

TO THE EXTENT SUBJECT OF LEGAL REGULATION OF AGRARIAN LAW OF UKRAINE

**O.M. SVELIEVA, *laboratory assistant of Department of land and
agrarian law*¹,
National University «Yaroslav the Wise Law Academy of Ukraine»**

Investigate current issues in dispute delimitation of the subject of legal regulation of agrarian law as an independent branch in the law of Ukraine defined and justified the concept of «the subject of legal regulation of the agrarian law of Ukraine» in modern terms, differentiated range of social relations that form the basis of the subject of legal regulation of agricultural law held their separation from other similar public relations, vectors predicted future development of agrarian relations.

Agrarian law, an independent branch of law, agrarian relations, the subject of legal regulation beyond regulation.

Research the subject of legal regulation of agrarian law today is a growing interest from researchers. This is due to the dynamic and rapid development of social relations in agriculture, their intensification. They need in today's timely study of their specificity, the development process and development of the basis of research proposals for the development and adoption of relevant legislation in order to create conditions for ensuring food security. This approach creates the conditions for the transformation of the agricultural sector of Ukraine for high-performance, competitive on the domestic and foreign markets sector of the state economy, preserving Ukrainian peasantry as a carrier of identity, culture and spirituality of the nation, integrated rural development and social problems in rural areas.

Agrarian relations because of their social significance and impact on socio-economic development of the country has always been the focus of different scientific schools. However, at different stages of development of Ukrainian society on studies that were carried out in the area of agrarian relations, influence and impact of social and political factors. This

¹ Reviewer – Doctor of Legal sciences, Professor M.V. Shulga

significantly complicates the disclosure of specific agrarian relations that are the subject field.

In today's reform of agriculture policy research subject of legal regulation Ukraine Agrarian Law still applies, is of great theoretical and practical significance. Due to these problems the agricultural science and legal problem arises study the subject of legal regulation independent branch – agrarian law of Ukraine.

So important is the issue of a comprehensive analytical study of the concept and features of the subject of legal regulation of the agrarian law of Ukraine and its separation from objects other industries that are in close relationship with the agrarian law. In addition, a separate study require agrarian social relations as an object of transformation at the present stage of development of market economy in Ukraine. The latter identified the target article.

May 24, 2013 in Kharkiv, a round table dedicated to the memory of the outstanding scientist, lawyer, professor Julian Oleksandrovich Vovk «Recent advances in science land, agrarian and ecology law». This scientific event provided an opportunity not only to honor the memory of the outstanding scientist and raise for discussion acute disputes concerning the doctrines of land, agrarian, and environmental law.

In particular, in its research report, Professor V.V. Nosik rightly observed that the greatest achievements in science land, agricultural and environmental law is that the social and legal consciousness is a gradual revision the stereotypical views of scientists on the methodological foundations of land use and natural resources in agriculture and forestry, food security and quality environment on the basis of ownership of the Ukrainian people to land and other natural resources in a democratic, legal and social state [3, p. 25]. So the time for resolving disputes, on the subject of legal regulation of the agrarian law of Ukraine and disclosure of the current state of research in this area.

Issues of content regulation Ukraine Agrarian Law at various times studied famous domestic legal scholars, among them: N.O. Bagay, M.J. Vashchyshyn, O.V. Gafurova, V.P. Zhushman, V.M. Yermolenko, T.A. Kovalenko, V.V. Nosik, O.O. Pogrebnoy, V.I. Semchyk, A.M. Stativka, N.I. Titova, V.Y. Urkevych, V.S. Shelestov, M.V. Shulga, V.Z. Yanchuk and other scientists.

Despite numerous scientific publications on this subject, many of which only exacerbated the debate on the subject of legal regulation of the agrarian law of Ukraine and do not consider the current state of public

relations in agriculture. Among the issues that are still the subject of scientific debate are the lawyers of agrarian law and make an imbalance in the development of the same law, the following:

- The place of agrarian law in the national legal system (comprehensive, independent, comprehensive independent, comprehensive, integrated and specialized area of law);
- What kind of social relations in modern conditions can be attributed to the subject of legal regulation of Agrarian Law of Ukraine;
- Can it be called a relationship similar, whether they are complex;
- As differentiate social relations that are the subject of agrarian law from other similar relations, which by its name can be attributed to other items of similar industries (land, property, labor, organizational, managerial, tax, financial, investment, innovation and other often referred to as part of the subject Agrarian Law);
- What are the priorities of agrarian relations in the future and so on.

Such questions may seem strange at first glance because they are key to any industry, and therefore must be as most defined and justified. However, reality suggests that there are some gaps in the scientific and legal support some of these issues. Let's take another step towards the study of responses to questions.

Representatives of the modern doctrine of legal theory are the following main stages of formation of an independent branch of law: 1) the formation of a new field of public relations or intensification of existing areas (forming an independent subject of legal regulation), 2) the adoption of new regulations, the need for the formation of what are called natural given an independent subject of legal regulation (forming an independent branch of law), and 3) characteristics of regulated social relations generate the need to use special, it is the most efficient methods for their regulation, and 4) developing and strengthening the systemic links between a group of law and as a consequence – allocation metanorms (legal definitions, principles of law), the general part, the internal hierarchical structure of the industry (Institute of Law, sub-institutions right), 5) as a result of the accumulation of the above changes is dialectical leap, the transition of quantitative changes into qualitative – divergence (difference, distinction) system ties subsidiary' Law with «parent», i.e. the formation of an independent branch of law. Then follow the next two steps, which can be defined as «postsystems» 6) forming an independent science and discipline, 7) conceptualization of the idea of an independent nature of the law in the field of legal science [1, p. 13]. All these steps agrarian law of

Ukraine has successfully overcome and at this stage the main task is to strengthen its position in the national legal system. We will focus on the most pressing and controversial issues that in modern conditions require uncompromised solutions. In scientific and reference literature the subject of legal regulation of the agrarian law is defined as the agrarian social relations that make up a complex relationship (land, property, labor, organizational, managerial, financial, etc.), which in the process of agricultural production, processing and marketing of agricultural producers, as well as in relationships with other entities, public authorities and local governments [4, p. 131]. As you can see, the relationship is called a component listed subject of legal regulation of the agrarian law. Logical question arises: when these relationships will then act as the subject of their homologous areas such as land law, labor law, civil law, etc.?

Regarding land relations at the time expressed his opinion Urkevych V., who wrote that «Land Law and legislation defining the general conditions of land use in all spheres of public life, the general principles of land rights, the basis of their origin and termination issues land use and protection, management and others. However, the internal agricultural land relations, – he said – especially related to the transfer of agricultural enterprises a member of the land share contribution, its use and return». That is, as the author concludes, land relations can be attributed to the subject of agrarian law only in case of use of land for the production of these agricultural products. The conclusion – feature of object agrarian law is that it is manifested with internal (intra) agrarian relations.

Other similar lists a relationship that seems to have a «dual registration» is also related to the subject of legal regulation of the agrarian law only if they display both internal (intra-industrial) agriculture policy. Also, in my opinion, is not appropriate to call outlining the relationship of land, labor, etc., and immediately indicating the subject area, that is, for example, agrarian relations on the transfer of land share contribution, agrarian relations of membership in agricultural cooperatives, etc. Thus there is an opportunity to avoid inaccuracies in enforcement activity.

It can be reasonably argued that the main criteria for the separation of law from other agricultural sectors are: 1) subjects (participants) of these relations (farmers, agricultural cooperatives, agricultural companies, private (private rental), state and municipal agricultural enterprises and their associations, members of agricultural enterprises, farmers, persons who are private farm, agricultural exchanges, the Agrarian Fund, agricultural subsidies, insurance, etc.), 2) the items on which these relationships arise,

change and stop (production and business activities on agricultural land, agricultural production, in some cases, forest plantations and water bodies, agricultural property, membership in an agricultural enterprise, agricultural technology, land and property shares (shares) and the right them, etc.), 3) a common goal pursued participants relations – production, processing and sale of agricultural products, including commodity, food security and sustainable functioning of Ukraine agriculture. Contents of this relationship is in dynamic development, constantly expanding and becoming more prominent public character.

Thus, the subject of legal regulation of the agrarian law, which is not characteristic of other branches of law – is agrarian relations that can not be attributed collectively to the subjects of other areas of law.

Rightly observes M.J. Vashchyshyn that the current system of law in Ukraine there is no law, the scope of which is to some degree penetrated to the norms of other industries. How the author notes, "it is necessary to abandon the complexity of the agrarian law, which makes this a "less cheap", or even deny her own existence through borrowing provisions in other areas of law that are necessary to adjust the number of agrarian relations" [2, p. 194]. This may explain the fact that agrarian relations can not be considered homogeneous, given their diversity and different areas of their display.

Moreover, as the notes Yermolenko V.M., opposition and independent complex areas of the law was the result of insufficient study theory of law entity categories of «independence» and «complexity» in the context of their possible use in characterizing the components of the legal system [5, p. 23]. That is, these categories are not mutually exclusive and characterize different aspects in determining the legal field.

The views expressed by the position and analysis of research on the issues outlined allow the following conclusions.

First, the agrarian law of Ukraine – an independent branch of law governing agrarian relations, which consist in the production, processing and marketing of agricultural products, food security and sustainable rural development.

Second, the subject of legal regulation of the agrarian law of Ukraine are agrarian social relations that are complex.

Thirdly, according to many scientists, the subject of legal regulation of agrarian law is manifested with internal (intra) agrarian relations, but in the ongoing agrarian reform may be said that not only domestic agrarian relations exhibit their characteristic features. Modern social processes lead

to the emergence of new agrarian social relations that are more ambitious character. For example, relations in the field of quality control of imported and exported agricultural products in international cooperation in agriculture in ensuring food security, sustainable rural development, social development of rural areas and so on. This agrarian law provisions designed to fill gaps in the law and resolve these social relations.

Fourth, agrarian social relations can be grouped in the following categories: 1) relations in production, processing and marketing of agricultural products of natural and legal persons – subjects of agricultural management (e.g., relations in the field of organic agriculture, the use of biotechnology in agriculture, aquaculture development, including the sea, the development of crops and livestock, etc.), 2) relations in the field of highly profitable and competitive in the international market of agricultural production specified persons (logistics of agricultural production relations in the field of quality assurance and safety of agricultural products, government support for agricultural producers; relations in the field of agricultural insurance products, investment in agriculture, taxation of agricultural producers on the establishment and functioning of agricultural exchanges, the Agrarian Fund, agricultural subsidies, insurance, etc.), 3) relations in the field of Sustainable rural development (in the area of social development of the village, in the area of diversification of agricultural production, agricultural extension, ancillary industries and trades, etc.), 4) International cooperation in agriculture and others. This list is certainly not exhaustive.

Finally, concerning the priority development of agrarian relations in the future, it should be noted that recently there are research and development scientists mainly economists who emphasize the need for a new perspective on interaction concepts farming – agricultural sector – agricultural landscape and introduce a new concept of «agrosphere» that opens the thesis that farming implements its uniqueness to ensure the development of society by promoting it as a form of economic activity, source of income and provider of environmental services. In this case it is the creation of well-functioning system of cooperation between agricultural production and environmental safety. This will improve the competitiveness of the sectors agriculture and forestry, improve the environment, enhance quality of life in rural areas. There is an urgent need to implement the principles of sustainable development agrosphere the national agricultural policy, including its legal form.

References:

1. Головина А.А. Критерии образования самостоятельных отраслей в системе российского права : автореф. дис. ... канд. юрид. наук / А.А. Головина // Моск. гос. юрид. акад. – М., 2012. – 34 с.
2. Ващишин М.Я. Критерії самостійності аграрного права // Розвиток наук земельного, аграрного, екологічного та природоресурсного права / М.Я. Ващишин // Збірник наукових праць Круглого столу (19 жовтня 2012 р.) / за ред. Г.І. Балюк, М.В. Краснової, А.М. Мірошніченка, В.В. Носіка : [Електронний ресурс]. – Режим доступу: <http://law.univ.kiev.ua/science.html>.
3. Носік В.В. Розвиток доктрин земельного, аграрного та екологічного права у національній правовій системі України / В.В. Носік // Сучасні досягнення наук земельного, аграрного та екологічного права [текст] : збірник матеріалів круглого столу, присвяченого пам'яті проф. Ю.О. Вовка (м. Харків, 24 травня 2013 р.) / за ред. Шульги М.В., Саннікова Д.В. – Х. : Національний університет «Юридична академія України імені Ярослава Мудрого», Національна академія правових наук України, 2013. – 157 с.
4. Словник з аграрного права / уклад.: В.П. Жушман, О.О. Погрібний, В.Ю. Уркевич / за ред. В.П. Жушмана. – Х. : Нац. юрид. акад. України, 2010. – 160 с.
5. Ермоленко В.М. Некоторые узловые моменты современной теории аграрного права / В.М. Ермоленко // Современные приоритеты в развитии аграрного, земельного и экологического права: матер. Междунар. науч.-практ. конф., посвящённой памяти М.И. Козыря (г. Москва, 2 марта 2012 г.). – М. : Институт государства и права РАН, 2012. – С. 20–25.