judicial institutions. A special role here is played by the European Court of Human Rights (here and after – ECHR).

Today, the most important for Ukrainian society is the decision of the ECHR in the case of Zelenchuk and Tsytsyura v. Ukraine. ECHR unanimously established violation of Article 1 of Protocol No. 1 (property protection) of the European Convention on Human Rights. The case concerned complaints of two people to a state ban on the sale of agricultural land, which, according to them, violated their rights to ownership as owners of such land plots. The Court noted that, after the fall of the Soviet Union, Ukraine predominantly distributed agricultural land to persons who had previously worked in collective farms, but introduced a prospective temporary prohibition on the sale of land, known as a "land moratorium". The Government argued that the measure prevented the concentration of land in several hands, stopped the impoverishment of the rural population and made it possible to ensure that the land remained cultivated. However, the Court has established that the state has not established a fair balance between the general interests of the community and the applicants' property rights. The court noted that no other state of the Council of Europe had such a ban, and relied on the inconsistency of Ukraine's approach to the moratorium termination. It was also unclear why a less restrictive measure was not effective for the same purpose. The court ruled that the government should take legislative measures to ensure the necessary fair balance for owners of agricultural land, although this did not mean that Ukraine should immediately create a market for agricultural land without restrictions. The applicants were not awarded any monetary compensation [2].

Since the repeated prolongation of the moratorium negatively affects a very large number of people, the ECHR has indicated that Ukraine should take measures for the implementation of this decision within two years and provide owners with the right to dispose of agricultural land. The ECHR did not award monetary compensation to applicants who are harming the moratorium, but indicated that it would not exclude the collection of such compensation from Ukraine in the future if the relevant measures for opening up the agricultural land market are not used.

The decision we are analyzing, indisputably, is a key precedent that to a large extent determines the further legal development of relations in this area. For example, it can be used in the following cases.

Compensation for damage caused by land moratorium. Owners of land plots (units) may apply to the courts of Ukraine with claims for damages caused by the inability to alienate a land plot at market price. Moreover, the fact of the illegal land moratorium is unnecessary to prove, since it is already established by the ECHR. However, suing to a court with a claim for damages would not have a chance of success until the ECHR awards compensation for damage on the application of the Ukrainian landowner. National courts, referring to their own decisions, may rely on the refusal of the ECHR to award compensation in the Zelenchuk and Tsytsyura v. Ukraine case, in order to save on the state the funds that could be paid to about seven million owners of agricultural land (shares) [3].

2. The permission of the court to alienate the land. Theoretically, obtaining from a court a permit for a transaction on alienation of land could be an effective mechanism for the protection of rights to land. The practice of Ukrainian legal proceedings already has its own precedents, when the period during which the prohibition of alienation of land activists acted has been shorted. This is reflected in Resolution of the Plenary No. 13 dated 25.12.1996 of the Supreme Court of Ukraine. At the same time, owners could apply to the court for a reduction of such a term, if they substantiate such a need (for example, unsatisfactory financial condition). Although there are currently no legal grounds for obtaining a court permit for the alienation of agricultural land, theoretically, with minor changes to land legislation, courts could decide to grant permission in cases similar to Zelenchuk and Tsytsyura v. Ukraine, which would be in line with Ukraine's commitment to the ECHR. [3].

3. The notary's obligation to certify the contract of alienation of land. The most realistic way to protect the rights of landowners may be to appeal to a court with a requirement to oblige the notary to certify a contract of alienation of land. As a rule, notaries do not agree to certify such agreements, referring to the land moratorium. In this regard, an appeal to court for the «legalization» of the alienation agreement, taking into account the conclusions of the ECHR in the case of Zelenchuk and Tsytsyura v. Ukraine, may form a judicial practice aimed at protecting property rights. Today, a number of lawsuits have been initiated on the obligations of notaries to certify agreements on the alienation of land, but it is rather difficult to predict the position of national courts [3].

Nevertheless, we hope that the mass appeal of landowners to courts in defense of their rights will allow the formation of a new judicial practice enshrined by the Supreme Court that the title to the land is immutable, and therefore if the owner wishes to alienate an agricultural land, the court must to allow to do it (to legalize the agreement) or to assign a decent compensation for losses. The first steps to overturn the land moratorium by national courts based on the decision of the ECtHR in the case of Zelenchuk and Tsytsyura v. Ukraine are already being made, in particular, on October 10, 2018, a decision was made on the suit of the prosecutor to refuse to invalidate the land plot contract that is subject to action land moratorium (case number 227/1505/18) [3].

The ECHR decision which is examined in this article is decisive, but its provisions are almost addressed to state authorities in Ukraine and are intended to ensure the prompt reversal of the land moratorium. In turn, representatives of the legislature should take all necessary measures to ensure and implement the rights of citizens by virtue of their rights and the legitimacy of their legitimate interests. Now, the decision to abolish the land moratorium depends more on the political will of the legislator. However, given the current situation in the state, unfortunately, it does not belong to the primary tasks of the parliament. Thus, the final resolution of the issue of legislative establishment of the abolition of the land moratorium will not take place soon.

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