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Secção I

Investigação Científica*

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Gaps in the acquiring real estate and agricultural land in Ukraine: A comparative study with EU law

Lacunas na aquisição de imóveis e terras agrícolas na Ucrânia: um estudo comparado com a legislação da UE

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ABSTRACT: This research is particularly timely now due to Ukraine's ongoing efforts towards integration with the European Union, the urgent need for economic development amidst global uncertainties, and the rising demand for regulatory reforms in the real estate and agricultural sectors to attract more domestic and foreign investments. The purpose of this study is to investigate the distinctive aspects of legal regulation of real estate and agricultural land ownership rights in Ukraine and to draw upon the experiences of selected European Union countries. The methodological basis of the study consists of a comparative and logical analysis methods. This study analyses the acquisition of property rights, specifically real estate and agricultural lands, in Ukraine in comparison to EU nations such as Germany, France, Italy, and Poland. The results highlight the distinct regulations and procedures established in each country, dictated by their Civil Codes and special laws. It identifies the need for Ukraine to align its property acquisition laws with European standards, proposing measures such as establishing a system of public faith in the Land Registry, implementing compulsory notarized agreements for ownership transfer, clearer rules on ownership acquisition through prescription, and adopting EU-like directives for additional regulation.

KEYWORDS: legislation, law, regulatory deficiencies, European Union law, title guarantees, way of protection.

RESUMO: Esta pesquisa é particularmente oportuna agora devido aos esforços contínuos da Ucrânia em direção à integração com a União Europeia, à necessidade urgente de desenvolvimento econômico em meio às incertezas globais e à crescente demanda por reformas regulatórias nos setores imobiliário e agrícola para atrair mais investimentos internos e estrangeiros. O objetivo deste estudo é investigar os aspectos distintivos do sistema jurídico dos direitos imobiliários e de propriedade de terras agrícolas na Ucrânia e aproveitar as experiências de países selecionados da União Europeia. A base metodológica do estudo consiste em métodos de análise

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comparativa e lógica. Este estudo analisa a aquisição de direitos de propriedade, especificamente imóveis e terras agrícolas, na Ucrânia em comparação com nações da UE como Alemanha, França, Itália e Polónia. Os resultados evidenciam as distintas normas e procedimentos estabelecidos em cada país, ditados por seus Códigos Civis e leis especiais. O estudo identifica a necessidade de a Ucrânia alinhar suas leis de aquisição de propriedade com os padrões europeus, propondo medidas como o estabelecimento de um sistema de fé pública no Registro de Imóveis, implementando acordos notariais obrigatórios para transferência de propriedade, regras mais claras sobre aquisição de propriedade por meio de prescrição e adoção de diretivas da UE semelhantes, para uma regulamentação adicional.

PALAVRAS-CHAVE: legislação, lei, deficiências regulatórias, direito da União Europeia, garantias de títulos, forma de proteção.

Introduction

Nowadays, globalisation challenges the foundations of property rights. In particular, developing countries are looking for opportunities to create a favourable climate for economic development. To achieve this goal, one of the important considerations is to create a strong and balanced regime for all types of property. At the same time, guaranteed profit from the use of property and real rights is possible only when the state has developed a system of protection of such rights in all its components. At the same time, this system should include appropriate legislation that establishes appropriate procedures and methods of protection, the availability of qualified law enforcement agencies, an independent court, etc. The development of supranational institutions, the creation of a financial system with elements of mutual integration, and the deepening of cultural, economic, political, and legal ties between European countries inevitably bring closer the need to address the issue of effective harmonisation and further unification of legal regulation of public relations, including private ones. This idea is not new, but more and more often the appeal to it indicates the inevitability of making a decision on how to solve it.

Sources of information on this topic are the Convention for the Protection of Human Rights and Fundamental Freedoms⁴ of 1950, ratified by Ukraine, namely Article 1 of the first protocol (1952). Part 4 of Article 41 of the Constitution of Ukraine⁵. Issues of the exercise of private property rights to immovable property were investigated by A.N. Lysenko, I.V. Lysenko,

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms. 1950. Retrieved from: https://zakon.rada.gov.ua/laws/show/995_004#Text

⁵ Constitution of Ukraine. 1996. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/254k/96-bp>

A.M. Gariaieva⁶. The problems of prohibiting the use of property and investments by individuals and legal entities were studied by A. Lähteenmäki-Uutelaa, A. Lonkilaa, S. Huttunena, N. Grmelováb⁷.

The exercise of property rights under both Ukrainian and European legislation may be restricted when the owner exercises his or her property right⁸. Moreover, due to the rapid development of property relations, there are gaps in the regulation of practical problems of implementing methods of property restriction, which is why judicial practice in this area is also ambiguous, which is of particular importance in the state of martial law in Ukraine. If the laws impose strict restrictions on property rights or if the administrative branch does not meet legitimate expectations, compensatory consequences should not be expected⁹. In addition, it is necessary to consider the specifics of state registration of property rights. Although registration is not a means of acquiring property rights but merely a proof of ownership, in today's conditions in Ukraine, access to all registries is closed. Therefore, it is not possible for both legal entities and individuals to properly register property rights or make any property and related transactions.

Notably, the impact of the development of information technologies on the concept of property rights and elements of legal relations of property determines the need for additional legislative changes. As for land ownership, the land reform clearly marked the beginning of the regulatory framework for further land policy, new forms of land ownership, the land market, and the management system in the field of land resources use and protection^{10,11}. Consequently, Ukraine's chosen path of integration into the European Union (EU) requires its

⁶ LYSENKO, A.N., LYSENKO, I.V., and GARIAIEVA, A.M. Exercise of the private property right to certain types of real estate property under the law of Ukraine. *Law and Safety*, 2020, 79(4), 122-129.

⁷ LÄHTEENMÄKI-UUTELAA, A., LONKILAA, A., HUTTUNENA, S., and GRMELOVÁB, N. Legal rights of private property owners vs. sustainability transitions? *Journal of Cleaner Production*, 2021, 323, 10.

⁸ LYSENKO, A.N., LYSENKO, I.V., and GARIAIEVA, A.M. Exercise of the private property right to certain types of real estate property under the law of Ukraine. *Law and Safety*, 2020, 79(4), 122-129.

⁹ LÄHTEENMÄKI-UUTELAA, A., LONKILAA, A., HUTTUNENA, S., and GRMELOVÁB, N. Legal rights of private property owners vs. sustainability transitions? *Journal of Cleaner Production*, 2021, 323, 10.

¹⁰ ILKIV, O.V. Specifics of using and protecting land resources in Ukraine and foreign countries. *Journal of Legal, Ethical and Regulatory Issues*, 2021, 24, 1-10.

¹¹ DOLGOPOLOVA, L.M., US, M.V., and GLOTOV, S.O. Relevant Issues of Property Rights Protection in Ukraine. *Journal of Advanced Research in Law and Economics*, 2020, 11, 1137-1144.

national legislation to be as close as possible to that of the EU member states. In the context of the above, it requires an in-depth study of the national legal support of property rights.

Literature Review

Convention for the Protection of Human Rights and Fundamental Freedoms¹² of 1950, ratified by Ukraine, in particular, Art. 1 of the first protocol (1952) provides for the right of all individuals and legal entities to use their property and property rights without any obstacles. At the same time, the deprivation of persons' property is not allowed, except in cases where such deprivation is carried out in the public interest and under the conditions provided for by law and the basic principles of international law. It also recognises the right of the state to exercise control over the disposal of property in accordance with the general public interest or in order to ensure payment of tax or similar fees (fines). At the same time, Part 4 of Article 41 of the Constitution of Ukraine¹³ provides for a provision on the impossibility of illegal deprivation of property rights of any person. In particular, the rights to private property are recognised as inviolable.

A.N. Lysenko, I.V. Lysenko, A.M. Gariaieva¹⁴ determined that the rights of property owners can be restricted by law, and the exercise of property rights should proceed not only from the content of the right itself, but also from legislative and contractual boundaries. Based on the conclusions of the practice of the European Court of Human Rights (ECHR), researchers note that the interests of owners should not contradict the interests of society. However, researchers have revealed the basic principles of implementing private property rights only for certain types of real estate, in their theoretical essence, without considering the peculiarities of practical use. A. Lähteenmäki-Uutelaa, A.

¹² Convention for the Protection of Human Rights and Fundamental Freedoms. 1950. Retrieved from: https://zakon.rada.gov.ua/laws/show/995_004#Text

¹³ Constitution of Ukraine. 1996. Retrieved from: <http://zakon2.rada.gov.ua/laws/show/254к/96-БД>

¹⁴ LYSENKO, A.N., LYSENKO, I.V., and GARIAIEVA, A.M. Exercise of the private property right to certain types of real estate property under the law of Ukraine. *Law and Safety*, 2020, 79(4), 122-129.

Lonkilaa, S. Huttunena, N. Grmelováb¹⁵, concluded that owners should have fair expectations of compensation for infringement of their real rights or deprivation of property rights, but only if such compensation is justified. Moreover, researchers did not consider property rights in the context of relationships with other participants in property relations.

Overall, the literature review emphasizes the need for comprehensive legal regulations and mechanisms to protect property rights, particularly in the context of evolving property relationships, technological advancements, and the integration of national legislation with European standards. Further research is warranted to bridge the gap between theoretical principles and practical implementation of property rights, considering the specific challenges and nuances of the current legal landscape.

Materials and Methods

The fundamental role in this study was taken by the comparative method, with allowed conducting a comparative analysis of legislative approaches in solving regulatory issues within the framework of law and property relations, and identifying the main features of regulatory support in this area. In addition, the method of logical analysis was used to establish the essence of property rights through the prism of norms regulating relevant relations in Ukraine and the EU countries. This study was conducted in three main stages.

At the first stage, a comprehensive analysis of laws and regulations of Ukraine and individual EU countries concerning the definition of property rights and real rights, their forms and mechanisms for their protection was carried out. The place of property rights in the legal systems of Ukraine and European states is determined. The paper describes the features of the procedure for state registration of property rights and real rights. Possible cases of legitimate restrictions and reservations on the exercise of property rights of legal entities and individuals, in particular, housing, land, etc., are investigated.

At the second stage, the existing major violations in the field of property rights in modern conditions were analysed. Legislative gaps in the protection of

¹⁵ LÄHTEENMÄKI-UUTELAA, A., LONKILAA, A., HUTTUNENA, S., and GRMELOVÁB, N. Legal rights of private property owners vs. sustainability transitions? *Journal of Cleaner Production*, 2021, 323, 10.

the rights of ownership, disposal, and use of property rights have been identified. At the same time, the prospects for applying new legal methods of protecting property and property rights were considered. In general, the results obtained in the course of this study and the conclusions formulated on their basis can be used in the future in the process of studying problematic issues of legal regulation of relations in the field of property rights.

Results

In Ukraine, in the constitutional order, that is, at the highest level, the state undertakes to ensure the following rights of citizens: to protect the rights of all subjective property rights, including the rights of business entities; equality of each subject of property rights in the legislative field without exception; to use, own, and dispose of personal property, and the results of their own creative and intellectual activities (Articles 13, 41 of the Constitution of Ukraine)¹⁶. It is important that the Constitution of Ukraine¹⁷ establishes three main forms of ownership. This is private, state, and municipal property. However, the Civil Code of Ukraine¹⁸ defines this type of property (which has become very relevant in the EU) as trust property, which can arise based on a law or contract.

As can be seen from the content of Article 182 of the Civil Code of Ukraine¹⁹, property rights, in particular, the rights to immovable things, encumbrances and prohibitions of such rights, their creation, transfer, and termination must be registered in accordance with the procedure established by the state, conducted publicly, and carried out by the relevant authorities. Notably, the fact of state registration is not the moment of acquisition of a real right, but only registers its presence. The transfer of property rights and real rights in Ukraine takes place by making transactions that can be unilateral, bilateral, and/or multilateral (will, power of attorney, contract, etc.). In most cases, the transfer of property objects to municipal and state organisations

¹⁶ Constitution of Ukraine. 1996. Retrieved from <http://zakon2.rada.gov.ua/laws/show/254k/96-Bp>

¹⁷ Constitution of Ukraine. 1996. Retrieved from <http://zakon2.rada.gov.ua/laws/show/254k/96-Bp>

¹⁸ Civil Code of Ukraine. 2003. <http://zakon2.rada.gov.ua/laws/show/435-15>.

¹⁹ Civil Code of Ukraine. 2003. <http://zakon2.rada.gov.ua/laws/show/435-15>.

takes place by assigning these institutions the right of operational management or the right of economic management²⁰.

In addition to these, the Civil Code of Ukraine²¹ also regulates relations associated with the use of other people's property, including easement relations related to the use of land plots, other natural resources, or real estate objects in order to satisfy the interests of third parties. In turn, the right of private property is terminated in the event of absolute and irreversible loss of legal ties between property objects and their owners based on committing/not performing specific actions or through the commission of special legal acts (contracts, court decisions, actions of the parties to legal relations that are illegal, legal events and facts, legitimate use of property)²².

Land in Ukraine is recognised as the main national wealth protected by the state. Land ownership rights are guaranteed both for citizens, legal entities, and for the state itself. Article 81 of the Land Code of Ukraine²³ provides for the following grounds for acquiring land ownership rights: civil law agreements; free transfer of state and municipal property from land; privatisation of a land plot in use; acceptance of inheritance; allocation in kind of a land share. In most countries of the European Union, provisions on the acquisition and ownership of land are included in the civil codes. Each state has created special management bodies in the field of land relations, which are represented in the form of bureaus, agencies, services, etc.²⁴.

In Ukraine, residential buildings, apartments, and other residential premises that have a purpose and are suitable for permanent or temporary residences in them are recognised as housing for individuals. Moreover, housing rights are protected by law, so eviction from residential premises or restriction of the right to use it is possible only in a legal manner. In turn, a person can be recognised as having lost the right to use housing due to its absence. The grounds for acquiring, implementing, restricting and terminating

²⁰ LITOSHENKO, O.S. Legal regime of property of state and communal enterprises. *Scientific Electronic Journal*, 2020, 1, 96-99.

²¹ Civil Code of Ukraine. 2003. <http://zakon2.rada.gov.ua/laws/show/435-15>

²² BILETSKYI, D.M. Ways to terminate the right of private property under the civil legislation of Ukraine. Odessa: National University "Odessa Law Academy", 2018.

²³ Land Code of Ukraine. 2001. <https://zakon.rada.gov.ua/laws/show/2768-14#Text>

²⁴ ILKIV, O.V. Specifics of using and protecting land resources in Ukraine and foreign countries. *Journal of Legal, Ethical and Regulatory Issues*, 2021, 24, 1-10.

housing rights are set out in the Civil Code of Ukraine²⁵ and the Housing Code of the Ukraine²⁶. There are such forms of realisation of the right to housing: receiving for indefinite use from the state or public housing stock; receiving for indefinite use from the fund of housing and construction cooperatives; acquiring ownership through privatisation or acquisition. On the other hand, one of the fundamental documents for EU states, which establishes the duty of the state to take measures aimed at promoting access to housing of an appropriate level; preventing homelessness and reducing it in order to gradually eliminate it; setting housing prices affordable for low-income people is the European Social Charter²⁷. The Universal Declaration of Human Rights²⁸ generally for the first time established the right of everyone to such a standard of living (food, clothing, housing, medical care, social services), in order to maintain health and well-being. The right to adequate housing is also recognised by the International Covenant on Economic, Social and Cultural Rights²⁹ and the European Convention on the Legal Status of Migrant Workers³⁰.

In the Romano-Germanic system of law, the institutions of real law are also property rights and, accordingly, real rights to other people's property objects: easement, usufruct, pledge, etc. The theory of Eastern European and Western European states distinguishes such concepts as "real law" and "real rights"³¹ or real law from the standpoint of subjective and objective understanding. Examples of effective legal regulation of property rights in the European Union are the German Civil Code³², which establishes a general definition of property rights (complete and limited), but does not separately distinguish such a category as "real rights".

The system of real rights to other people's property in Germany includes: inherited building rights, easements (usufructs, limited personal easements, and

²⁵ Civil Code of Ukraine. 2003. <http://zakon2.rada.gov.ua/laws/show/435-15>

²⁶ Housing Code of the Ukraine. 1983. <http://zakon4.rada.gov.ua/laws/show/5464-10>

²⁷ European Social Charter. 1996. https://zakon.rada.gov.ua/laws/show/994_062#Text

²⁸ Universal Declaration of Human Rights. 1948. http://zakon2.rada.gov.ua/laws/show/995_015

²⁹ International Covenant on Economic, Social and Cultural Rights. 1966. https://zakon.rada.gov.ua/laws/show/995_042#Text

³⁰ European Convention on the Legal Status of Migrant Workers. 1977. https://zakon.rada.gov.ua/laws/show/994_307#Text

³¹ BAHR, Ch. *Common European property law basics, Objects of legal protection under property law, types and forms of subjective property rights*. Munich: C.H. Vilnius, 2015.

³² MAKOVSKIY, A.L., and BERGMANN, V. *German Civil Code: German civil code with introductory law*. Moscow: Wolters Kluver, 2006.

land easements), building rights, pre-emptive purchase rights, obligation of real rights, collateral³³. The French Civil Code, by analogy with the German one, does not define "real law", but establishes the general formulation of "property rights", which is an integral and complete possession of a thing³⁴. In general, French legislation in the system of property rights includes the following rights: the right to use someone else's property, property rights themselves, and other types of real rights (for example, collateral rights)³⁵. As for state property, the EU member states regulate such concepts as "municipal" and "communal" property. One of the new common types of property in the EU countries – trust – is also of interest. In the Convention on the Law Applicable to Trusts and on their Recognition of July 01, 1985³⁶ a trust is related to legal relations that arose during the life or death of the owner(s), then the property is transferred to the disposal of the trustee for the purpose of obtaining income for the person specified by the owner or for other stipulated purposes. Moreover, the institution of property management can be implemented through trust representation^{37,38}. In turn, the general legal grounds for the existence of trust property are consolidated in the norms of the Model Rules of European private law, which are called Draft Common Frame of reference (DCFR)³⁹. In addition, in European countries, real rights arise on the basis of transactions, court decisions or legal facts and are subject to registration in special legal cadastres.

The rules of ownership acquisition in different countries are primarily governed by their respective Civil Codes and special laws. These legal frameworks provide the basis for understanding how individuals can acquire and establish ownership rights over various types of property. In many civil law

³³ HEINTS, R.M. Property rights under German law. *Current Problems of Improving the Current Legislation of Ukraine*, 2016, 42, 45-58.

³⁴ GILIKER, P. Codifying tort law: Lessons from the proposals for reform of the French civil code. *International and Comparative Law Quarterly*, 2008, 57(3), 561-582.

³⁵ BOSTAN, L.M., and BOSTAN, S.K. *History of the state and law of foreign countries*. Kyiv: Center for Educational Literature, 2008.

³⁶ Convention on the Law Applicable to Trusts and on their Recognition. 1985. <https://www.hcch.net/en/instruments/conventions/full-text/?cid=59>.

³⁷ MARTSENKO, N. 2019. Comparative legal characteristics of property rights in the legislation of Ukraine and foreign countries. In: *Guarantees and protection of fundamental human rights as an integral part of Ukraine's integration into the EU* (pp. 187-198). Olsztyn: University of Warmia and Masuria.

³⁸ NEKIT, K.H. The concept of trust property (trust) in the legislation of European countries and model rules of European private law. *Young Scientist*, 2015, 2(17), 822.

³⁹ BAR, Ch., and CLIVE, E. *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of reference (DCFR)*. Munich: Sellier European Law, 2000.

jurisdictions, including countries such as Germany, France, and Italy, the Civil Code sets out the general principles and rules for ownership acquisition. These codes typically outline the different modes of acquiring ownership, such as through purchase, inheritance, gift, or occupation. They also establish the requirements and procedures for the transfer of ownership, including the necessity of a valid contract, registration, or other formalities⁴⁰.

In Germany, the process of acquiring real estate, including agricultural lands, is governed by the Bürgerliches Gesetzbuch (BGB) - Civil Code. To make the acquisition legally valid, a written contract must be concluded and registered in the land register (Grundbuch). Regarding agricultural lands, there may be restrictions on the acquisition of such lands by foreigners or non-residents in certain federal states of Germany. In Germany, the acquisition of agricultural lands may pose challenges for foreign buyers due to certain restrictions imposed by the agricultural land laws of individual federal states. These laws aim to maintain the agricultural character of the land and prioritize its use by local farmers. Non-residents or foreigners may face limitations or additional requirements when purchasing agricultural lands⁴¹.

In France, the Civil Code (Code Civil) defines the rules for acquiring ownership of real estate, including agricultural lands. The purchase agreement must be in written form and signed by the parties. Registration of the property acquisition agreement is carried out in the public register, which ensures the legal validity of the acquisition. In France, the acquisition of real estate, including agricultural lands, is generally straightforward. However, challenges can arise when dealing with complex inheritance laws and regulations, particularly in cases involving shared ownership or succession issues. Additionally, specific zoning regulations may restrict the use of agricultural lands for non-agricultural purposes⁴².

In Italy, the acquisition of ownership of real estate, including agricultural lands, is governed by the Codice Civile (Civil Code). The purchase agreement

⁴⁰ BAO, H.X.H., MENG, C.C., and WU, J. (2021). Reference dependence, loss aversion and residential property development decisions. *Journal of Housing and the Built Environment*, 36(4), 1535-1562.

⁴¹ VLAHNA, K., and KUÇI, H. (2021). Property rights with special emphasis on the right of servitude according to the legislation in Kosovo with a comparative view with some European countries. *Review of International Geographical Education Online*, 11(8), 1761-1769.

⁴² Ibidem.

must be in written form and signed by the parties. Registration of property rights is carried out in the land register (Registro Immobiliare), ensuring the legal validity of the acquisition. In Italy, the acquisition of agricultural lands may be subject to strict regulations aimed at preserving the country's agricultural heritage and protecting local farmers. Non-residents or foreigners may face certain restrictions or requirements when purchasing agricultural lands, including the need to demonstrate their commitment to agricultural activities⁴³.

In Poland, the acquisition of ownership of real estate, including agricultural lands, is regulated by the Civil Code (Kodeks Cywilny). The purchase agreement must be in written form and signed by the parties. Registration of property rights is conducted by the relevant local land and mortgage register (Księgi Wieczyste), which guarantees the legal validity of the acquisition. In Poland, the acquisition of agricultural lands can be challenging due to the agricultural land ownership restrictions that prioritize local farmers. Non-residents or foreigners may face limitations on the size of the land they can acquire, and approval from local authorities may be required. Additionally, land consolidation efforts and changing land use regulations may further complicate the acquisition process⁴⁴.

Special laws often complement the provisions of the Civil Code by addressing specific types of property or unique circumstances. For example, countries with specific regulations regarding real estate ownership may have laws governing the acquisition of land, buildings, or other immovable property⁴⁵. These laws may establish additional requirements, such as obtaining permits or adhering to zoning regulations, to ensure proper ownership acquisition. In some countries, international treaties or agreements may also play a role in shaping the rules of ownership acquisition, particularly for cross-border transactions or specific industries. These agreements help harmonize legal frameworks and provide clarity for individuals or entities seeking to establish ownership rights across different jurisdictions. It is essential for individuals and businesses operating in these countries to be familiar with the specific rules of ownership

⁴³ Ibidem.

⁴⁴ Ibidem.

⁴⁵ DUDÁS, A. (2022). The rules on foreigners' right to acquire ownership of agricultural land in Slovenian, Croatian and Serbian law. *Journal of Agricultural and Environmental Law*, 17(33), 20-31.

acquisition applicable to their situations. Consulting legal professionals or experts in each jurisdiction is crucial to ensure compliance with local laws and regulations⁴⁶.

Overall, the rules of ownership acquisition in selected countries are determined by a combination of Civil Codes, special laws, case law, and international agreements. Understanding these legal frameworks is essential for individuals and businesses seeking to acquire and establish ownership rights over property in a given jurisdiction. The European Union does not have a unified property law; rather, it respects the diversity of property laws in its member states. However, some EU regulations and directives impact property laws, like the Mortgage Credit Directive or the AIFMD directive concerning real estate funds.

For Ukraine to adjust its property acquisition laws to be more compatible with European standards, it could consider implementing some of the following changes:

1. Introduce a system of public faith in the Land Registry, to provide greater certainty of ownership.
2. Implement a compulsory notarized agreement for the transfer of real estate ownership.
3. Adopt clearer rules on the acquisition of ownership through prescription.
4. Introduce EU-like directives for additional regulations.

As for the acquisition of agricultural lands, it would be crucial to make amendments to the Land Code of Ukraine, bringing more transparency, simplification, and protection for both buyers and sellers. It's also important to adjust agricultural land acquisition laws to the realities of the modern economy and agrarian sector, considering the EU's CAP (Common Agricultural Policy) standards and international best practices.

Discussion

The analysis of legal literature allows the authors to state that there are no special investigations devoted to the problem of legal regulation of property

⁴⁶ TAVARES, D.C., and HIRATA, A. (2021). Defects in Real Estate Acquisition: Differences between Brazilian and German Registration Systems. *Civillistica.com*, 10(2).

rights and other real rights in Ukraine in a comparative aspect with similar institutions in the EU countries. In all available scientific research, a single approach to understanding the essence of real rights can be traced. In general, real rights are understood as a set of legal norms regulating relations regarding the exercise of a person's right to material things. Nowadays, the main provisions on the regulation of property rights, as well as related and derived property rights in Ukraine and the EU states are consolidated at the constitutional level, in codified legislative acts and special laws. The authors agree with opinion of I.F. Sevriukova⁴⁷ that modern real rights must comply with the basic principles defined by the unified law of the state. When forming a new system of real rights in the civil legislation of Ukraine, absolutely all available types of real rights should be taken into account. Such legislation should contain requirements regarding the content of real rights, the grounds for their occurrence, exercise, restriction, termination, and protection. This will simplify the procedure for considering property disputes and make judicial protection of real rights effective.

At the same time, according to L.M. Dolgoplova, M.V. Us, S.O. Glotov⁴⁸ the possibility of exercising real rights in EU countries must necessarily meet the requirements of EU common law, consolidated in the relevant charters, declarations, directives, etc. This approach, in turn, gives the owner more opportunities to exercise their property right, as well as its protection. After all, in comparison with the EU countries, Ukraine does not have a supranational binding right in the sphere of property relations. Here, it is worth noting the need for recodification of civil legislation, which would allow avoiding obstacles created by legal conflicts regarding the possession and use of real rights. This is the focus of the studies by R.A. Maidanyk, N.I. Maidanyk, N. Popova⁴⁹. However, such recodification should be commensurate with the specifics of the development of real rights in Ukraine. In Ukraine, the right of ownership, which

⁴⁷ SEVRIUKOVA, I.F. Formation of the system of property rights in the civil law of Ukraine and some European countries: comparative analysis and problematic issues. *Constitutional State*, 2017, 28, 241-248.

⁴⁸ DOLGOPOLOVA, L.M., US, M.V., and GLOTOV, S.O. Relevant Issues of Property Rights Protection in Ukraine. *Journal of Advanced Research in Law and Economics*, 2020, 11, 1137-1144.

⁴⁹ MAIDANYK, R.A., MAIDANYK, N.I., and POPOVA, N. Rethinking the general part of property law in the context of Europeanization and codification. *Business, Economy and Law*, 2021, 6, 39-54.

exists completely separately from other real rights, includes the regime of ownership (actual control over property), use (the possibility of receiving profit or other benefits from property), and disposal (destruction of property or legal alienation of property, by selling it, donating it, bartering, etc.) of property objects. In Ukraine, property is divided into private, state and municipal. In the EU countries, property is divided into private and municipal, which was investigated by N. Martsenko⁵⁰. Moreover, the researcher did not focus on the advantages of such a concept of property division. The study suggests that the European position of dividing property into types is more justified, since this minimises corruption risks and simplifies bureaucratic privatisation procedures.

A.N. Lysenko, I.V. Lysenko, A.M. Gariaieva⁵¹, studying the specifics of the implementation of certain types of private ownership rights to immovable property, found that the right of ownership to property can be restricted or even terminated in accordance with the procedure established by law, only if the possession of such a right contradicts the general interests of the state and society. However, the legitimate restriction/termination of any property right should proceed, first of all, from the scope of exceeded powers to use property and the amount of damage caused to other participants in property relations, including the state. Investigating the regulatory mechanisms of trust ownership, K.H. Nekit⁵² suggests that trust as a modern type of property should be regulated in Ukraine, using the experience of real law systems of European states of continental law. Since this type of trust property provides that the right of ownership to the property belonging to the founder of the trust property is terminated, while the trust owner acquires a special right to the specified property, which is subject to protection in a separately provided procedure. In addition, the regulation of trust property in Ukraine also has some inconsistencies, since in the legal field there are concepts of "trust property" and "trust management", the delineation of which is not appropriate.

⁵⁰ MARTSENKO, N. 2019. Comparative legal characteristics of property rights in the legislation of Ukraine and foreign countries. In: *Guarantees and protection of fundamental human rights as an integral part of Ukraine's integration into the EU* (pp. 187-198). Olsztyn: University of Warmia and Masuria.

⁵¹ LYSENKO, A.N., LYSENKO, I.V., and GARIAIEVA, A.M. Exercise of the private property right to certain types of real estate property under the law of Ukraine. *Law and Safety*, 2020, 79(4), 122-129.

⁵² NEKIT, K.H. The concept of trust property (trust) in the legislation of European countries and model rules of European private law. *Young Scientist*, 2015, 2(17), 822.

As for land rights, the EU has provided fairly effective legal opportunities for the sale and lease of land, including for the purpose of attracting investment, developing its own production facilities, etc. Moreover, the structure of land relations management institutions in Ukraine is quite close to the European one. Meanwhile, O.V. Ilkiv⁵³ identifies a number of shortcomings of the land management system in Ukraine, as well as imperfections of laws and regulations in the field of land law. Such factors clearly negatively affect the implementation of land reform. In addition to the above, it is worth pointing out in practice the implementation of land rights is not guaranteed, since constantly there are questions about the impossibility of registering ownership of a land plot located under residential or non-residential buildings that already have owners; land raiding; free privatisation of land plots due to the lack of an appropriate land fund and about the discrepancy between the boundaries of land plots registered in state cadastres – the boundaries of plots in kind on the ground. In addition, there is an ambiguous situation regarding housing rights, if a person does not have direct family ties with the homeowner (this refers to eviction). Therefore, the Housing Code of Ukraine⁵⁴ requires urgent changes, as it is outdated and does not contain requirements for modern housing relations.

The issue of legal support of housing rights in Ukraine in comparison with the EU countries has been underinvestigated. Moreover, the list of ways to implement housing rights in Ukraine is quite wide, but in practice, due to the lack of state and municipal housing stock facilities, it is almost impossible to obtain housing through privatisation. But a number of international treaties in the EU recognise the right to housing as one of the most important civil rights, along with the right to respect for family and private life. According to the practice of the European Court of Human Rights, housing can be recognised as any residential or non-residential premises in which a person spends most of their life. These circumstances guarantee the right of everyone not to be illegally evicted from their occupied housing. At the same time, the procedure of eviction from occupied residential premises in recent years in Ukraine takes place with consideration of the postulates of EU law and only in cases of extreme

⁵³ ILKIV, O.V. Specifics of using and protecting land resources in Ukraine and foreign countries. *Journal of Legal, Ethical and Regulatory Issues*, 2021, 24, 1-10.

⁵⁴ Housing Code of the Ukraine. 1983. <http://zakon4.rada.gov.ua/laws/show/5464-10>.

necessity. In addition, it is necessary to eliminate conflict-of-laws provisions of codified legislation in the field of housing rental and removal of a person from registration in residential premises.

Regarding the protective mechanisms of real rights in Ukraine, the civil legislation of Ukraine provides for a fairly wide range of legal ways to protect real rights⁵⁵. Protection of real rights involves the use of coercive measures aimed at restoring violated subjective rights and ensuring the exercise of legal obligations by the guilty party. The choice of specific methods of protecting real rights depends on the essence of such rights and on the nature of the violations themselves. There are jurisdictional and non-jurisdictional forms of protection of real rights. Non-jurisdictional protection includes self-defence and notarial protection of rights. The jurisdictional form is directly related to the judicial protection of a personal property right. It is important to note that under martial law in Ukraine, in the case of forced alienation of property of individuals and legal entities, such methods of protecting real rights as compensation for alienated property and return of alienated property on the basis of a court decision are provided. The most effective are judicial methods of protection. In turn, the legal development of non-jurisdictional ways (as is the case in the EU countries) of resolving disputes related to real rights will reduce the time and cost of protecting such rights⁵⁶.

Conclusions

An analysis of the literature and European practice leads to the conclusion that in order to solve the above-mentioned problems in Ukraine, it is necessary to develop modern principles for the exercise of property rights and derivative property rights of citizens, to establish a system of appropriate measures of a state nature, to create effective administrative state methods for registration, transition, restriction, and termination of property rights, and the development of appropriate legislative support that would exist in accordance with the economic and social challenges of modern times, considering the experience of the development of the system of property rights consolidated in the law of

⁵⁵ Civil Code of Ukraine. 2003. <http://zakon2.rada.gov.ua/laws/show/435-15>.

⁵⁶ Convention on the Law Applicable to Trusts and on their Recognition. 1985. <https://www.hcch.net/en/instruments/conventions/full-text/?cid=59>.

European states. It is established that Ukraine has legally unresolved problems regarding the acquisition property rights, for the solution of which it is necessary to implement in Ukrainian legislation both pan-European standards in the field of property rights and the experience of specific EU states. In particular, the right of ownership in Ukrainian legislation is separated from the system of general real rights, which creates a number of additional conflicts and legal issues regarding the application of relevant legislative norms. In addition, it would be advisable for Ukraine to borrow the European concept of the absence of state property as such, since the existence of exclusively municipal property simplifies the procedures for using property for its intended purpose and limits the corruption component.

The study suggests implementing reforms that enhance transparency, efficiency, and certainty in the process of acquiring property rights. Specific recommendations include establishing a system of public faith in the Land Registry, mandating notarized agreements for the transfer of real estate ownership, defining clear rules for acquisition of ownership through prescription, and adopting EU-like directives for additional regulation. For agricultural lands, amendments to the Land Code of Ukraine are suggested to improve the buying and selling process, ensuring protection for both parties. This is especially crucial considering the significant role of the agrarian sector in Ukraine's economy. Implementing these changes could foster a more investor-friendly environment, enhance legal certainty, and boost economic development by encouraging more domestic and foreign investments in real estate and agriculture sectors. It is essential for the relevant authorities to consider these findings and recommendations in their policy decisions and regulatory reforms.

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