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LAND MARKET OPENING IN UKRAINE: MYTHS OR REALITY

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ABSTRACT

After the acquisition of independence by Ukraine, a reform process has begun. Among them, land reform was one of the major ones. The development of the Ukrainian land market is still ongoing and due to the effect of the moratorium on the sale of land makes, it impossible to carry out effective agrarian reforms in the country and nullifies the prospects of attracting investment and Ukraine's accession to the EU which is why this study is relevant. The purpose of the article was to carry out scientific research on the functioning of the land market in Ukraine and to determine the administrative and legal mechanism of lifting the moratorium on the sale of agricultural land in Ukraine. To achieve this purpose, general scientific and specific research methods, including methods of logic, analysis, comparison were used. The results of the study are an exploration of the experience of post-socialist countries in establishing a moratorium on land sales and the overall development of the land market in these countries, determining the mechanism for lifting the moratorium in Ukraine. The significance of the obtained results is reflected in the fact that this study may serve as a basis for outlining future changes to the current legislation of Ukraine on the functioning and development of the land market in Ukraine.

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INTRODUCTION

The acquisition of independence obliged Ukraine to determine its independent path of development of all life spheres of the Ukrainian people, so the country has begun a reform process that is still ongoing. Land reform was one of the first and major reforms. Although the main slogan of the October Revolution of the 20th century was "The land to the people" and in the Soviet Union the land belonged to the state, and the citizens of the country only worked on it and therefore could not dispose of it. The adoption in December 1990 of the Decree "On Land Reform" No. 563-XII by the Verkhovna Rada of the USSR confirmed the desire of the Ukrainian people to freely own their land and that the

redistribution of land to be transferred to private and collective ownership should take place (Andriychuk, 2002). This Decree stipulates that land reform is an integral part of the economic reform carried out in Ukraine in connection with the transition of the state's economy to market relations. The objective of this reform is to redistribute land with the simultaneous transfer of it to private and collective ownership, as well as to the use of enterprises, institutions and organizations to create conditions for the equal development of different forms of land management, the formation of a multifaceted economy, rational use and protection of land (1990). In 1992, due to the lack of a mechanism of control by the state on the

implementation of land reform, the Decree of the Verkhovna Rada of Ukraine "On acceleration of land reform and privatization of land" No. 2200-XII (1992) was adopted. For the equal development of different forms of ownership and management of land, the Presidential Decree "On urgent measures to accelerate land reform in the field of agricultural production" No. 666/94 (1994) was issued. It envisaged the division of the land of large holdings into land shares. Thanks to these decrees of the President of Ukraine, the Ukrainians in the late '90s were given free parcels of land as land shares. But as early as 2001 the Verkhovna Rada of Ukraine adopted the Law "On agreements on the alienation of land unit (land share)" No. 2242-III (2001), which stated that the owners of land shares temporarily cannot make their purchase and sale, donation.

In the same year, the Land Code of Ukraine (2001) was adopted, extending such a ban to land parcels for agricultural and other commodities agricultural production irrespective of ownership form, in other words, a moratorium on the purchase and sale of agricultural land was introduced (Dereviankin, 2006).

After that the moratorium was extended several times, as confirmed by the following legal acts: Law of Ukraine "On amendments to the Land Code of Ukraine" dated 06.10.2004 No. 2059-IV; Law of Ukraine "On amendments to the Land Code of Ukraine on the prohibition of the sale of agricultural lands before adopting appropriate legislative acts" dated 19.12.2006 No. 490-V; Law of Ukraine "On amendments to paragraphs 14 and 15 of section X "Transitional Provisions" of the Land Code of Ukraine on the term for sale of land parcels" dated 19.01.2010 No. 1783-VI; Law of Ukraine "On amendments to section X "Transitional Provisions" of the Land Code of Ukraine on prohibition of alienation and change of purpose of agricultural lands" dated 20.12.2011 No. 4174-VI; Law of Ukraine "On amendments to the Land Code of Ukraine" dated 20.11.2012 No. 5494-VI; Law of Ukraine "On amendments to section X "Transitional Provisions" of the Land Code of Ukraine on continuing the prohibition of agricultural land alienation" dated 10.11.2015 No. 767-VIII; Law of Ukraine "On amendments to Section X "Transitional Provisions" of the Land Code of Ukraine" No. 2236-VIII (2017); Law of Ukraine "On Amendments to Section X "Transitional Provisions" of the Land Code of Ukraine on extension of the prohibition of agricultural lands alienation" No. 9355-5 (2018).

METHODOLOGY

The following methods were used during the study: general theoretical (analysis, synthesis, concretization, generalization, method of analogy, modelling); empirical methods (research of experience of the land market functioning in Ukraine and post-socialist countries, research of normative-legal and scientific-methodical literature on the given issue, scientific research and conclusions).

To build a strong legal and competitive state, national power holders must create a completely new innovative model of Ukraine's development. Make a plan of work that must be completed to achieve a specific goal. Of course, every sphere of life of society needs its path of development, which can be built by analyzing the experience of foreign countries, to reduce the risk of negative consequences. One of the key issues in this plan is land reform.

There has long been a land market in Europe that has been functioning quite effectively for many years. In most countries of the European Union, it is open, but some of them have some restrictions (Pchelina, 2019). But despite the existence of certain prohibitions, it does not prevent them from being among the most developed in the world. The state does not set a land price and does not take part in its regulation. Most often the price is set by the land market itself, and it is determined by various factors such as soil fertility, a small amount of agricultural land, national currency revaluation by purchasing power parity and others (Riepin, 2018). Another condition of the open market is the opportunity to acquire land for foreigners. They are given the same rights and obligations as the citizens of the country where they buy the land. But such an opportunity exists only in some EU countries, such as Great Britain, the Czech Republic, the Netherlands and some others. In the same states, there are no restrictions on the area of land that can be owned (Redykh, 2018).

Another type of land market in the EU countries is the open land market with restrictions, it operates in countries such as Poland, Romania, France and some others. It lies in the fact that the state establishes certain conditions under which a person can become the owner of the land parcel. Firstly, this may relate to persons belonging to the citizenship of a particular country, which means a ban on the purchase of land by foreigners. Secondly, restrictions may be imposed on foreigners in the following conditions: residence in that

country for the required number of years, marriage with nationals of that country, use of land according to its intended purpose (Redykh, 2018). In some countries, land tenure limits are set, and the purchase of agricultural land by legal entities is prohibited. It is also forbidden to sell the land, with the subsequent change of its agricultural purpose to another (Riepin, 2018). Even though the open land market is widespread in the EU, and most often any person who has money can buy the land, but still most agricultural land is rented. All land is not concentrated in the hands of a single person (Redykh, 2018).

It should be noted that in those countries where the open land market operates without restrictions, the price of land is higher than in the countries where they exist, but the development of agriculture is active regardless of the type of land market.

In addition, it must be noted that Europeans care about their landholdings and, accordingly, the state of the environment, as they consider this to be one of the important factors in the continued normal functioning of the land, as they care about the future of their descendants (Harust *et al.*, 2019a; Mazur *et al.*, 2021). In many former countries of the socialist camp, but the current EU member states, which initially had a moratorium on land, the land can be purchased now, but subject to certain conditions. And in the next five years after the lifting of the moratorium, the price of land has increased several times. Thus, after the collapse of the USSR and the withdrawal of the countries from the socialist camp, each of them was tasked with transitioning to a market economy, which was accompanied by an economic crisis, so they chose their path of development to get rid of it faster.

Romania was one such country. After the overthrow of socialism in the country, the state began work on reforming all spheres of social life, including the agrarian one. The prerequisites for this were the fall in agricultural production and the economic crisis that led to the low incomes of the population (Denissova and Born, 2021).

The first thing the authorities did to get out of the crisis was the adoption of the Land Law in 1991, which introduced a mechanism for transferring land from state ownership to private ownership. This process took place in two ways:

1) through distribution – the distribution of lands among the villagers who worked on them (Haidai, 2016).

2) through restitution – the return of land to former owners or their heirs.

As a result of the operations, 75% of the agricultural land or 8 million hectares were transferred to private ownership (Chala, 2015). However, some agricultural land remained state-owned.

Romania is a prime example of a country that has made positive economic changes since joining the EU. However, when Romania became a member of the EU in 2007, a moratorium on land sales to foreigners was introduced in the country. It was implemented for 7 years. The problem that contributed to the introduction of the moratorium is the fear that foreigners will buy all lands (Sosiedko and Palmieri, 2021). But the restrictions were lifted in 2014 and from that time all EU citizens have the opportunity to purchase land.

Continuing on the topic of foreigners as owners of agricultural land, it should be noted that in Romania the share of agricultural land owned by foreign companies is 900,000 hectares, which is only 9.6% of the total arable lands. The total area of agricultural land in Romania is 14.7 million hectares, 64% of which is arable land, i.e., 9 408 000 hectares. Thus, it can be said that 8,508,000 hectares of arable land are state-owned and privately owned by citizens. In other words, after the moratorium was lifted, all the land did not become owned by foreign nationals. On the contrary, lifting the moratorium made it possible to attract foreign investment in agricultural development.

In addition, a rapid rise in land prices is observed in Romania. It is one of the countries with the fastest rate of price growth. Just before the country acceded to the EU, the price has increased from \$ 360 to \$ 1145 per hectare. After joining the EU, the price is \$ 6,150 per hectare, which is 17 times higher.

After the collapse of the international system of socialism, the transition to market relations began in Bulgaria, just the same as in Romania. The first area of the economy that has changed is agrarian. Land reform in this country began with the enactment of the Law “On ownership and use of agricultural land” in 1991, which was then amended approximately 35 times. Thanks to this reform, approximately 2.5 million landowners have received their land, which is about 10 million land parcels. This process has been delayed due to numerous litigations. Land that was not recoverable to the extent that it had previously existed was to be offset by the relevant land parcel from the land fund of the state. Due

to lengthy litigation, the country has established a moratorium on land sales for new owners for three years. However, after the expiration of the specified period, its validity was cancelled. However, as in Romania, after the lifting of the moratorium, the sale of agricultural land to legal entities and foreign citizens was prohibited. The latter were allowed to buy the land only through the inheritance line and under the circumstance that it would be transferred to the property or sold to those persons with legal ownership of the land within 3 years (Boholiubov, 2016).

It is worth noting that in 2013, members of the Bulgarian Parliament continued the moratorium on the sale of land to foreigners until 2020, as Bulgarian citizens were opposed to foreigners becoming owners of their land. But 55 deputies filed a class-action lawsuit to the Constitutional Court to declare the moratorium unconstitutional. In early 2014, the Constitutional Court of Bulgaria declared the parliamentary decision unconstitutional, since according to the Treaty on the accession of Bulgaria to the EU, restrictions on the sale of land to foreigners should be lifted during 7 years of the country's stay within the EU. Therefore, the foreigners have had the opportunity to purchase agricultural land in Bulgaria since January 1, 2014 (Honcharov, 2014). According to the current legislation of Bulgaria the owners of the land can be citizens of Bulgaria; state; municipality; legal entities; citizens of EU countries and countries with which Bulgaria has concluded international agreements.

Currently, the land in Bulgaria is for sale under the following conditions:

- 1) the legal or private person can become the owner if has been in the territory of the country for more than 5 years;
- 2) foreigners or foreign legal entities may acquire ownership under the terms of an international agreement.

The state does not regulate land prices. This process is controlled by the market itself. There are no limits on the area of ownership. There is no land tax. These conditions led to an increase in land prices to \$ 4 650 per hectare (Haidai, 2016).

As a result, the Bulgarian land market is recognized as one of the most liberal in the European Union, which is open but with some restrictions. Partial restrictions exist for foreign nationals and individuals or legal entities. In modern Bulgaria, 98% of agricultural land is privately

owned, and a significant number of it is leased. In connection with this, Bulgarian citizens are obliged to register agricultural land lease agreements in the municipal departments of agriculture starting from 2018 (Topuzanova, 2018).

The first step in Lithuania's land reform was the adoption of the Law "On Land Reform" in 1991, according to which agricultural land began to be returned to private ownership through the purchase of land parcels or the restoration of ownership (1991). It was only the beginning of the creation of a land market in Lithuania and the implementation of dramatic changes in the agricultural sector of the economy.

Lithuania's path to joining the European Union lasted until 2009. During this time, there was already a land market in Lithuania and corresponding sales and purchase operations were taking place. But after Lithuania became an EU member state, it introduced a moratorium on the sale of land to foreigners for 7 years. In 2014, the Lithuanian authorities continued the moratorium to create an effective regulatory and legal framework that would ensure the proper functioning of the land market and, accordingly, the agrarian sector (Korolenko, 2011).

It should be noted that the moratorium in that country continued only once. It shows the public responsibility of the state authorities, who have fulfilled their promises within the specified time.

Over the next two years, the legislative acts necessary for lifting the moratorium were elaborated and adopted by the Lithuanian Parliament. Namely: Law "On Land Reform"; Law "On the Land"; Law "On the Acquisition of Agricultural Land".

According to the mentioned laws, land can be acquired by private and legal persons of Lithuania, foreign private persons, legal entities and other organizations. All foreigners must meet the criteria for European and transatlantic integration. Those countries that meet these criteria include European Union countries; the countries that concluded the Association Agreement with the European Communities and their member states; states of the Organization for economic cooperation and development; states of the North Atlantic Treaty Organization; countries party to the Agreement on the European economic area. In addition, if private persons are nationals of the mentioned countries, their permanent residents or permanent residents of the Republic of Lithuania who does not have

Lithuanian citizenship, they also have the right to own agricultural land.

Conditions for the acquisition of agricultural land:

- 1) adequate qualifications and experience in the field of agriculture;
- 2) the right of preference for the purchase of the land for sale to the co-owner of the land parcel, state, user, neighbour of the land parcel;
- 3) obtaining permission from the National Land Service;
- 4) the person undertakes to use the land for an agricultural activity for at least 5 years;
- 5) the maximum purchase area is 500 ha;
- 6) the principles that determine the interrelated persons (holding 25% of the legal entity's votes);
- 7) the transfer of a legal entity or its shares is equivalent to a land transfer agreement (all precautions are taken) if the legal entity owns more than 10 ha of agricultural land.

Land reform and the lifting of the moratorium should have attracted foreign investment in agriculture, after which stable rules were formed in the country that had to be followed to ensure the interest of foreign investors. These include:

- transparent and clear rules of farming that apply to everyone and equally;
- a stable regulatory framework;
- low level of bureaucracy;
- eradicating corruption;
- guarantees of property rights protection;
- free trade-in products.

However, restrictions that apply to foreign nationals in the land market impede the attraction of significant foreign investment to agriculture, but the small ones still come. Despite this fact, agriculture is developing well enough, thus strengthening national farming enterprises (Starkiavichius, 2017).

As for the price of land, it is established not by the state but by the market. The price in 2012 was \$ 1100 per hectare, and as of 2016 has grown to \$ 4033 per 1 hectare (Riepin, 2018).

Lithuania is an example of a country that has established clear rules under which agricultural land ownership is acquired. Before the moratorium was lifted, major legal acts were amended to allow foreigners to become landowners.

We note that lifting the moratorium in these countries has led to a positive change in their economic life. However, on their way, they had to overcome all

obstacles, which were in the absence of legal acts that could regulate land relations related to foreigners. However, the necessary regulatory acts were adopted, the respective controlling bodies were created, and a moratorium on land sale was lifted. Following this event, the land market in these countries became open to foreign nationals, but with some restrictions. The latter are some obstacles, but they open the way to invest in the agricultural sector of the economy and contribute to its sustainable development. The lifting of the moratorium is a fact which testifies to the openness and readiness to cooperate with other foreign countries and became the main factor of these countries' accession to the European Union.

RESULTS AND DISCUSSION

The land market is a phenomenon that does not exist in Ukraine now. We cannot open it because of a moratorium on the sale of agricultural lands. Even though there is private land ownership, Ukrainians cannot realize their full ownership of the land, since they do not have the opportunity to dispose of the land in the form of its sale (Harust *et al.*, 2019c; Khoroshkov and Derevianko, 2021). During the 25 years of independence, a very large number of Ukrainians, who were the actual owners of the divided land, have not been able to exercise their rights due to the moratorium.

As we noted above, it is quite obvious that in the last 20 years the state has not developed a proper normative and legal framework for the civilized introduction of the land market with national interests in mind. It is also obvious that to open the land market, it is necessary to abolish the moratorium. However, the views on its abolition divided the Ukrainian society in half. One part of the population believes that the abolition of the ban on lands sale will cause it to be bought up by groups of people, which will lead to monopolization of agricultural production, and in case of further opening of the land market will also lead to the more intensive purchase of land by foreign citizens.

Another view is that the lifting of the moratorium will give Ukrainians the right to dispose of their land without restriction, in addition to opening up the land market, which in turn will lead to an increase in land prices, attract foreign and domestic investment in agriculture and boost the economy. Most non-governmental organizations, farming enterprises, agricultural companies and economists, are in favour of lifting the

moratorium and promoting the land market since it will be possible to take out loans secured by land for the development of agriculture, the rent will increase and the shareholders will be able to receive a fair cash payment for their shares (Topuzanova, 2018; Shulga *et al.*, 2021).

This is evidenced by the results of the KIIS social survey on the purchase and sale of agricultural land conducted in 2018 by the Razumkov Center and the Sociological Group "Rating". The survey was conducted in different territories and among different people. Thus, according to the results of this survey, rural residents provided the following answers:

Against the sale of land – 75%

For the sale of land – 11%

Could not reply – 9%

Did not vote – 4%

Not much differs its results among the cities, residents:

Against the sale of land – 70%

For the sale of land – 14%

Could not reply – 10%

Did not vote – 6%

Also, there was comparative voting among different sections of the population, as their views differ on this issue. Thus, 57% of the wealthy voted against the sale of agricultural land, and 77% among the poor (Redykh, 2018). The conclusion is obvious – the majority of the population of Ukraine opposes the lifting of the moratorium. However, it should be noted that the vast majority of Ukrainians do not intend to cultivate their land, but seek to sell it at a market price or lease it for a long time.

All this confirms in a certain way the existence and rapid development of the shadowland market in Ukraine since for most of the population the restrictions exist to break them, so the existence of corruption and other schemes allow to circumvent the moratorium and sell agricultural land (Harust *et al.*, 2019b). Through the use of such schemes, legal owners of the land are shareholders, but they are owned by other people. This result is achieved with the help of rent, emphyteusis, barter, donation, fictitious debt, registration of contracts retroactively.

One of the main features of the land market is the presence of transactions, i.e., certain agreements or operations. According to the World Bank data, which were released and presented on 8.10.2018 during 2016-2017 in Ukraine, approximately 3.2 million transactions account for agricultural land. It should be noted that

transactions include not only sales but also other agreements.

Thus, the following operations were performed in 2016 – 2017: rent – 76,1%; transfer of land inheritance – 18,3%; purchase and sale – 3,1%; barter-donation – 1,6%; emphyteusis – 0,8%; mortgage – 0,1%.

Attention should be drawn to the fact that 6% of agricultural land does not fall under the moratorium, so sale and purchase contracts that make up 3.1% were legally enforced.

But there are still illegal transactions to obtain land ownership, for example, through loan agreements. Of course, the tenant does not have the right to dispose of the land plot, but they may enter into a loan agreement with the priority right to buy the land after the moratorium is lifted. This means alienation of agricultural land (Dankevych, 2018).

Another common way is emphyteusis. According to it, not the land is for sale, but the right to use it and such a right is not subject to a time limit. In addition, online stores where you can buy anything including agricultural land are now widespread (Dankevych, 2018).

The existence of a shadow market is conditioned by the fact that Ukrainian black earth is a valuable resource, accounting for 44% of the country's total territory, 30% of Europe and 9% of world reserves. The climate zone in which Ukraine resides is conducive to growing a record number of crops, thereby providing the country's economic resources (Dankevych, 2018). Because of this, many Ukrainians and foreigners are trying to take over large agricultural land in any way, bypassing the moratorium. Therefore, without its removal, we cannot create a legitimate and transparent land market through which the state would control the appropriate processes that would contribute to the full development of our country's agricultural sector.

The lifting of the moratorium on land sales can have both positive and negative consequences. In our study, we tried to investigate and evaluate them.

First, the actual full ownership of the land by the citizens can be considered a positive consequence, i.e., there will be an opportunity to sell the owned land. For Ukrainians, this will open up the legal land market, which will result in a price increase for the land, from the existing national regulatory monetary value of one hectare of land, which depends on the relevant legal acts. Because of this Ukrainians leave 13-18 thousand hryvnias per

year for 1 hectare in the tenants' pockets. Thus, land shares owners will be able to receive more income from the land they will rent out.

Another positive consequence is the possibility of obtaining a loan secured by land for the development of the Ukrainian farming enterprises. This will allow Ukrainian farmers to upgrade the technical park, buy elite seeds, build agricultural storage facilities etc., and most importantly give an economic impetus to the rapid growth of agricultural production.

In addition, the abolition of the moratorium and the opening of the land market will allow attracting foreign investment in agricultural development, since in Ukraine about 71% of the land is agricultural land, which is in comfortable weather and climatic conditions, which contributes to soil fertility (Dankevych, 2018).

As for the negative effects, first of all, it is the concentration of a large land area in the hands of a single person, but there are some doubts about this since the owners of land shares are elderly people who have low pensions and renting out their shares is an additional income for them, which they are unlikely to give up, especially due to the rising subsistence level in the country (Harust *et al.*, 2019b).

Another negative consequence may be the emergence of speculators who will buy land at a lower price and resell at a higher price, but in this case, it also depends on the desire of Ukrainians to sell their land. The list of negative consequences also includes the phenomenon of land acquisition by foreigners, but this can also be prevented by imposing certain restrictions on such citizens, although even so, it also depends on the Ukrainian population itself (Starkiavichius, 2017).

In general, if we analyze the experience of foreign countries, we can foresee all the positive and negative consequences of lifting the moratorium and opening the land market, and thus create our model of the country development in this direction, that is, what needs to be done to minimize the occurrence of negative consequences and increase the occurrence of positive ones.

CONCLUSION

Taking into account the results of our study, we concluded that the moratorium on the sale of land should be lifted, subject to the creation of an appropriate legal basis.

Firstly, it is necessary to create a strong regulatory

framework without any conflicts that would protect the property rights of Ukrainian citizens on land. The list of such documents may include the Law "On circulation of agricultural lands", which defines the conditions under which citizens can purchase land. In addition, the said legislative act should specify the list of entities that may be owners and, if necessary, create requirements for them. For example, if they are foreign nationals or legal entities.

It is also necessary to develop and adopt a Law "On the use of agricultural land", which sets out a list of actions that must be taken to preserve soil fertility. Such a list includes observance of crop rotations; periodic use of organic and mineral fertilizers and other processes. Observance of these conditions will help to save the land, because according to scientists' forecasts, if the situation does not change and the soils will be "depleted", then in 120-150 years the fertile soil layer can completely collapse.

In addition, it is advisable to create a special state body or subdivision within the State Service of Ukraine for Geodesy, Cartography and Cadaster, which would be in charge of control over the use of agricultural land, the implementation of land-related operations and the fight against the shadowland market, and also to monitor compliance by owners and users of agricultural land-use rules. Thus, the creation of such special fuses will ensure a safe abolition of the moratorium on land and will not cause negative consequences for the country, and taking into account the experience of foreign countries will allow opening a transparent land market, which will become a positive aspect of state development.

RECOMMENDATIONS

It is worth noting that Ukraine has been independent for 28 years, but more than half of this time there is a moratorium. This figure tells us about the inactivity of the state government, which did absolutely nothing to lift this moratorium and not impede the existence of the country. Taking into account foreign experience, it should be noted that in the countries of the former socialist camp, which were similar in economic and political status to Ukraine, the moratorium lasted on average 7 years. During this time, they created normative and legal acts that indicated restrictions on agricultural land ownership.

In addition, in the EU countries, there is an open land market which results in the land price being set and

regulated by the land market itself, and in comparison, with Ukraine, it is several times higher and, in some countries, even ten times higher.

Thus, the implementation of the European experience will allow Ukraine to create for itself a secure model of lifting the moratorium, and subsequently opening up the land market, which will provide positive consequences for the country's economy and become an effective step for EU accession.

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