

**LEGAL REGULATION OF TERRITORIES BELONGING TO THE COMMUNITY:
FINANCIAL AND ECONOMIC ASPECTS**

The article deals with general issues of regulating the separation of state and municipal property in the legal way, paying special attention to the procedure of distributing the land, and to the definition of the main drawbacks at this stage. The procedures of distributing the land before and after the adoption of the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine regarding the separation of state and municipal property» are compared. Statistics on the number and value of work on demarcation of municipal and state-owned from the date of independence of the Ukrainian state and to the present day is given. Certain provisions of the valid legal acts in the sphere of distributing land are analyzed.

The questions of management and disposal of municipal property directly by local communities are raised.

The article examines the valuation of land, which is a key and critical component of effective community usage of the territory. The legal principles of valuating the land are identified and two types of it are characterized – normative and expert. The main points, reasons and consequences of the normative and expert valuation in accordance with the applicable national legislation are identified.

The fact that the normative monetary valuation of land and non-valuated land areas are the basis of land taxation in Ukraine, is emphasized. The size of land tax is given. The rate difference depending on whether normative monetary valuation of land was made or not is identified.

It is also noted that monetary valuation of land after 2000 is adjusted to the specified rate of indexation every year. Statistical data of the State Agency of Land Resources of Ukraine regarding the indexation rate of normative monetary valuation of land from 1996 to 2014 are given.

At the end of the article conclusions on the legal regulation of land owned by local communities from financial and economic side are made. A number of proposals on the issue of underfunding local budgets are given, taking into account that the land tax in communal ownership is a source of local revenues, and considering the imperfection of legislation in land valuation, violation of the procedure of land valuation and its understatement which is not justified economically.

Keywords: *the demarcation of land, the valuation of land, the land tax, the indexation rate of normative monetary valuation of land.*

Ібрагімова А.А. Правове регулювання земель, які належать територіальним громадам: фінансово-економічний аспект

У статті досліджуються загальні питання правового регулювання розмежування земель державної і комунальної власності, де особлива увага приділяється процедурі розподілу земель із визначенням її основних недоліків на сучасному етапі. Також розглядається питання оцінки землі, яка є ключовою і вирішальною складовою ефективного використання земельних ресурсів територіальних громад. Наприкінці статті робляться висновки щодо правового регулювання земель, які належать територіальним громадам з фінансово-економічної сторони. Наводиться ряд пропозицій для вирішення питання недофінансування місцевих бюджетів.

Ключові слова: *розмежування земельних ділянок, оцінка землі, ставка земельного податку, коефіцієнт індексації нормативної грошової оцінки земель.*

Ибрагимова А.А. Правовое регулирование земель, которые принадлежат территориальной группе: финансово-экономический аспект

В статье исследуются общие вопросы правового регулирования разграничения земель государственной и коммунальной собственности, где особое внимание уделяется процедуре распределения земель с определением ее основных недостатков на современном этапе. Также рассматривается вопрос оценки земли, которая является ключевой и решающей

составляющей эффективного использования земельных ресурсов территориальных громад. В конце статьи делаются выводы относительно правового регулирования земель, принадлежащих территориальным громадам с финансово-экономической стороны. Перечисляется ряд предложений для решения вопроса недофинансирования местных бюджетов.

Ключевые слова: разграничение земельных участков, оценка земли, ставка земельного налога, коэффициент индексации нормативной денежной оценки земель.

Introduction

The Constitution of Ukraine, taking into account that the land is extremely important in all social and economic sectors of the country, declares it the fundamental national wealth that is under state protection [1].

Today the land is one of the most valuable resources, which local community may possess, the presence of which provides social, economic and cultural development of each community. Land is the foundation and the basis for building financially and economically independent, as well as strong local government in Ukraine.

Law of Ukraine «On Local Self-Government in Ukraine» dated 21 May 1997 p. № 280/97-VR provides satisfying land interests of local communities by means of acquisition and exercise of communal land ownership [2]. This right is not fully implemented in our country now, as a number of issues regarding the status of land management and other aspects evolve. This hinders the development of local government in Ukraine economically and as a result, construction of capable and competent communities.

Analysis of recent research

The works of such authors as A.M. Miroshnichenko, A.I. Ripenko, V.I. Borisova, L.A. Musica are devoted to the issue of separating state and municipal property. Some questions on the monetary value of land and payment for it were studied by K.B. Hryvnak, V.M. Pegs, G.M. Biletska and other scientists.

Statement of research objectives

The purpose of this study is to analyze the statutory regulation of land owned by local communities in the context of their separation and evaluation, as well as clarification of financial and economic assessment of the land tax in Ukraine today.

Results

General provisions of the right to the communal land ownership are set out in the Land Code of Ukraine (hereinafter – LC of Ukraine) dated 25 October 2001, № 2768-III. Under Part 2, Art. 83 all the land within settlements, except land of private and public property, and the land on which

are buildings, structures and other immovable property of the community, regardless of their location, is municipally owned [3].

Moreover, the state owned land plots that will be used to house facilities for servicing the needs of local communities (public enterprises, institutions, organizations, community pastures, cemeteries, places of disposal and recycling wastes, recreational facilities, etc.) and territories, which according to the approved planning documentation are intended to be included into populated localities by the decisions of the executive power, are transferred to municipal ownership [3].

Earlier in the legal doctrine prevailed the view, according to which communal lands appear in Ukrainian state only after the separation of state and municipal property according to a complex land ordered procedure stipulated by the Law of Ukraine «On the separation of state and municipal property» dated February 5, 2004 № 1457-IV (hereinafter – the Law «On demarcation of lands»). However, since the adoption of the Land Code of Ukraine and this Law, the separation of state and municipal property has not been conducted yet. This is because such a procedure was too complicated and expensive, as it provided development and coordination of land documents for demarcation. Demarcation was based on the need for simultaneous distributing vast areas of land in kind (on the ground) between the state and local communities and preparing complex and expensive land documents, approval, transfer of plot boundaries in kind, the issuance of the state act for the right to communal property [4, p. 7].

According to the State Agency of Land Resources of Ukraine, the cost of demarcation as of 2011 was about 600 million hrn. Considering such a large sum of money, the procedure of demarcation was barely held and amounted to nothing. Thus, according to the Centre of Commercial Law, 0.57% of lands were demarcated as of 2012 for seven years [5].

The solution to this problem is proposed in the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on the demarcation of

state and municipal property» dated September 6, 2012 № 5245-VI, under which the Law «On demarcation of land» became invalid. In Ukraine, after January 1, 2013 territories, in accordance with Articles 83 and 84 of the Land Code of Ukraine, managed by the village, town and city councils, and lands that are jointly owned by several local communities – regional or provincial councils, are considered demarcated [6].

Though the adoption of this law has resolved the existing problem on the distribution of land in Ukraine, but at the same time, greatly has complicated the procedure of obtaining land from state and municipal property in the possession or use. For example, the form of communal ownership act of land has not been approved legally yet, after the receipt and registration of which, in accordance with the applicable law, comes the «final» distinction and the time when the property rights of local communities on land come into force.

In our view, it will be possible to talk clearly about the consequences of state and municipal property demarcation that will be carried out according to the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on the demarcation of state and municipal property» only after the practical application of the provisions of this Law and the development of clear and effective mechanisms for their implementation.

According to Article 80 of the Land Code of Ukraine, municipalities implement communal ownership of land directly or through local authorities. S.I. Borisova noted correctly about the inadmissibility of ignoring the important fact that the will of communities to commit a transaction on the land can be made at the general meeting of members of the local community, through a referendum, by interviewing community members, etc. This statement applies primarily to not numerous communities, that facilitates the meeting of residents to address issues related to alienation or leasing state-owned land [7, p. 58].

However, L.A. Musica recognizing local communities as subjects of public law, denies them direct involvement in the management and disposal of municipal property and proposes to give these powers only to local governments [8, p. 9]. It is hard to accept this statement, because according to part 1, Article 143 of the Constitution of Ukraine, territorial communities of villages, towns and cities manage the property in communal ownership either directly or through

their local governments [1]. Therefore, depriving local communities of the right on disposal of land in municipal property is contradicts the Basic Law of Ukraine.

Considering that the land tax is one of the main sources of local revenues, today this opportunity for their content is used insufficiently, as the existing amount of rent payment for land plots and selling brings little income. The estimate of rural land is usually 2-5 times lower than urban land [9, p. 272].

Land valuation is a key and critical component of effective communities land-use accordingly, high-quality and cost-calculated valuation of land provides fixing well-grounded payments for land and causes a number of consequences in the financial and legal aspects.

Legal basis of land evaluation, professional appraisal activity in land valuation in Ukraine is determined by the Law of Ukraine «On Land Assessment» dated December 11, 2003 № 1378-IV, which aims at regulating relations connected with the process of land evaluation, information provision of taxation and land market.

According to Article 3 of this Law, land valuation objects are: territory of administrative units or parts, territories of valuation areas and zones, land or the total of land and rights thereto, including land shares (units) within the territory of Ukraine [10].

One of the types of land valuation, depending on the purpose and methods is monetary valuation of land. It may be, depending on the purpose and the order of fulfilling, regulatory and expert [10].

Regulatory monetary valuation of land is capitalized rental income from land, determined in accordance with the laws of the central executive authority on land issues [11]. Such assessment of land is used to determine the amount of land tax, state duty in barter transactions, inheritance and donation of land by law, the rent for the land of state and municipal property, loss of agricultural and forestry production, the value of land area over 50 hectares to accommodate outdoor sports and fitness facilities as well as the development of indicators and mechanisms of economic incentives for rational land use and protection. The reason for it is the decision of executive authority or local authority. It is performed by legal entities that are the developers of documents on land use, according to the Law of Ukraine «On Land Management» dated 22 May 2003 № 858-IV [10].

In turn, the expert valuation of land is the

result of determining the value of land and associated rights by the appraiser using the set of approaches, methods and evaluation procedures that provide data collection and analysis, calculation and presentation of results in a report. Assessment of land plots and rights to them is carried out to determine the value of the evaluation object. Such assessment of land is used in the exercise of civil agreements regarding land and rights thereto, except the ones permitted under applicable laws of Ukraine. The reason for its holding is a contract concluded by stakeholders in the manner prescribed by law, and also court decisions. It is carried out by the subjects of land valuation in the given sphere in accordance with the Law «On Land Assessment», Law of Ukraine «On the assessment of property, property rights and professional valuation activities in Ukraine» dated 12 July 2001 № 2658-III, and other legal acts and state standards, rules and regulations [10].

In accordance with Articles 20, 23 of the Law of Ukraine «On Land Assessment» by the results of regulatory monetary value of land of the settlement, technical documentation is made which is approved by the village, town, city councils. The data on individual regulatory monetary value of land are documented as an extract from the technical documentation for regulatory monetary value of land, which is given by the relevant executive authority on land issues. On their basis, parties – landowners and land users, calculate the amount of tax liability of payment for land and reflect it in tax reporting. In turn, as a result of expert money estimation of land a report is drawn up [10].

Regulatory monetary valuation of land, with a coefficient of indexation, and area of land, the regulatory monetary value of which has not been calculated [11], according to item 271.1 Article 271 of the Tax Code of Ukraine (hereinafter – TC of Ukraine) dated December 2, 2010 № 2755-VI, is the basis of taxation of land in Ukraine.

Item 274.1 Article 274 TC of Ukraine established the land tax for the plots of land the normative monetary valuation of which has been conducted regardless of the location (within or outside of the place) – the amount of 1% of the normative assessment [11]. The exception are land plots referred to in Articles 272, 273, 276 of this Code.

Due to the amended Law of Ukraine «On Amendments to the Tax Code of Ukraine regarding the improvement of certain tax provisions» dated

24 May 2012 № 4834-VI after July 1, 2012, the taxation of land outside settlements given to industrial enterprises, transport (except for land railways, except railway land plots, on which folk cultural buildings and other structures are detached), communications, energy, businesses and organizations engaged in operation of transmission lines (except agricultural land and land for forestry purposes) is carried out at a rate of 1% of the normative monetary value of the land, if such an assessment has been carried out (issue 274.1 Article 274 of the Tax Code), and if not assessed – at 5% of the normative monetary value per unit of area of arable land in the Crimea and region (issue 278.1 Art. 278 of the Code) [11].

The monetary valuation of land, since 2000, every year as of January 1, specifies the indexing coefficient according to the procedure approved by the Cabinet of Ministers of Ukraine. Under this procedure the central executive power body on land issues annually calculates the coefficient index of normative monetary value of land according to the consumer price index for the previous year and not later than January 15 of this year, informs the central authority of the State Fiscal Service of Ukraine and land owners and users about this assessment annual indexation [12].

According to the State Agency of Land Resources of Ukraine as of January 1, 2014 indexation rate of normative land assessment for 2013 is 1.0, which is in accordance with paragraph 289.2 of Article 289 TC of Ukraine calculated on the consumer price index basis for 2013 – 100.5% [13].

In 2014 normative monetary valuation of land settlements, agricultural land and non-agricultural land (except land within settlements), which is held by the original data of the previous years must be indexed as of January 1, 2014 by a factor of 3.2, which is determined based on the product of the rate of indexation for 1996 – 1.703, 1997 – 1.059, 1998 – 1.006, 1999 – 1.127, 2000 – 1.182, 2001 – 1.02, in 2005 – 1,035, 2007 – 1,028, 2008 – 1.152, 2009 – 1.059, 2010 – 1.0 2011 – 1.0 2012 – 1.0 2013 – 1.0. Regulatory monetary valuation of land in 2002, 2003, 2004 and 2006 was not indexed [13].

Finally, attention should be drawn to the fact that the issue 14.1.147 Article 14 TC of Ukraine stipulates that the land tax as a generalization of the concept is a federal tax levied in the form of land tax and rent for land plots of state and municipal property. This tax is included in the

budgets of local governments and belongs to the general fund revenues of local budgets, but is not taken into account in determining the amount of intergovernmental transfers [14].

In view of the current state and local budgets under the financial inability of local communities to decide for themselves the full local issues, there is an urgent need and feasibility of introducing such a tax, as payment for the land to the list of local taxes and fees, income from the payment of which remain fully in local budgets. This change will help to improve the overall financial capacity of each territorial community in Ukraine.

Conclusions

So, considering all the above mentioned, we can conclude that the land in communal ownership is a key component of the resource base of communities. The question of demarcating state and municipal property is still not fully resolved, and in practice causes a number of problems, especially in the consolidation (state registration) of community rights to land. Therefore, to solve this problem, in our opinion, it is necessary to determine the form of legislative act of communal land ownership and amend the legislation regarding the procedure of state registration of rights to land in state and municipal property. Although today, this procedure is too complicated and expensive.

In addition, considering that the fee for the land in communal ownership is a source of local revenues, respectively imperfect legislation in land valuation, violation of the procedure for assessing land, its economically unjustified underestimation leads to reduced tax base and, consequently, underfunding local budgets. Therefore, in our opinion, it is necessary:

– amend the Law of Ukraine «On the evaluation of land» in the definition of real value and the value of land;

– amend the TC of Ukraine in terms of percentage between the tax rate (increase the size of the tax rate) and normative monetary value of land and annual indexation normative assessment of the land. Supplement the provisions of section 14.1.147 Article 14 with the definition: «The land fee is a local tax levied in the form of land tax and rent for land plots of state and municipal property, payable to the local budget of the territorial communities»;

– strictly comply with legal provisions regarding land valuation, monitor this procedure and increase the responsibility for its violation.

Moreover, we believe that the village and town councils, with the aim of filling up local budgets should actively implement modern projects on their lands that can bring income to local communities and have a positive impact on their social and economic development. For example, projects such as ecotourism; «Urban village» – pockets of urban residents in rural areas, which consist of modern buildings, the necessary infrastructure and so on.

It is also necessary to form a competitive basis in the area of the territorial community land ownership and use by organizing and conducting land auction (competition). Thus for sales or for delivering possession the value of the land, which is determined by its expert money estimation is used. By the way, the experience of other countries (Poland, Hungary) shows that competitive sales may significantly increase the size of local budgets revenue.

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