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LAND MANAGEMENT AND LAND-USE SYSTEMS IN FOREIGN COUNTRIES: BEST LEGISLATIVE PRACTICES

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SUMMARY

The article presents a scientific analysis of land management systems in the leading countries of the world (Italy, Germany, Poland, Canada, Australia, France), the organizational and functional features of land information systems are analyzed. The features of cadastral systems related to the issues of rational use and land use planning abroad are investigated. A number of proposals have been formulated for the national cadastre, which can be implemented on the basis of foreign experience in order to improve the content of the information system and make it convenient for citizens and bodies implementing state policy in the field of land relations.

It has been determined that foreign countries use a systematic, integrated approach to land management, which is appropriate in Ukraine in the conditions of decentralization of land relations.

Key words: land management, land use, land cadastre, information systems, foreign experience.

ЗЕМЛЕУПРАВЛЕНИЕ И ЗЕМЛЕУСТРОЙСТВО В ЗАРУБЕЖНЫХ СТРАНАХ: ЛУЧШИЕ ЗАКОНОДАТЕЛЬНЫЕ ПРАКТИКИ

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АННОТАЦИЯ

Статья содержит научный анализ систем землеустройства в ведущих странах мира (Италия, Германия, Польша, Канада, Австралия, Франция), проанализированы организационно-функциональные особенности земельно-информационных систем. Исследованы особенности кадастровых систем, связанные с вопросами рационального использования и планирования землепользования за рубежом. Сформулирован ряд предложений для отечественного кадастра, которые могут быть внедрены на основе зарубежного опыта с целью улучшения содержательного наполнения информационной системы и удобного использования для граждан и органов, осуществляющих реализацию государственной политики в сфере земельных отношений.

Определено, что зарубежные страны используют системный, комплексный подход к землеустройству, что целесообразно и в Украине в условиях децентрализации земельных отношений.

Ключевые слова: управление земельными ресурсами, землепользование, земельный кадастр, информационные системы, иностранный опыт.



Statement of the problem. Land fund management is defined as the activities of public administration and local authorities aimed at ensuring the rational use and protection of the land fund of the country [1, p. 116–119]. The land management system of each country has certain features, which is due to specific historical, economic, geographical circumstances. As a rule, land management of cadastral activities is carried out on the basis of formation, accounting, registration of land plots and other real estate objects. The main land management measures include: planning of land use by administrative-territorial units; land management; organization for rational use and protection of land; land parceling and land consolidation; land use improvement activities; formation of land plots, etc. [7]. The functional features of conducting land information systems abroad require research.

The relevance of the research topic. The need for systematic research and analysis of foreign experience in the field of land management, the creation and maintenance of information systems, land-use systems, inventory of resources is due to several factors. First, the process of decentralization of land relations in Ukraine, as one of the stages, provides for the mandatory inventory and assessment of agricultural land in order to transfer it to the communal property of the united territorial communities. Secondly, the European integration processes and the formation of the open market require the unification of information bases and administrative procedures related to the circulation, land lease in order to create a favorable investment climate in the country. Thirdly, changing the subject-object characteristics of the public administration system in the land sector and the redistributing land taxes in order to fill local budgets, the completion of land reform will require the introduction of best foreign practices in order to improve the quality of management, competent and efficient land use, clear administration of land taxes.

Status of research. Given the relevance of the outlined topics, it is worth noting that such scientists as V. Gorbatiuk, V. Dmytrusenko, V. Zhuk, A. Danylenko, T. Yevsyukov, Yu. Karpinsky, V. Kulnich, M. Lykhogrud, A. Lyashchenko, A. Mukhovyykov, A. Yurchenko and others have contributed to the study of various aspects of the development of land relations.

A significant number of domestic scientists, in particular, I. Bystryakov, S. Bulygina, D. Dobryak, V. Kryvov, L. Novakovskyy, S. Osypchuk, A. Sohnych, focus attention on the study of land cadastral systems.

Foreign experience in land use was researched by O. Botezat, R. Taratula, M. Trubina, the sphere of land value assessment is of scientific interest to A. Ivsaenko.

But given the dynamic of the development of land relations, the globalization of world technological and digital systems, the pace of rule-making of national and international legislation, foreign experience requires study and analysis.

The object and purpose of the article is a systematic analysis of foreign experience in the field of land management, cadastral systems and development of proposals for domestic legislation to improve the mechanisms of management and administration of land resources at the state, regional and local levels.

Presentation of the main material. The basis for the competent management and administration of land resources in any country is an information system containing complete, objective, accessible information. In Ukraine, such an information base is the State Land Cadastre. The national legislator enshrined the concepts of the State Land Cadastre in the Land Code of Ukraine as follows – this is a unified state system of land cadastral works, which establishes a procedure for recognizing the fact of the emergence or termination of the right of ownership and right to use land plots and contains a set of information and documents on the location and legal regime of these land plots, their assessment, land classification, quantitative and qualitative characteristics, distribution among landowners and land users [4].

In addition, a special Law of Ukraine “On the State Land Cadastre” was adopted in 2011, which stipulates that the State Land Cadastre is a unified state geographic information system about the land located within the borders of Ukraine, their intended purpose, restrictions in their use, and also data on the quantitative and qualitative characteristics of land, their assessment, the distribution of land between owners and users [8].

Based on the above definitions, it is advisable to include the following aspects in the functions of the State Land Cadastre of Ukraine: legal (recognition of the fact of the presence of a plot, its boundaries, registration of property rights, rights of use); informational (providing data on the objects of the State Land Cadastre and topographic-geodetic and cartographic materials); administrative (performance of land cadastral work, provision of complete and reliable information, which is the basis for management decisions).

However, despite such multifunctionality of the cadastre, it lacks data on buildings, real estate and property rights to it, this information is contained in the State Register of Real Estate Rights. Given that the function of cadastral registration of land plots is performed by bodies of the state land cadastre, and the function of registration of rights by the State Register of Rights, this has caused certain inconvenience for both citizens and employees of the above institutions.

The basic principle of functioning of the State Land Cadastre – the principle of openness and accessibility of information – needs further revision. Indeed, in live regime and free of charge you can use only the information posted on the website of the Public Cadastral Map of Ukraine. However, a huge amount of data is in the paid access, which can be obtained, for example, by using the service of providing extracts from the State Land Cadastre.

Another imperfection is that there are frequent errors occurring in the State Land Cadastre, such as the cadastral number duplication, the definition of the cadastral number without its assignment until 01.01.2013, the alienation of parts of land without prior division, instead of shares in the right to land plots, and others. Errors are caused both by technical failures of the system and may be subjective in nature. Specialists providing cadastre system maintenance need special training. Amending in the cadastral system is a complex and time-consuming process, requiring the efforts and attentiveness of the professionals involved.

Therefore, another reason for analyzing foreign experience is the imperfection of the Ukrainian system of the State Land Cadastre. At the same time, the overall positive trend in the development of modern land information systems in foreign countries is global coherence, coordination



of efforts between organizations working with relevant information that are directly responsible for the formation of cadastral data in their field of activity. Therefore, in a number of countries the information required for various purposes is concentrated in a single information system or the exchange of information between different systems is organized [11, p. 31].

An ideal example, in this context, is Italy, where in 1886 by the Constitutional Law № 3682 “Real Estate Balancing Act” a unified land cadastre was established, the main purpose of which was to tax real estate. Italy is one of the 13 European countries where the cadastre and register of rights are maintained by one governing body. From a functional point of view, the cadastre of the Italian Republic combines two registers – “legal” and “tax (fiscal)”, which optimizes the information space. The contents of the cadastre are divided into two parts: 1) records of an administrative nature, including records about the owner; 2) records of geometric nature that determine the topographic indicators [5, p. 46]. It is this content division that has become the basis for two major land information systems: the land cadastre and the housing and construction cadastre.

General management and control over the implementation of cadastral activities are entrusted in the Ministry of Economy and Finance of the Italian Republic. The main volume of technical and operational activities within the competence of the Ministry is carried out by a territorial agency, which is one of the four fiscal agencies established within the scope of Ministry, the other agencies are a customs agency, revenue and state property agencies [12].

A significant defect of the cadastre is the lack of legal foundation, that is, certificates received from the registry do not have legal force, which causes a number of legal negative consequences for buyers [9, p. 50].

Founded in Germany in 1817, a similar multi-purpose land cadastre serves as a basis for taxation, property registration and land assessment. Along with the generally accepted functions of the state register, real estate cadastre information is the basis for land information systems and is used for territorial –administrative management and systematic development of agriculture. The main legal act

regulating the operation of the cadastre is the Hessen Land Law “On Real Estate Cadastre and Geodetic Survey”, adopted in 1992.

The management of the real estate cadastre is functionally assigned to the federal lands (regional level) and is maintained by the respective land management and land cadastre departments. At the same time, there is no federal (national) level in the cadastral system in Germany. Each federation has its head office and regional offices. The registration of completed land operations is assigned to special workers whose activities are subject to licensing. The land manager’s license may be obtained by a person who has the necessary university education and two years of practical experience [6, p. 16].

Germany has developed a system of public administration of land relations at the local level. Each federal land develops its own complex (plan) of measures for the development of land use of the controlled territories. A striking example of successful self-government is that each action plan is discussed at a public hearing. Inter-farm land management is mainly represented by land consolidation and land use regulation [3]. Such experience can be useful for Ukraine in the context of community involvement in land management.

One of the latest land legislations in Europe, which is worth considering from the perspective of studying and gaining experience, is the legislation of Poland. Thus, the term “cadastre”, appeared in Polish law only in 2005 and is defined as the official inventory of land plot descriptions.

Organizationally, the real estate cadastre is maintained by the Main Department of Geodesy and Cartography. The structure of the service comprises 16 voievoda (regional) offices and 425 powiat (subregional) offices. Such an extensive system of public authorities has brought the successful reform of land decentralization.

The peculiarity of the cadastral system in the Republic of Poland is that its jurisdiction falls under the competence of various government departments (the Ministry of State Administration and Internal Affairs, Ministry of Justice and Ministry of Finance) and local governments at different levels. That is, the cadastral system is accessible to all state organizations,

which are entrusted with the implementation of tasks in the field of land relations. An important groundwork of modern Polish society is that information on land plots, buildings and premises is open to the public and widely available (restrictions apply only to personal data). The integrated electronic system enables the exchange of data between the real estate registry, the soil registry, the mortgage registry and the fiscal registry.

The most advanced land cadastral system in Europe is considered to be French, and it also has a fiscal focus. Legal regulation of the activities of the land cadastral system is carried out by the Civil Law. The operation of land cadastral works is provided by the General Directorate of Tax Services, Tax and Land Operations, with an extensive system of local authorities, which include: tax centers, cadastral inspections, land departments, tax services, there are also regional land cadastre information centers. A sufficiently large number of public authorities are called upon to ensure the functioning of the cadastre, which is why there is a specialized National Cadastral School in Toulouse that provides basic training for professionals.

The French National Cadastre Service operates in several areas: administrative, legal and technical – a special service has been set up to implement each of them. Thus, the administrative service, in accordance with the powers assigned to it, carries out: the formation of cadastral registries, registration of the transfer of ownership of the land plot, the issuance of copies and extracts from cadastral documents, the calculation of land taxes. The legal service of the Land Cadastre is engaged in the delimitation of land ownership, identification of land data, its individual plots, and maintenance of land cadastral records. The technical service is responsible for: restoration of old and damaged cartographic plans, coordination, inspection and centralization of land survey, the preservation of boundary marks and the geodetic network as a whole [10, p. 16]. It is worth noting that at the local level (in the cadastre bureau of communes) the documentation is computerized and is constantly updated on 1 January each year.

Considering the land management experience of a prominent representative of the Anglo-Saxon legal family – Canada,



it is worth noting that the main purpose of the functioning of land cadastre is not only fair taxation of landowners but also guaranteeing land ownership. Canada is an example of a country with an active agricultural land market (about 98% of it are privately owned).

The bulk of legislation in the field of land relations is carried out by the provincial authorities (the smallest unit of administrative-territorial division). Therefore, local authorities have extremely broad powers in the area of land relations management. At the same time, some provinces have introduced rather strict measures in cases of violating agricultural land use (British Columbia, Newfoundland, Quebec) [2, p. 407].

The powers to ensure the maintenance of the cadastre, the study of the country's resources with the aim of predicting land productivity are among the functions of the Land Inventory Service. It is the data obtained by this Service that forms the basis for management decisions, planning and land resources management by both federal and provincial authorities. The information entered in the cadastre is subject to differentiation in four directions, depending on the needs of land assessment: 1) for agriculture, 2) forestry, 3) for recreational purposes, 4) reproduction of fauna.

Taking into account the traditions of the Anglo-Saxon legal family, it should be noted that the registration system contains complete legal information about the land and makes it possible to identify all the owners of the land from today to its first owner, of course, for the appropriate fee. This functionality becomes available due to the communication system between the numbering of ownership with the cartographic material of each land plot.

The Australian Land Registry has a radically different purpose unlike all the countries analyzed above. Thus, the main purpose of the functioning of the land registry of Torrens (Torrens Title System), by the way, it dates back to 1858) is the establishment and maintenance of the legal integrity of the borders, namely the possibility of their determination on the ground and subsequent restoration (rather than taxation), as in the previous cases) through the mechanism of issuing to the holder the certificate for all rights (property, lease, mortgage), that apply to the land. The certificate also

contains information on the encumbrance and restrictions of the owner's rights. It is the obtaining of the cadastral certificate that guarantees the rights of the property owner, which provides the Torrence system with a high degree of transparency.

Today, Australia's land cadastre has systematized various data (statistical, tax registers, planning documents, land cadastre) – which is why it is a spatial data base and provides activities of planning, land use, taxation, real estate market support, subsoil use, statistics, etc. [5, p. 25].

Conclusions. Thus, the systematic analysis of foreign experience in the field of land management, keeping cadastre system leads to the conclusion that leading countries are striving to ensure more complete cooperation between different users of land information, and therefore a large number of information systems have been created. Most land cadastrals combine fiscal, legal and information functions.

At the same time, each of the analyzed systems of land relations management has features that would be appropriate to introduce in the Ukrainian legislation. For example, active involvement of the community in land issues in the form of discussion at public hearings of a set of measures for the development of land management would make it possible to realize direct democracy in communities.

Poland's experience is extremely useful, as land reform has resulted in open access to information on land, buildings and premises for the public. In addition, the Polish cadastral system is open to all state organizations working in the field of land relations, which reduces the bureaucratic burden typical of Ukraine, and enables data to be exchanged between related registers (real estate registry, land registry, mortgage registry and fiscal registry).

Attention is also drawn to the French personnel training system, which is specifically designed for specialists of institutions implementing state policy in the field of land relations. Given the extensiveness and dynamism of the development of land legislation, the changing powers of communities, there is an objective need to create a specialized educational institution in Ukraine.

Australia and Canada are countries where land information systems operate to secure land rights and to ensure the rights

of citizens, which are the foundation of every state based on the rule of law.

The issues of separation of powers to manage land resources in Ukraine require further scientific research, taking into account international experience; assessment of land use efficiency at community level, etc.

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PRINCIPLE OF ADMINISTRATIVE PROCEDURE: THE EXPERIENCE OF FRG, POLAND

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SUMMARY

The author monitors the legislation in the area of administrative procedures of such European countries as Poland, FRG with the aim of consolidation the principles of the administrative procedure in order to adopt some principles in the legislation of Ukraine, which is now at the formative stage. The author also suggests grouping the principles of administrative procedure into two groups: general and specific. The definition of the concept of “principles of administrative procedure” was also provided by the author.

Key words: principles of administrative law, principles of administrative procedures, good governance.

ПРИНЦИПЫ АДМИНИСТРАТИВНОЙ ПРОЦЕДУРЫ: ОПЫТ ФРГ, ПОЛЬШИ

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АННОТАЦИЯ

Автор проводит мониторинг законодательства в сфере административных процедур таких европейских стран как Польша, ФРГ на предмет закрепления принципов административной процедуры с целью реципирования некоторых принципов в законодательство Украины, которое сейчас находится на стадии формирования. Также автор предлагает сгруппировать принципы административной процедуры в две группы: общее и специальные. В работе дается авторское определение понятия «принципы административной процедуры».

Ключевые слова: принципы административного права, принципы административных процедур, хорошее управление.

Statement of the problem. A significant role in the mechanism of legal regulation of administrative procedures belongs to principles – the key guidelines, which determine the basics of functioning and organization of administrative procedures. They possess a crucial value for an effective systemic regulation of administrative and procedural relations from the viewpoint of methodology, and also for the law enforcement of corresponding legal norms by government authorities in the course of their work [1, p. 256]. The principles serve as a reference point in the formation of a unified legal standard of a model for the relationships between the executive bodies and citizens, creating legal boundaries for the implementation of procedural activities of authorities. Without them, the administrative proce-

cedure efficiency would be particularly low, since the very decision-making process would have an uncontrolled by society, confidential and one-sided character.

In relation to the regulation of administrative procedure the goal of principles is to balance restrictions in relationships between the executive authorities and citizens. As was stated by M. Yefremov, the principles of administrative procedures are meant to restrain the limits of discretion of the public administration officials on one hand, and on the other hand – to grant private individuals maximum freedom in promoting their rights and interests [2, p. 14]. Moreover, the core of the principles comes down to the protection of human rights and freedoms from arbitrary acts and subjectivity by the authorities.