

COUNTRY REPORT: UKRAINE

Land Law Problems in the Ukraine

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Land relations are a very important sphere of social relations. The legal regulation of land must reflect its value as the object of human relations. The laws governing land relations are influenced by social, political, economic and ecological factors. Unfortunately, the potential for conflict in relevant spheres of social life cannot but be reflected in the state of land legislation. This is illustrated in the Ukraine by laws intended to protect agricultural lands from being redeveloped for other purposes.

The key law governing the market for land in the Ukraine is the Law "About the Land Market" adopted on 9 December 2011. On 20 December 2011, the Verkhovna Rada (or Supreme Council of the Ukraine) extended a moratorium on the transfer of agricultural land to non-agricultural uses until 1 January 2013, but more recently has not supported prolonging the moratorium until 1 January 2014.

On 16 October 2012, the Verkhovna Rada adopted the Law "About the Introduction of Changes to the Land Code of Ukraine (About the Circulation of Agricultural Land)". The amendments deal in the part with the moratorium on alienating agricultural land. Under this law, the date on which the moratorium will expire is not specifically prescribed, but depends on the adoption of a law controlling the transfer of agricultural land, instead of the law controlling the land market noted above. As a result, the moratorium now has an indefinite duration.

Not less important is the formation of a state land bank. On 6 September 2012, the Verkhovna Rada adopted the Law "About the Introduction of Changes to Some Legislative Acts of Ukraine Concerning the Delimitation of Land of State and Municipal Property". This enables the Cabinet of Ministers of Ukraine to transfer state agricultural land to the state land bank. This is a state-owned entity which cannot be privatised. This approach is intended to enable more effective management of state land and the implementation of state policy on

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private land, which is aimed at: increasing agricultural production; realising public infrastructural projects; developing agricultural areas; and creating ecological reserves and other public policy goals.

According to the “Transitional Statements” for this Law, state and municipal property are considered to be transferred to the state land bank automatically upon its formation. However, the process of delimiting these lands and developing an inventory of them has not been completed (although official documents tell a different story).

Previously, granting land title to the State was regulated under the Law of Ukraine “About the Delimitation of Land of State and Municipal Property” 2004. However, this law was not effectively implemented because of the substantial costs involved. However, the process of title clarification has commenced. The measurement of titled land projects is progressing and title details have been confirmed in some cases. With recent reforms, this incremental land titling procedure has been drastically changed. Public title is automatically created with the creation of the state land bank. This situation indicates the lack of a systemic approach to dealing with the complex issues of land title, and it is likely that the lack of such an approach will influence the quality of land titles. Official announcements suggest that further investment will be made to address the problem of titles in public land.

There is currently 10.6 million hectares of state agricultural land in Ukraine. There is a great contemporary need for a more reliable system regulating land title to deal with large tracts of land, the ownership of which remains unclear (2 million hectares); or in respect of which there remain unclaimed shares (1,5 million hectares). It is also necessary to settle the management of small parcels of arable land constituting 7 million parcels (shares), the average area of which is each 3-4 hectares. This fragmentation and uncertainty creates impediments to effective agricultural production.¹ As a result, early in the development of the state land bank, it will be important to take measures to consolidate rural land if this initiative is to overcome the negative economic, ecological and social consequences associated with the current fragmentation of agricultural land title. This needs to be overcome to ensure stable income from the lease of land plots, which will in turn promote increased agricultural investment and the replenishment of the state budget.

To achieve stable development of rural regions, protection of the environment, protection of land and rational usage, optimization of the system of land tenure is needed. This requires

¹ See further http://www.kmu.gov.ua/control/publish/article?art_id=245684296.

clarification of legal relations over land and other real estate, which requires access to a reliable cadastre. International experience suggests that cadastral-registration systems play an important role in managing real estate, taxing and lending security, property market information and legal governance in the real estate market. Reliable title-registration systems are an essential attribute of the economy of all economically-developed countries.² In this regard, the Law “About the State Land Cadastre” was adopted in Ukraine in July 2012. It will come into effect on 1 January 2013. Prior to its introduction, there was no reliable land database in Ukraine. The cadastre existed only on paper, and was randomly adjusted resulting in corruption and a lack of transparency. Ukraine is one of the last countries in the civilized world to implement a computerised cadastre system. Modern software should enable an effective cadastre-registration system within this law.

The newly adopted Law “About the State Land Cadastre” proposes a system of many bylaws to supplement this law and to develop its principles. Accordingly, on 17 October 2012, the Cabinet of Ministers of Ukraine adopted the resolution “About the Confirmation of the Procedure of Managing the State Land Cadastre”. This document defines the sequence for issuing cadastral identifiers to plots of land, which is essential to their registration. The resolution defines the process for using registers and documents of the State Land Cadastre by different categories of users. This addresses the use of extracts from the State Land Cadastre, references that contain generalized information about land (areas), and copying of the cadastre map (plan) and other documents within the State Land Cadastre. The resolution comes into effect simultaneously with the Law of Ukraine “About the State Land Cadastre from 1 January 2013.

These innovations suggest that there is an opportunity for positive changes in the procedure of state registration of land plots and titling of rights to real estate. Whether the new system will be effective, only time will tell.

² *Conceptual Principles of Managing the State Land Cadastre in Ukraine* (available at <http://www.dzk.gov.ua/control/main/uk/publish/article/157431>).