

Mykola Chabanenko, PhD in Law

CODIFICATION AS A FORM OF AGRARIAN LEGISLATION IMPROVEMENT

The scientific paper covers the topical issues of agrarian legislation improvement provided in the form of agrarian legislation codification. It is supposed that codification is the most efficient form of agrarian legislation improvement. The basic concepts of agrarian legislation codification are analyzed and generalized. Pros and cons of agrarian legislation codification through adopting the Agrarian Code of Ukraine are examined. It is grounded that the agrarian legislation codification should be realized through adopting of the Agrarian Code of Ukraine. Basic attention is paid to the issues of the future Agrarian Code of Ukraine structure and content. The special part of the future Agrarian Code of Ukraine should contain the rules of law which concern the issues of food security and rural areas social development.

Formulation of the problem. Analysis of legal acts of the agrarian legislation suggests about its significant amount. However, current agrarian legislation has little effect, that, as V. Semchik points, determined by (1) the crisis in the Ukrainian economy; (2) the lack of efficiency of the laws that regulate the relations in the sectors of the economy; (3) the imperfection of state economic management in the country¹; (4) the declarative and financial insecurity of legal regulations; (5) the existence of collisions, the inconsistency, instability and frequent changes and additions to agrarian legislation; (6) the development of projects of agrarian laws without the participation of lawyers and others². Constituent elements of the efficiency of agrarian laws are: state support of agricultural products, the stability of legal norms fixed in the laws, a timely response to the ineffectiveness of the laws, constitutionality, the absence of overlaps and gaps in the law, citizens' awareness about the laws, and the mechanism of the law implementation³.

We should also agree with those scholars who point on such direction to improve the efficiency of the agrarian legislation of Ukraine, as its analysis and critical evaluation; abolition of legal acts that do not

¹ Семчик, В.І. (ред.) та ін. (1998). *Аграрне законодавство України: проблеми ефективності*. Київ: Інститут держави і права ім. В.М. Корецького, 10.

² Семчик, В.І. (2006). Фактори впливу на рівень ефективності аграрного законодавства України. *Проблеми вдосконалення земельного та аграрного законодавства України: перспективи в XXI ст.*, 4.

³ Семчик, В.І. (2012). *Навчаючись, навчаю... Вибрані праці. До 85 річчя*. Київ: Спринт-Сервіс, 505.

correlate changed social relations; legislative strengthening of the legal status of new subjects of agrarian economies; systematization of the agrarian legislation through the development and adoption of the Agrarian Code of Ukraine¹; adaptation of Ukrainian agrarian legislation to the EU legislation².

The most profound form of systematization of agrarian legislation is its codification, because "... it allows to bring all norms of a branch in a coherent system, to factor out general provisions and to form a general part, to reconcile all specific norms with the most common norms principal to this branch of law³". According to the opinion of S. Alekseev, codification of legislation - the ordering of legal norms in the process of law-making, when preexisting laws and other normative legal acts are cancelled, legal norms are processed and introduced into a single coherent system, and when a single, consolidated, legally and logically solid agreed normative act – a Code is given, which expresses the content and legal specifics of a structurally separate division of a legal system⁴.

Currently, there is no a complete unity in the positions of the representatives of the agrarian legal science about codification as the most promising form of improvement of the agrarian legislation.

The assessment of the literary background. The problems of improvement and, in particular, codification of the agrarian legislation are analyzed in the works of the following representatives of the agrarian legal science: N. Bagay, B. Voronin, L. Dembo, V. Yermolenko, T. Kovalenko, M. Kozyr, T. Kurman, V. Nosik, V. Semchik, A. Stativka, N. Titova, V. Urkevich, V. Yanchuk.

The purpose of this article is to clarify, to analyze and to generalize the existing opinions about the improvement of the agrarian legislation in the form of codification of the agrarian legislation.

The statement of the main material of the study. In an aspect of the agrarian legislation its codification is the highest form of systematization, which consists in a substantial changing of the acts of agrarian legislation

¹ Носік, В.В. (2006). Проблеми кодифікації аграрного законодавства України. *Проблеми вдосконалення земельного та аграрного законодавства України: перспективи в XXI ст.* Біла Церква: Білоцерківський державний аграрний ун-т, 18–19.

² Семчик, В.І. (ред.) та ін. (2003). *Організаційно-правові питання аграрної реформи в Україні.* Київ: Інститут держави і права ім. В.М. Корецького НАН України, 261.

³ Яковлев, В.Ф. (1975). Отраслевая дифференциация и межотраслевая интеграция как основы системы законодательства. *Правоведение*, 7, 23.

⁴ Алексеев, С.С. (1999). *Право: азбука-теория-философия: Опыт комплексного исследования.* Москва: Статут, 96.

and combining them into a single legal act¹. However, the views of the scholars on this process differ.

Thus, G. Bystrov² in former times spoke for the adoption of the Fundamentals of agrarian (agricultural) legislation. N. Titova also spoke pro the adoption of the Fundamentals of the land and agrarian legislation of Ukraine; she was convinced that in this basic legal act, together with the principle of the priority of agricultural land should be fixed priority of the legal status of the peasant to the land. This status, as she outlined, should be disclosed by supplying of special constitutional rights "... of peasants as citizens of Ukraine on free development of his personality, education, freedom of association in political parties and public organizations, labor, leisure, social protection, health, medical care and medical insurance, etc..."³. The Fundamentals could become a basic legal act that would fix the principle of land and agrarian order, common features of agricultural land tenure and agricultural labor in all organizational and legal structures of the agro-industrial complex of Ukraine; special basic rights and duties of the subjects of these structures, which could be specified in the special laws on these structures⁴.

In addition, N. Bagay marks that the codification of the agrarian legislation in the form of Fundamentals reflects its principal features, such as its comprehensive, integrated and specialized nature. Norms of this codification act could regulate not single social relations but their large complex - agrarian relations. Therefore, on N. Bagay's opinion, the Fundamentals should identify the main, general provisions of the legal regulation of social relations in the agricultural sector of economy, playing the role of an agrarian Constitution⁵.

The opponents of the adoption of such Fundamentals assert that, considering the absence of the federal order in the country, as well as the need for a single act of codification, such a act of regulation, as the Fundamentals is not required. Instead of it the main complex codification

¹ Коваленко, Т.О. (2005). Систематизація аграрного законодавства України. *Стан та перспективи розвитку аграрного права*. Київ: Магістр, 86.

² Быстров, Г.Е. (1985). *Источники советского сельскохозяйственного права*. Москва: Изд-во МГУ, 157–162.

³ Титова, Н.І. (2006). Невідкладні проблеми підвищення правового статусу селянства України. *Проблеми вдосконалення земельного та аграрного законодавства України: перспективи в XXI ст.* Біла Церква: Білоцерків. держ. аграр. ун-т, 9.

⁴ Титова, Н.І. (ред.) та ін. (2005). *Землі сільськогосподарського призначення: права громадян України*. Львів: ПАІС, 271.

⁵ Багай, Н.О. (2002). *Розвиток науки аграрного права України*. Львів, 99–100.

act, which will regulate agrarian relations¹ should become the Agrarian Code of Ukraine. This position was widely supported by modern lawyers. Its advocates are V. Yanchuk, V. Semchik, A. Stativka, V. Nosik, V. Yermolenko, V. Urkevich, T. Kovalenko and other researchers. Similar thoughts about the need for adoption of the Agrarian Code are expressed by the scientists from Russian Federation². There are similar codes in foreign countries also. Thus, the Agrarian Code of France, among other things determines the status of agricultural cooperatives, the norms on regime of agricultural labor, lending of agricultural works, etc³. Agrarian Codes also exists in some countries of Latin American (Mexico, Uruguay)⁴.

A unified position about the structure of the future Agrarian Code is not developed yet. Thus, N. Titova and A. Natsyuk recommend to focus on such aspects of this codification act as: general provisions and principles of agrarian policy of Ukraine; the right for land use, free economic activity, contractual, financial and credit relations; the state protection of the rights of peasants and their organizational structures; foreign trade and other relations of the subjects of agrarian activity⁵. A. Stativka proposes to fix in it first of all provisions on the peculiarities of agrarian relations, equality of all forms of ownership and organizational forms, methods of management, etc⁶. V. Urkevich believes that the code should to direct its regulatory effect primarily on the domestic private agrarian relations. However, it should fix the peculiarities of the legal regulation of external, private and public legal relations⁷. As A. Zemko pointed out, the fixation in the Agrarian Code of norms which would

¹ Янчук, В.З. (ред.) та ін. (2000). *Аграрне право України*. Київ: Юрінком Інтер, 58–59.

² Воронин, Б.А. (2000). *Становление аграрно-правовой науки и актуальные проблемы ее развития*. Уфа, 142; Козырь, М.И. (2004). Новое в правовом положении сельскохозяйственных товаропроизводителей России на современном этапе. *Актуальные проблемы аграрного права России: теория и практика*. Москва: Право и государство, 49; Зенюкова, О.В. (2005). *Общетеоретические аспекты формирования законодательства, регулирующего аграрные отношения. Стан та перспективи розвитку аграрного права*. Київ: Магістр, 73.

³ Дембо, Л.И. (1962). *Очерки современного аграрного законодательства капиталистических стран*. Москва: Госюриздат, 33–36, 135, 136, 204.

⁴ Янчук, В.З. (ред.) та ін. (2000). *Аграрне право України*. Київ: Юрінком Інтер, 42.

⁵ Титова, Н.І., Нацюк, А.А. (2001). До поняття та характеристики аграрного законодавства України *Держава і право*, 11, 397.

⁶ Статівка, А.М. (2001). Про аграрне законодавство України і проблеми його удосконалення в сучасних умовах. *Підприємство, господарство і право*, 7, 9.

⁷ Уркевич, В.Ю. (2007). *Аграрні правовідносини в Україні*. Харків, 310.

establish legal requirements for the quality and safety of agricultural products is a basic factor of competitiveness of agricultural production. Herewith it is appropriate to secure the decisive role of the state in the execution of the functions of control over the quality and safety of agricultural products. The researcher continues that it is necessary to reflect in the Agrarian Code the characteristics of modern agrarian social relations, equality of all forms of ownership, organizational and legal forms and methods of management, to determine the legal status of subjects of agrarian business, the peculiarities of various kinds of agrarian production and economic activity, to regulate the labor relations of employees, to determine the guarantees of their social protection, etc¹.

In former times, the structure of the Agrarian Code was developed by V. Yanchuk, who offered to include to it following provisions: the preamble, the legal regime of property in the agricultural sector, the subjects of agrarian business, production and business activities, agricultural rent, agricultural contracts, quality and safety of products, raw materials and food, agricultural employees and their protection, the state and Ukrainian agricultural entrepreneurs, responsibility for violation of agrarian legislation, the final clauses².

According to modern views on the construction of the codified act, V. Urkevich states it should be next. Normative material of the Code should be divided into general and special parts. The first part should include the following sections: general provisions (the definition of agrarian relations, the definition of the jurisdiction of the Code, its correlation with other legal acts), a public-law regulation of agriculture (state agrarian policy and its principles, the system of bodies of state regulation of agrarian relations, its competence and powers, forms and methods of state regulation of agrarian relations), the general principles of the legal status of the subjects of agrarian law (agricultural enterprises and individuals involved in agrarian relations).

Normative material of the special part of the Agrarian Code should contain sections on: the peculiarities of a legal status of members of agrarian relations (farmers, agricultural cooperatives, collective, private, public and municipal agricultural enterprises, peasants, members and employees of agricultural enterprises, agricultural employers), the property basis of agricultural management (the property of subjects of agrarian management, its legal regime), the specifications of the use of land and

¹ Земко, А.М. (2009). Щодо вдосконалення аграрного законодавства України. *Сучасні проблеми аграрного і природоресурсного права*. Київ, 72–73.

² Янчук, В.З. (ред.) та ін. (2000). *Аграрне право України*. Київ: Юрінком Інтер, 60–62.

other natural resources in the implementation of agricultural activities (rules for the use and protection of land, forests, water, subsoil, air quality in the area of agriculture), to provide measures of the state support for agricultural producers (the system of such measures, the principles of its supplying, the competent authorities), the implementation of industrial and economic activity and its separate types (the general principles of the agricultural production and economic activity, the rules of activity in the field of crop production (including the production of biomass for biofuels), animal husbandry, beekeeping, fish farming, production of forest products, etc.), the peculiarities of the taxation of agricultural producers (payment of the fixed agricultural tax, fees for agricultural land), the provision of safety and quality of agricultural products and foodstuffs (production of safe and high-quality agricultural products and food, the control for presence of transgenic products), the peculiarities of the regulation of labor relations of members and employees of agricultural enterprises (registration of labor relations between the members of the agricultural enterprises and employees, specific of working time and rest periods, payment, disciplinary responsibility of agricultural workers), the specificity of the contractual relations of agricultural producers (contracting of agricultural production, exchange agreements for the sale of agricultural products, agrochemical, irrigation and other maintenance of agricultural producers, etc.), rural social development, sustainable development of rural areas (composition of the rural areas and its social sphere, measures of state support for their development), responsibility for violation of the agrarian legislation (legal grounds and terms for responsibility)¹.

In general, agreeing with this, we note that in the special part of the future Agrarian Code of Ukraine in the sections, which will contain the legal norms on food security of Ukraine and rural social development, should be allocated separately. Such a proposal is entirely justified by the previous statements, in particular, by the conclusion about the existence of such part of the agrarian legislation as legislation on food safety and legislation on social development in rural areas.

The abovementioned shows that the opinion of M. Kozyr is absolutely true and that the Agrarian Code will be not a codification (what is virtually impossible for a complex branch which is an agrarian legisla-

¹ Уркевич, В.Ю. (2010). Про структуру Аграрного кодексу України. *Спадковість творчих ідей академіка В.З. Янчука та їх розвиток у науці сучасного аграрного і природоресурсного права..* Київ, 39–40.

tion), but a solid complex normative act of incorporated character¹. Precisely this nature will cover all the essential features of social agrarian relations.

The conclusion. Supporting the idea of further codification of agrarian legislation through the adoption in the future of the Agrarian Code of Ukraine, it is proposed to fix the sections that should contain legal rules on food security of Ukraine and rural social development in its special part. Such a proposal is entirely justified by a conclusion about the existence of such parts of the agrarian legislation as legislation on food safety and legislation on social development in rural areas.

In general, A. Stativka² is right, noting that the adoption of the Agrarian Code would indicate a high degree of development of a complex agrarian legislation. It would complete the process of systematization of all agrarian legislation. At the same time, it would eliminate contradictions and gaps in existing legal acts, would ensure their unity and coherence, as well as contributed to the completion of the formation of agrarian law as an independent branch.

Bibliography:

1. Алексеев, С.С. (1999). *Право: азбука-теория-философия: Опыт комплексного исследования*. Москва: Статут.
2. Багай, Н.О. (2002). *Розвиток науки аграрного права України*. Львів.
3. Быстров, Г.Е. (1985). *Источники советского сельскохозяйственного права*. Москва: Изд-во МГУ.
4. Воронин, Б.А. (2000). *Становление аграрно-правовой науки и актуальные проблемы ее развития*. Уфа, 142.
5. Козырь, М.И. (2004). Новое в правовом положении сельскохозяйственных товаропроизводителей России на современном этапе *Актуальные проблемы аграрного права России: теория и практика*. Москва: Право и государство.
6. Зенюкова, О.В. (2005). *Общетеоретические аспекты формирования законодательства, регулирующего аграрные отношения* *Стан та перспективи розвитку аграрного права*. Київ: Магістр.
7. Дембо, Л.И. (1962). *Очерки современного аграрного законодательства капиталистических стран*. Москва: Госюриздат.
8. Земко, А.М. (2009). Щодо вдосконалення аграрного законодавства України *Сучасні проблеми аграрного і природоресурсного права*. Київ, 72–73.
9. Коваленко, Т.О. (2005). Систематизація аграрного законодавства України *Стан та перспективи розвитку аграрного права*. Київ: Магістр, 86.

¹ Козырь, М.И. (2008). *Аграрное право России: состояние, проблемы и тенденции развития*. Москва: Норма, 167.

² Статівка, А.М. (2011). Про аграрно-правову науку і систематизацію аграрного законодавства України. *Сучасні проблеми систематизації екологічного, земельного та аграрного законодавства України*. Київ: ВГЛ «Обрії», 112.

10. Козырь, М.И. (2008). *Аграрное право России: состояние, проблемы и тенденции развития*. Москва: Норма.
11. Носік, В.В. (2006). Проблеми кодифікації аграрного законодавства України *Проблеми вдосконалення земельного та аграрного законодавства України: перспективи в ХХІ ст.* Біла Церква: Білоцерківський державний аграрний ун-т.
12. Семчик, В.І. (2006). Фактори впливу на рівень ефективності аграрного законодавства України *Проблеми вдосконалення земельного та аграрного законодавства України: перспективи в ХХІ ст.*
13. Семчик, В.І. (2012). *Навчаючись, навчаю... Вибрані праці. До 85 річчя*. Київ: Спринт-Сервіс.
14. Семчик, В.І. (ред.) та ін. (1998). *Аграрне законодавство України: проблеми ефективності*. Київ: Інститут держави і права ім. В.М. Корецького.
15. Семчик, В.І. (ред.) та ін. (2003). *Організаційно-правові питання аграрної реформи в Україні*. Київ: Інститут держави і права ім. В.М. Корецького НАН України.
16. Статівка, А.М. (2001). Про аграрне законодавство України і проблеми його удосконалення в сучасних умовах *Підприємництво, господарство і право*, 7.
17. Статівка, А.М. (2011). Про аграрно-правову науку і систематизацію аграрного законодавства України *Сучасні проблеми систематизації екологічного, земельного та аграрного законодавства України*. Київ: ВГЛ «Обрії».
18. Титова, Н.І. (2006). Невідкладні проблеми підвищення правового статусу селянства України *Проблеми вдосконалення земельного та аграрного законодавства України: перспективи в ХХІ ст.* Біла Церква: Білоцерків. держ. аграр. ун-т.
19. Титова, Н.І. (ред.) (2005). та ін. *Землі сільськогосподарського призначення: права громадян України*. Львів: ПАІС.
20. Титова, Н.І., Нацюк, А.А. (2001). До поняття та характеристики аграрного законодавства України *Держава і право*, 11.
21. Уркевич, В.Ю. (2007). *Аграрні правовідносини в Україні*. Харків.
22. Уркевич, В.Ю. (2010). Про структуру Аграрного кодексу України *Спадковість творчих ідей академіка В.З. Янчука та їх розвиток у науці сучасного аграрного і природоресурсного права*. Київ.
23. Яковлев, В.Ф. (1975). Отраслевая дифференциация и межотраслевая интеграция как основы системы законодательства *Правоведение*, 7.
24. Янчук, В.З. (ред.) та ін. (2000). *Аграрне право України*. Київ: Юрінком Інтер.