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LAND LAW: IS IT PUBLIC OR PRIVATE?

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Сидор В.Д. ЗЕМЕЛЬНЕ ПРАВО: ПУБЛІЧНЕ ЧИ ПРИВАТНЕ?

Анотація. *Метою даної публікації є дослідження характеру співвідношення приватних та публічних основ земельного права. Встановлено, що приватна складова має місце у відносинах власності на землю та землекористування, при укладанні договорів із земельними ділянками. Публічний аспект земельного права реалізується у відносинах державного управління земельними ресурсами. Досліджується рівень державного втручання в процес формування ринку землі. Доводиться, що основне завдання земельного законодавства у вітчизняній правовій системі полягає в правовому забезпеченні балансу приватних і публічних інтересів у використанні землі, який досягається закріпленням сукупності взаємозв'язаних правових механізмів впливу на різні види суспільних земельних відносин.*

Ключові слова: *земельне право, публічне право, приватне право, земельні відносини, земельне законодавство, ринок землі, державне регулювання.*

Summary Sydor V.D. Land law: is it public or private? *The purpose of this publication is to study the nature of the relationship between private and public foundations of land law. It is established that a private component takes place in the relations of ownership of land and land use, the conclusion of contracts with land plots. Public aspect of land law is implemented in the relations of state management of land resources. The level of state interference in the process of forming the land market is studied. The main task of land legislation in the domestic legal system is to legalize the balance of private and public interests in the use of land, which is achieved by consolidating a set of interrelated legal mechanisms of influence on various types of public land relations.*

Keywords: *land law, public law, private law, land relations, land legislation, land market, state regulation.*

Science of land law is going through a difficult period, associated with changes in the principle value of public and private interest in the regulation of land relations. In present conditions of Ukraine's legal system sharpened debate on the division of law to the appropriate field, distinguishing public law and private-law institutions. One of the effective steps of improvement of legislation is the optimization of private and public law principles in establishing the mechanism of regulation.

Publicly-law type of regulation is characterized by the fact that in the areas of public law in the first place are obligations of participants of public relations in its various forms (prohibitions, regulations, etc.). By the nature of norms and orientation influence public law is mainly imperative, and the main result of his influence should be strict implementation of the participants of public relations requirements contained in the law.

Publicly and legal principles of land legislation of Ukraine is objectively due to the principles that determine the need, purpose, features, content and the use of public law of the land in the mechanism of regulation. The basic legal principles of public land law is the principle limitations of land rights and the principle of regulation of land rights.

Publicly legal restrictions represent legal restriction of legal land rights enshrined aimed at ensuring public interests in land relations. The object of public legal restrictions may be any fixed in-law land rights. The ways of the law on public legal restrictions of land rights is a normative set of grounds, boundaries and limitations purposes, restraining orders, list of facilities and the range of subjects related land rights.

Lack of necessary scientific basis transformation property in Ukraine, imperfections and dynamics of the law in this area is not conducive to effective legal regulation of land relations. In today's special urgency and severity is the question of public law principles of land law and the law, public land ownership, its subjects and objects. From the solution of this question depends largely on the integrity of the state, effective protection and use of land resources, the interests of the population of Ukraine and local communities.

The intervention of public law principles in the sphere of land market relations aimed at protecting the interests of the whole society. In modern terms the priority is the formation of socially oriented land market, and it is not possible without interfering with the land market relations public law principles. In accordance with the third paragraph of Art. 1 of the Land Code of Ukraine, the use of land ownership can not prejudice the rights and freedoms of citizens, public interest, aggravate the ecological situation and the natural qualities of the land[1]. That feature of the land law is that it is a sphere interaction of private and public interests, and therefore the regulation of land relations is done using public law and private law means.

Urgent task in conducting legal policy is to ensure optimal ratio of public law and private law principles in the law of the land in establishing a stable order in the country. Therefore, public legal measures bear gradual, thoughtful, gradual, but steady and consistent character.

Type of private regulation of land relations is characterized by the fact that its fundamental principles are striving to give members certain rights of land relations and their feasibility. The nature of the rules and regulation of private right direction is mostly idle, the main result of its regulatory impact is not imposing prohibitions and restrictions, and providing certain rights.

Of private regulation of land relations is characterized by the following principles as the recognition and protection of private land ownership, independence and autonomy of the subjects of land relations, equality of subjects of land ownership. It is in these aspects of private regulation of land relations intervene publicly-legal means, resulting in a restriction of the right of private ownership of land, a restriction on freedom of land transactions, the moratorium on the alienation of agricultural land and more.

Penetration of private regulation in land relations includes not only the creation of new institutions, but also rethinking those who are traditional land rights. Statewide legislation is an independent branch of the law of Ukraine is a system of regulations that govern land relations.

The foundation of the formation of modern land law were laid in the last decade of the last century. At the heart of this process lay as creating new legal institutions and mechanisms of land reform and the need to ensure continuity of legal regulation of land relations. Modern land law considers the land together: as a natural resource and as property. That land legislation, combining private legal and public legal methods of influence, designed and capable of ensuring the rational use and protection of land as a major national wealth under special state protection. Creating a market-oriented land circulation involves identifying, accounting, ensuring optimal combination and harmonization of private and public needs and interests of land relations. Under these conditions regularly updated value problem of public law and private law principles in land law. Since the transition to a market economy can not be accompanied by a revival of the idea of private and public law, integrated regulation, should pay attention to the direct connection of a

large number of problems in the area of land, ignoring the need to optimize the mediation of private and public interests.

One of the basic laws of the land legislation is a significant expansion of private sector regulation. There are existing in land law private legal institutions and norms: land ownership, different types of land use, land easements and other property rights, obligation ratios (rent and other transactions with the land); civil ways to protect land rights. There is a need to improve the mechanism of incorporation of public interest in private law rules governing land relations, and the problem is also the so-called inverse penetration of public law principles in modern private law. The interpenetration of public law and private law principles creates the need to develop the modern theory of land rights in the direction of seeking their optimal value and interaction.

Land legislation in its substantive sense is a set of rules aimed at protecting public and private land interests. Land interests considered constructing category as a decisive factor in the impact and meaning of the land law, the driving force of their motive and behavior of land relations. External criteria publicity land interests is standard form of expression.

It is important to study the problem of establishing balance, finding a universal correlation between the public and of private interests. There is a need to unite in a fundamentally new scientific issue series of general and sectoral aspects of security and protection of land rights. This is due, on the one hand, dynamic environmental conditions of formation and use of land legislation, sharpening needs of economic development and environmental interests of society, increased exploitation of lands in current market conditions, on the other hand – the practical needs in the legislative process and enforcement activity theoretical concepts justifying the ways of legal harmonization of various land interests.

Criteria rights division between public and private but well-known criteria – subject and method of regulation may serve interest. Interest is the values, target and meaningful basis impetus to normative mediation and development of any subjective rights. Value of public law and private law interests in the legal regulation of land relations are legally legal indicator of the quality of the political regime in the relevant historical and legal point of society. Land Reform by introducing private and other forms of land ownership leads to a gradual transformation of the Soviet land relations, which by its nature had only public, an independent view of land relations public-private nature, which naturally leads to the need of traditional and stereotypical doctrinal ideas, opinions and concepts on the relationship between interaction and civil, land, natural resource legislation, development and implementation in practice of lawmaking and enforcement of new legal models of legal regulation of property, land, natural resources, environmental relations through the implementation of norms, principles, methods and mechanism private and public law to ensure that private and public interests in the use and protection of land.

It should be noted that the imperative and dispositive methods of legal regulation does not define public law and private law basis of land relations. Dependence them apart is not linear. Publicly legal interests can be protected discretionary and private rights – imperatively legal methods.

A special way to regulate the relations of public interests in land law formed mainly of prohibitions and regulations, public-legal restrictions on economic activities, subject composition landowners and land users, functional and regional land use restrictions.

Legal land restrictions can be seen in the narrow and broad sense: as either a synthetic method of legal regulation, which is formed mainly prohibitions and obligations as a generic term that includes the proper restrictions, encumbrances and different requirements imposed on the subjects of land relationships. Existing in land law set limits is an important tool for regulating land relations. Purpose of land and legal restrictions is to ensure public land interests.

The source of public legal restrictions in land use is a constitutional provision. Enshrined in Art. 14 Constitution of Ukraine, the special status of land as the main national wealth under special state protection[2] requires special conditions to ensure security and protection of rights of all members of society to the ground. Since the constitutional provisions of Art. 13 on the property of the Ukrainian people to all land within the territory of Ukraine follows the principle

of equal access to land. Equality and fairness in land relations based on formal, ie legal equality. The principle of legal equality involves the introduction state the conditions under which any entity of land rights may be subject land relations.

Restriction of economic activities in order to ensure public land interests should be imposed by the current land legislation under the Constitution of Ukraine, based on guaranteed constitutional right of every citizen to the ground. On the constitutional and legal position justification land legal restrictions possible on the basis of second part of Article 13 of the Constitution of Ukraine, which secures that the property should not be used to the detriment of the person and society[2]. In other words, these limitations may motivated by the need to ensure the land law. If the grounds of restrictions established by the Constitution of Ukraine, their nature, content and features of land defined by law. In this regard, an important task is to determine the extent of lawmaking admissibility limit private interests to protect the land rights of citizens and public land interests.

An important way to ensure the public interest is the regulation of land free access of all citizens to the land to ensure freedom of movement and enjoyment of aesthetic, recreational, recreational needs. In terms of the presence of previous legal procedures and conditions for freedom of access is realized by exercise of public land and through easements.

Public interest in the land is protected by setting security zones Unity and cooperation of public law and private law principles based on the use of general categories and concepts developed in the theory of law, such as the rule of law, prohibitions, permissions, responsibilities, etc. Private and Public Law serve as two main areas of regulation, each of which governs the appropriate field of public relations.

The object of science is the study of land law laws legal regulation of land relations, including the problem of interaction between public law and private law principles of their regulation. Studies of various landlegal phenomena only from the standpoint of public or private law does not give full and comprehensive understanding of their legal nature, does not allow to achieve the goal of complex study of complex land processes and phenomena suggest effective ways of improving land legislation.

Private and public law in all developed legal orders continue to exist as two separate, independent branches regulation as two different types of legal impact on social relations. However, it should recognize and take into account that the private and public sector is always communicate with each other, resulting in some emerging areas of law in which the elements of public law regulation penetrate the private right and vice versa. Identifying elements of public law and private law regulating the land laws and determining their characteristics, should proceed from the fact that the main criterion for separation of private and public law, is the difference in techniques and methods of influence on land relations.

To correct their differentiation is also necessary to consider the sequence of factors that affect the formation of the land law, according to which the interests of the subjects of land relations define the content and the specific properties of these relationships, in turn, determine the nature of legislative requirements.

Land legislation is not a mechanical combination rules breaking equality and norms based on relations of power and subordination actually land legislation is built on a combination of such methods. This relationship is present in some of the land and legal norms, increasing the level of legal institutions and becomes a fundamental level land law in general. Try to break this relationship means to eliminate land law as a branch. Complex (private law and public law) the nature of legalization of land relations finds its manifestation terminology in the current legislation.

Based on the basic directions of state land policy and based on the adoption of specific and interrelated land law, formed a set of legal mechanisms impact on certain types of land relations. The rules of legal mechanisms have both public law and private law and are primarily aimed at ensuring a balance private and public interests over land in the community. It is important, if not decisive, importance ratio and the combination of these mechanisms in the

framework of land regulation. Of private nature of certain norms of possession, use and disposal of land no doubt, as a public law nature of the control of state land or land registry.

The value of land laws and rights as an independent field lies in the possibility of its use as a tool of the complex legal impact on land relations in the state. If we consider the land legislation simply as a set of public law and private law regulations laid down in the Land Code of Ukraine and other normative acts, an important part of the regulatory capacity of the industry will not be involved.

Today, a convergence of private and public law areas of regulation. The widespread use of public-legal means of regulating land relations can not be seen as government interference in private law relations.

This fact underlines the need to combine these tools, without which it can not effectively use the land legislation. Private law can not exist without public as Public Law ensures the efficient use of private law and private legal tools provided are guaranteed public-legal means.

Value the use of private and public law principles in the regulation of land relations is not permanent. It depends on the specific conditions of the economy. In those countries where the land market was formed and the basic principles of the market economy operate effectively, the use of public legal instruments regulating minimum. Where is the process of the land market, the role of public legal regulations of quite substantial.

The main objective of land law in the domestic legal system is legal balancing private and public interests in land use, which is achieved by fixing the set of interrelated legal mechanisms to influence different types of public land law. Given the task corresponds formed in the present system of land law, which is led by the Land Code of Ukraine.

Interaction and mutual influence of public law and private law principles specific to regulation of land relations. One can not ignore that the dramatic changes of private law regulating land relations can not affect the state of public regulation and vice versa. Therefore, changes in the field of private regulation of land must be accompanied by an analysis of the consequences of such changes in public land relations. The same can be said about the changes in the regulation of public land management.

Land laws and the right to form a special provision on the right to land, their occurrence, termination and sale does not seek to isolate the land from the general circulation of the property. The role of land law is acceptable for both private and public interests.

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ПРО ВРАХУВАННЯ ЕКОЛОГІЧНИХ ВИМОГ В ІНСТИТУТІ ДОВІРЧОЇ ВЛАСНОСТІ

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Анотація: *у статті аналізується концепція "розщепленого права власності", притаманна англо-саксонській правовій традиції та можливість її імплементації в українське право в контексті врахування екологічних вимог щодо розвитку інституту довірчої власності.*

Ключові слова: *довірча власність, траст, вимоги екологічної безпеки, концепція "розщепленого права власності".*

Аннотация: *в статье анализируется концепция "расщепленного права собственности", характерная для англо-саксонской правовой традиции и возможность её имплементации в украинское право в контексте кореляции эколого-правовых требований вразвития института доверительной собственности.*