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LEGAL PROTECTION OF LAND IN IMPLEMENTATION OF PRIVATIZATION

Privatization of lands occupies an important place in reformation of the landed legal relationships, as it is the most widespread mean of acquisition by the citizens of right of ownership on earth. It belongs to the market legal instruments and depends on transformation of national economy from the planned economic system to market principles of manage. Functioning of national economy on market principles without privatization of earth can not be successful and effective. Thus, order of acquisition of many land plots by citizens by using their right for free of charge privatization, is relatively the new phenomenon in Ukraine. Neither in the legislation nor in the legal doctrine a single understanding, not to mention the concept of privatization of land plots, has finally become established. Despite the abundance of approaches, they can be summarized in two groups: broad and narrow approaches.

A broad approach involves consideration of privatization as the alienation of property that is in state and municipal ownership, in favor of individuals and legal entities. Based on this understanding, the norms of Art. 4 of the Law of Ukraine «On peculiarities of privatization of unfinished construction projects», which also provides for the privatization of land plots; some Decrees of the President of Ukraine on land issues. A broad understanding of privatization is used in writings, in particular, V. Nosik, P. Kulinich and other scholars. In a narrow approach, privatization is considered to be free of charge, one-time (within the established norms) alienation of land plots of state and municipal property exclusively to citizens.

In addition, privatization can be considered in various aspects, in particular: as a way of acquiring citizens ownership of land plots; as the basis for the emergence of rights to land; as a condition for citizens to implement land rights; as a procedure for the transfer of land plots of state and municipal ownership to private property of citizens, etc.

One of the main types of privatization of land plots is their transfer to citizens from the lands of state and municipal property within the limits of the rules of free privatization, which are established by Art. 121 of the Land Code of Ukraine, according to which citizens of Ukraine have the right to transfer free of charge land plots from the lands of state or municipal property for conducting a farm, for the maintenance of a private peasant farm, for gardening, for the construction and maintenance of dwelling houses, utility buildings and structures (private plot), for individual cottage construction, for the construction of individual garages. It should be noted that the free transfer of land plots to the property of citizens within defined norms is carried out by privatization them once for each type of their use. At the same time, the Land Code does not limit the number of land plots, and only their limits are set. The

content of the norm is rather complicated not only in connection with the fact that it establishes the acquisition of rights for various types of land use by citizens on the basis of private property, but also complicates the conditions for the transfer of land plots from different categories of land and for various purposes, which differ considerably from one another by its legal regulation.

In addition to the above, the land law provides for the possibility of privatization of land plots on a royalty-free basis by citizens who use such lands without proper legal right, as well as privatization of state and municipal agricultural enterprises, institutions and organizations by employees of these legal entities, retiree from among them, as well as employees of the social sphere of the village.

It is obvious that when privatizing land, the main requirements and principles of land legislation concerning the protection of land plots must be observed, in particular, the combination of the use of land as a territorial basis, natural resource and the main means of production; ensuring rational use and protection of land; provision of guarantees of rights to land; priority of environmental safety requirements. In support of this thesis it is possible to set the norm of Part 7 of Art. 118 of the Land Code of Ukraine concerning the procedure for implementation of these types of privatization, according to which the ground for refusal to grant a permit for the development of a land management project for land allocation may only be the discrepancy of the location of the object with the requirements of laws adopted in accordance with them regulations, general population plans points and other city-planning documentation about protection of land of administrative-territorial units, the project and in the land management in order to organize the territories of settlements, approved in accordance with the procedure established by law.

Along with the above, there are certain gaps and inconsistencies in the legislation regarding the given issue, including in relation to agricultural land. Thus, as an additional measure of protection of these areas, as well as for the purpose of their rational use by the Land Code of Ukraine in Art. 130 establishes the special legal personality of persons who may be buyers of such lands: Ukrainian citizens must have agricultural education or experience in agriculture or to engage in commodity agricultural production; legal entities of Ukraine – must indicate in their constituent documents of agricultural production the main purpose of the activity. However, this requirement applies only to purchasers of agricultural land, which are intended to engage in commodity agricultural production. It seems that such conditions should be put forward for all the purchasers of these lands, and not only buyers, because they are aimed precisely at the protection and efficient use of land and are not intended to restrict the rights of future owners of agricultural land areas or even deprive citizens of the right to receive such land in property.

A similar article 130 of the Land Code was contained in the Law of Ukraine «On Farmers», which in fact confirmed the need to have special education or skills for a person who expressed a desire to create a farm and engage in this type of activity. At the same time, the citizen did not necessarily have to enter into a contract of sale of such a plot to create a farm. On the contrary, for this purpose, he could take advantage of his right to receive land in accordance with the rules of free privatization provided for in Art. 121 of

the Land Code. Consequently, this provision directly pointed to the need to apply Art. 130 Land Code for all purchasers of agricultural land, regardless of the way of such acquisition: from the conclusion of civil legal transactions to free land privatization.

Today, the requirements for the special legal personality of the farmers creating a farm are not in a special law, which, firstly, does not contribute to compliance with the requirements of the law on the rational and responsible use of agricultural land as the main national wealth, since the owners of these lands may become individuals, which will use them irrationally, and secondly, substantially narrowing the rights guaranteed by the Constitution of Ukraine to citizens, restricting the rights of only individual subjects.

According to the author, based on all the above, appropriate changes should be made to the land legislation, which would allow to assert and guarantee the priority of security norms when acquiring and realizing rights to land parcels as the main property of the state, society and every citizen.

Ключові слова: приватизація земель, земельна ділянка, правова охорона земель, земельна реформа, власність на землю.

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Key words: privatization of land, land plot, legal protection of land, land reform, land ownership.

ШМАТЬКО ГЛІБ ІЛЛІЧ

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ПРОБЛЕМАТИКА ПРАВОВОГО ВИЗНАЧЕННЯ БІОМАСИ У КОНТЕКСТІ ТЕРМІНА «БІОПАЛИВО»

Одним із провідних секторів економіки України, котрий нарощує обсяги розвитку, є діяльність пов'язана з видобуванням біоенергетичної сировини та перетворенням її у біопаливо (рідке, тверде та біогазу та ін.) тобто виробництво даної продукції сільгоспвиробниками.

Питанню правового регулювання виробництва біопалива присвячені праці Т. О. Коваленко та В. Ю. Уркевича та С. А. Оболенської та ін. Проблеми виробництва біопалива вивчали такі представники економічної науки, як: Г. Гелетуха, О. В. Дубровін, І. Г. Кириленко, Г. М. Калетнік, А. Шпичак та ін. Теоретичною основою стали дослідження вчених-фахівців у галузі аграрного, земельного, природоресурсного та екологічного права Одеської правової школи, зокрема Т. Є. Харитонової, І. І. Каракаша, Х. А. Григор'євої, К. М. Караханян, Є. О. Платонові, І. Є. Чумаченко та ін.

У найзагальнішому розумінні біопаливо – паливо, яке отримують, як правило, з біологічної сировини; це альтернативний традиційним вид