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GENESIS OF LEGISLATIVE PROVISION OF THE RIGHT TO SHARE PARTIAL LAND OWNED PROPERTY IN UKRAINE

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SUMMARY

Comprehensive study of a particular legal phenomenon is possible only on the basis of its historical preconditions and the pre-normative legal regulation of the relevant social relations. Analyzing the legislative provision of the right to joint ownership of land in Ukraine appears to be necessary in the historical aspect, the relevant legal requirements regulating this right, which has a rich history.

Key words: genesis, land, joint property law, legislation.

ГЕНЕЗИС ЗАКОНОДАТЕЛЬСТВА ПРО ПРАВО ОБЩЕЙ ДОЛЕВОЙ СОБСТВЕННОСТИ НА ЗЕМЕЛЬНЫЙ УЧАСТОК В УКРАИНЕ

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АННОТАЦИЯ

Всестороннее исследование конкретного правового явления возможно лишь на основе его исторических предпосылок и предыдущего нормативно-правового регулирования соответствующих общественных отношений. Анализируя законодательное обеспечение права общей собственности на землю в Украине, представляются необходимыми в историческом аспекте соответствующие правовые предписания, которые регламентировали это право, имеющее богатую историю.

Ключевые слова: генезис, земельный участок, право общей собственности, законодательство.

Comprehensive study of a particular legal phenomenon is possible only on the basis of its historical preconditions and the pre-normative legal regulation of the relevant social relations. Analyzing the legislative provision of the right to joint ownership of land in Ukraine appears to be necessary in the historical aspect, the relevant legal requirements regulating this right, which has a rich history.

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As you know, in the twentieth century. the development of relations of property rights in the territory of present-day Ukraine was characterized by the refusal or restriction of private property, which is a form of joint ownership. In the Ukraine of the Soviet period, as in other republics of the former USSR, the basic legal form, first of all, of the individual appropriation of material and other benefits was the in-

stitution of not private but personal property of citizens.

After the October Revolution of 1917 under Soviet rule and with the spread of the regime of socialist ownership of the tools and means of production, the violent destruction of relations of capitalist private property, including land, took place. Personal property of citizens provided for an individual form of assignment of the results of their work only in order to meet their personal needs. Relations of property, including personal, were settled in the Soviet period by civil law. At that time, in all the Union republics, the legislation allowed to have in private only household items, personal consumption, comfort and auxiliary household, housing and labor savings. Thus, the Civil Code of the Ukrainian SSR in 1922 severely restricted the scope of property rights. In particular, the land



was proclaimed the property of the state and could not, like the rights to it, be the subject of civilian traffic. Ownership and use of land plots were allowed solely for the right use. The legal regime of joint ownership of the property was determined by Articles 61-65 of the Civil Code of 1922. The land was not considered to be property, however, the relations of joint partial ownership of the property had not yet found their legislative consolidation in the Civil Code of the USSR in 1922 in the Civil Code of the USSR in 1963, in comparison with the Civil Code of the USSR in 1922, the relations of joint ownership of property objects were settled. For the first time in Articles 112-119 of the Central Committee of the Ukrainian SSR in 1963, the legal regulation of relations of common partisan property has been consolidated.

After the October Revolution of 1917 under Soviet rule and with the spread of the regime of socialist ownership of the tools and means of production, the violent destruction of relations of capitalist private property, including land, took place. Personal property of citizens provided for an individual form of assignment of the results of their work only in order to meet their personal needs. Relations of property, including personal, were settled in the Soviet period by civil law. At that time, in all the Union republics, the legislation allowed to have in private only household items, personal consumption, comfort and auxiliary household, housing and labor savings. Thus, the Civil Code of the Ukrainian SSR in 1922 severely restricted the scope of property rights. In particular, the land was proclaimed the property of the state and could not, like the rights to it, be the subject of civilian traffic. Ownership and use of land plots were allowed solely for the right use. The legal regime of joint ownership of the property was determined by Articles 61-65 of the Civil Code of 1922. The land was not considered to be property, however, the relations of joint partial ownership of the property had not yet found their legislative consolidation in the Civil Code of the USSR in 1922 in the Civil Code of the USSR in 1963, in comparison with the Civil Code of the USSR in 1922, the relations of joint ownership of property objects were settled. For the first time in Articles 112-119 of the Central Committee

of the Ukrainian SSR in 1963, the legal regulation of relations of common partisan property has been consolidated.

The state ownership of land, which arose as a result of nationalization, formed the basis of land relations in the USSR, which, on the basis of voluntary association and equality with other union republics, included the Ukrainian Soviet Socialist Republic. The land, which was in the private ownership of human exploitation, was used by the Soviet Union to develop the productive forces of the country in the interests of the entire nation.

State ownership of land played a decisive role in ensuring the victory of socialism in the USSR. It created the possibility of the most desirable location of all branches of the national economy and became one of the most important conditions for the transition to socialist forms of land use. With the creation in the course of socialist construction of the conditions for the mass collectivization of disassociated individual farms the peasantry was on the path to socialism. As a result of transformation into a cooperative plan and the victory of the collective-farm system, the peasant question got its true solution.

Exclusive state ownership of land was the basis of the land system in the state. Legal regulation of relations of state ownership of land was carried out primarily at the Union level. Thus, the Fundamentals of Land Legislation (1968) as a union normative act regulated the right of exclusive state ownership of land, fixed the concept of a single land fund and the classification of land by categories, established the basic rules for land use, defined the rights and responsibilities of land users (Article 7-9 Fundamentals of Land Legislation 1968).

The provisions of the Union Foundations were detailed and specified in the Republican Land Codes. So the Land Code of the Ukrainian SSR (1970) was to be devoted to the detailed regulation of land relations. It formed the basis of domestic land legislation and met the needs for regulation of public relations in the field of use and protection of land in Soviet times.

Unfortunately, neither the Fundamentals of Land Law, nor the Land Code of the Ukrainian SSR, in terms of exclusive state ownership of land, had been said about private ownership of land.

The land, being in accordance with the Soviet land legislation, the object of the right of state property and the most important wealth of Soviet society, acted as the main means of production in agriculture and forestry, the spatial basis for the placement and development of all branches of the national economy. Scientifically grounded, rational use of all lands, their protection and all-important increase in soil fertility was determined by the nationwide task.

On February 28, 1990, the Supreme Rada of the USSR adopted the Fundamentals of the Legislation of the Union of PCPs and the Union Republics on Land. It was determined that «the land is the property of peoples living in this territory.» Citizens received the right to purchase land for life or rent. The regime of granting land to natural and legal persons was regulated in detail. Land tenure relied on local councils.

The foundations created conditions for rational use and protection of land, reproduction of soil fertility, preservation and improvement of the natural environment. There was no mention of private property and its variants in the Fundamentals of Land Law. But in March 1990, the Law «On Property in the USSR» was adopted, which listed its three main forms: «property of citizens», collective and state. In addition, the existence in the USSR of the ownership of foreign states, international organizations, foreign legal entities and citizens was allowed. Ownership could be shared or shared and mixed. This law gave rise to the appearance of varieties of land ownership.

Important for the legalization and legislative consolidation of the right to private ownership of land were the principled provisions of the Land Code of the Ukrainian Soviet Socialist Republic of December 18, 1990. This is, in particular, about the lifetime inherited possession of land by Ukrainian citizens. In the lifetime inherited possession of land in accordance with Art. 6 of the Land Code of the Ukrainian Soviet Socialist Republic of December 18, 1990. was provided to citizens of the UkrSSR for: the conduct of a peasant (farmer's) economy; conducting a personal auxiliary farm; construction and service of a residential building and utility buildings (private plot); gardening, dacha and garage construction.



Analysis of Art. 39 of the Land Code of the Ukrainian SSR (1990), which enshrined the rights of landowners, indicates that they actually concerned private owners with land. The procedure for the inheritance of the right to own a land plot was determined by the Land Code of the USSR and other laws of the Ukrainian SSR. As is known, for example, when a legacy was acquired on a land plot, two or more persons had a joint partial ownership.

Private ownership of land has been legalized and has been legally consolidated in the Law of Ukraine «On Land Ownership Formation» of January 30, 1992. (Information from the Verkhovna Rada of Ukraine, - 1992. - 18. - P. 225). This law was introduced in Ukraine along with the state – a collective and private ownership of land. It was established that land ownership in Ukraine has the following forms: state, collective, private. All forms of ownership were declared equal by law.

The provisions on the private ownership of land for citizens have evolved in the Land Code of Ukraine of March 13, 1992. So, according to Art. 6 of the Land Code of Ukraine (1992) citizens of Ukraine received the right to receive land plot ownership for: management of a peasant (farmer's) farm; conducting a personal auxiliary farm; construction and service of a residential building and utility buildings (private plot); gardening; cottage and garage construction.

Citizens acquire ownership of land in case of: their inheritance; obtaining a share of land in the common property of the spouses; purchase and sale, donation and exchange. Decree of the Cabinet of Ministers of Ukraine dated December 26, 1992. «On privatization of land plots» established that rural, settlement, and city councils of people's deputies ensure that during the year 1993 the citizens of Ukraine transferred to private ownership the land plots granted to them for maintenance of a private auxiliary farm, construction and maintenance residential building and household buildings (private plot); gardening, cottage and garage construction, within the limits of standards, established by the Land Code of Ukraine. It is prohibited to transfer private ownership of land plots in the territories of the areas of alienation and unconditional (mandatory) resettlement that have undergone radioactive contamination as a result of the Chernobyl disaster. The de-

creed provided the citizens of Ukraine with the right to sell or otherwise alienate land plots transferred to them for the purposes specified in Article 1 of this Decree, without changing their intended purpose.

Legislative consolidation of private ownership of land has created the basis for acquiring land plots into private ownership by individuals (citizens of Ukraine, foreigners and stateless persons) and legal entities of private law. The named entities may act in accordance with the law and the subjects of the right of joint ownership of land.

Participation of citizens and legal entities in the right of joint ownership of a land plot depended on their land legal personality.

Conducting land and agrarian reform in the conditions of the existence of private ownership of land resulted in the functioning of joint partial and joint ownership.

The emergence of the right of joint ownership of land on land was related to the voluntary association by the owners of the land owned by them, the acquisition of the land plot by two or more persons under civil law agreements, the acquisition of the inheritance on the land by two or more persons, as well court decision. The circle of joint ownership of land included spouses and co-owners of a residential building.

Unlike the Land Codes of 1990 and 1992, the current Land Code of 2001 directly distinguishes between the existence of a common property and its varieties as joint and joint ownership, which take their origins from civil law. The relevant legal requirements regarding the regime of joint property rights are concentrated in chapter 14 «Ownership of land», which establishes Section III «Right to land» of the Land Code of Ukraine.

In particular, Art. 86 of the Land Code of Ukraine contains general provisions relating to joint ownership of a land plot, but defines the subject matter of this property. Separately in Art. 87 lists the grounds for the right of joint ownership of a land plot, the list of which is exhaustive. Detailed rules of possession, use and disposal of land plot, which is in joint partial ownership (Article 88 of the Land Code of Ukraine).

Special attention was paid by the legislator to the regulation of relations of joint ownership of the land. Yes,

Art. 89 of the Land Code of Ukraine outlines the circle of persons whose joint property may be landed, such as: spouses; members of the farm, unless otherwise provided by an agreement between them; co-owners of a dwelling house; co-owners of an apartment building. It emphasizes that the ownership, use and disposal of land parcels of jointly-owned property are carried out in accordance with the contract or the law (Part 3 of Article 89 of the Land Code of Ukraine). The above article establishes the right of co-owners of a land plot that is in common joint property, on its division or on the allocation of a separate share from it, except in cases established by law. At the same time in Part 5 of Art. 89 of the Land Code of Ukraine states that the division of a land plot that is in common joint ownership with the allocation of the share of co-owner may be made subject to preliminary determination of the size of land shares that are equal, unless otherwise provided by law or not established by the court. These and other provisions of the Land Code, which relate to the rights of joint ownership of the land, give a clear idea of the joint ownership of the land plot and allow it to distinguish certain features.

Today the actual existence of common property visible in the legislation in force on Ukrainian territory since ancient times. In the development of social relations and the impact of the rights of other states, comprised of Ukrainian land, there was establishment of the institute common property, which permanently entrenched in the current Civil Code of Ukraine today, and is reflected in the Land Code of Ukraine. In addition to the Land Code of Ukraine that regulates joint ownership, these relationships are more fully disclose the civil law. Land plots and their rights are included in civil circulation. The land is recognized by the Civil Code of Ukraine as an object of real estate. Civil rights concerning the right to property are extended to the regulation of land relations. Thus, the general provisions on the ownership of regulated third book of the twenty-third chapter of the Civil Code of Ukraine, Article 316 defines ownership as the right person for a thing (property), which it has under the law on his own will, regardless of the will of others. The content of the property right consists in the following powers: to own, use, dispose of their property.



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ОБЕСПЕЧЕНИЕ СЛЕДСТВЕННЫМ СУДЬЕЙ ПРАВ ПОДОЗРЕВАЕМОГО ПРИ РАССМОТРЕНИИ ХОДАТАЙСТВА ОБ ИЗБРАНИИ МЕРЫ ПРЕСЕЧЕНИЯ В КОНТЕКСТЕ ПРАКТИКИ ЕВРОПЕЙСКОГО СУДА ПО ПРАВАМ ЧЕЛОВЕКА

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АННОТАЦИЯ

Основы действующего уголовного процессуального законодательства определяют обязанности, общие правила рассмотрения ходатайства об избрании меры пресечения, а также требования к обязательному разъяснению подозреваемому при рассмотрении ходатайства о применении меры пресечения его прав (ч. 2 ст. 193 УПК Украины). Рассмотрение ходатайства о применении меры пресечения является одной из основных функциональных обязанностей следственного судьи. Обеспечение прав подозреваемого следственным судьей при рассмотрении ходатайства о применении меры пресечения в отношении его процессуальных прав является одной из базовых гарантий справедливого судебного разбирательства. В данной статье автор приводит анализ практики Европейского суда по правам человека, которая наиболее полно раскрывает содержание и сущность основных прав подозреваемого при рассмотрении ходатайства о применении меры пресечения.

Ключевые слова: следственный судья, права подозреваемого, судебный контроль, прецедентная практика, решения Европейского суда по правам человека.

GUARANTEE THE RIGHTS OF SUSPECT BY THE JUDGE INVESTIGATOR DURING THE APPLICATION OF PREVENTIVE MEASURES IN THE COTEXT OF THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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SUMMARY

The principles of the current criminal procedural law determine the responsibilities of the general rules for considering such a request, as well as the requirements for mandatory explanation to the suspect when considering a request for the use of a preventive measure of his rights (Part 2 of Article 193 of the CPC of Ukraine). Consideration of a petition for the use of a preventive measure is one of the main functional assignments of an investigating judge. A person's knowledge of a petition for the application of a preventive measure in relation to his procedural rights is one of the basic guarantees of ensuring a fair trial. The purpose of this article is to analyze the practice of the European Court of Human Rights, which, in the opinion of the author, fully reveals the content and essence of the fundamental rights of the suspect when considering a request for a preventive measure.

Key words: investigating judge, suspect's rights, judicial control, case law, decision of the European Court of Human Rights.