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FARMS: PROBLEMS OF LEGAL REGULATION

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This article is devoted to the analysis of the legislation on farming in Ukraine. The problems of legal regulation of the activity of farms are investigated. Suggestions for improving the current legislation on farming are formulated.

The article analyzes the legal regulation of the establishment and operation of family farms. There are three types of farms: farm that has the status of a legal entity, a farm that has the status of a family-type legal entity, a family farm that does not have the status of a legal entity.

The advantages of personal farming in comparison with family farming are given. Private farms may use for production only small plots of land provided for their activities, in contrast, farmers have the right to use land provided for both farming and personal farming, and commodity agricultural production. These entities are not equal participants in the agricultural market, and do not have the status of agricultural producers. Also, members of peasant farms are not insured persons.

An equally important aspect is the availability of existing programs of budget support for the agricultural sector, which is currently possible only for natural persons-entrepreneurs who have the status of a family farm.

A number of legislative acts and scientific works are analyzed and it is concluded that the similarity of legal status and the possibility of further acquisition of the status of family farms, which will operate on the basis of registration of a natural person- entrepreneur applies only to those personal farms whose activities are aimed at surplus in the future, their operation will be associated with the production of marketable agricultural products. Proposals have been made to change the requirements for a family farm without the status of a legal entity as a taxpayer of the fourth group of the simplified taxation system.

Key words: farm, family farm, legislation on farming, agricultural production, agrarian legislation.

Formulation of the problem. In terms development of agrarian economy of Ukraine prominent place on today they are occupied by small farms that are the main share of agricultural products. To such organizational and legal forms of business which activities belong to family farms having the status of a

legal entity, and an individual entrepreneur. In European countries such subjects of agrarian legal relations play important socio-economic and cultural role, and pits of rural lifestyle.

In Ukrainian law, the legal status of families farms is defined by the Law of Ukraine On the Farm of June 19, 2003 and the Law of Ukraine “On Amendments to the Tax Code of Ukraine and some laws of Ukraine on stimulating the formation and operation of family farms mayors ”dated July 10, 2018.

However, despite the detailed regulation of legislation order of activity of family farms. There are still many unresolved issues concerning the order of creation and state registration of such entities, as well as their payment of a single tax on Thursday that group of the simplified taxation system.

Analysis of research problem. Theoretical, political and practical aspects of formation and development such organizational and legal forms of entrepreneurship activities were covered in the works of the following scientists: V. Yermolenko, V. Zhushman, G. Kornienko, P. Kulinich, S. Lushpayev, O. Pohribny, A. Stativka, N. Titova, V. Urkevich, S. Khrypko, M. Shulga and others.

The purpose of the article there is a study of the typology of farmers farms, their characteristics, as well as consideration of features state registration and taxation of family farms mayoral farms.

Presenting main material. Before the independence of Ukraine, there were kolkhozes – collective farms throughout the former Ukrainian SSR, the vast majority of which were engaged in the production of agricultural products. Today such activity is called farming.

Article 1 of the Law of Ukraine “On Farming” defines that farming is a form of entrepreneurial activity of citizens who have expressed a desire to produce marketable agricultural products, process them and sell them for profit on land plots provided to them for ownership and/or use, including for rent, for farming, commodity agricultural production, personal farming [1].

In essence, farming is a form of entrepreneurial activity that can be carried out in the form of a legal entity or a self-employed person. From 2018, such entrepreneurial activity can be carried out on the basis of such constituent documents as the charter for legal entities, or an agreement or declaration on the establishment of a farm [3].

The national legislation of Ukraine is diverse, which is manifested in the existence of pluralism regarding some norms. Therefore, one of the types of farms is a family farm. This type of farm is considered family-owned, provided that it is registered as a legal entity or organized on the basis of the activities of a self-employed person, his/her business uses only the work of members of one family and has the status of a family farm. It should be noted that the head of a family farm can only be a member of the respective family [2]. As a rule, such a family includes persons who live together, are connected by common life and have mutual rights and responsibilities [4]. However, other persons may be involved in certain types of work, including seasonal work, which is related to the activities of the farm and requires special knowledge or skills.

Establishment of a farm is possible in two versions, as a legal entity or as a self-employed person. If this type of business activity is created in the form of a legal entity, then for its registration it is necessary to take into account that such a company can be created only by a citizen of Ukraine or several citizens of Ukraine, with ownership of land plot or the right to use such land plot.

The Law of Ukraine “On State Registration of Legal Entities, Self-Employed Persons and Public Associations” establishes a list of documents required for registration of this type of entrepreneurial activity: 1) application for state registration of a legal entity; 2) application for election of a simplified taxation system by a legal entity and/or registration application for voluntary registration as a value added tax payer, and/or application for inclusion in the Register of non-profit institutions and organizations in the forms approved by law – at the request of the applicant; 3) a copy of the original (notarized copy) of the decision of the founders or the decision of the relevant state body on the establishment of a legal entity;

4) constituent document of a legal entity – in case of creation of a legal entity on the basis of its own constituent document; 5) a document confirming payment of the administrative fee [5].

One of the novelties of the legislation on the establishment of a farm as a family one, is the opportunity to organize this type of activity by an individual independently or jointly with members of his/her family on the basis of a contract (declaration). Such a contract is concluded by an individual together with members of his/her family in writing and should be notarized at the location of property and land plots of the farm. The head of a family farm without the status of a legal entity is a family member defined by the agreement on the establishment of a family farm, who is registered as a self-employed person. After concluding such a contract, the head of the family farm must register as a self-employed person or register changes to the information about the self-employed person.

The terms of the contract must reflect the following data:

- a) name, location of the farm, purpose and types of its activity;
- b) the procedure for decision-making and coordination of joint activities of members of the farm;
- c) the legal regime of common property of members of the farm;
- d) the procedure for covering costs and distribution of results (profit or loss) of the farm activity between its members;
- e) the procedure for entering and leaving the farm;
- e) labor relations of members of the farm;
- f) surname, name and patronymic of members of the farm, degree of family connection, passport data and registration numbers of taxpayers' registration cards (for individuals who due to their religious beliefs refuse to accept the registration number of the taxpayer's registration card and officially notified the relevant supervisory authority and have a mark in the passport, registration numbers of taxpayers' registration cards are not indicated) [2].

The scientist O. Gafurova claims that in today's conditions the legal status of a family farm, organized on the basis of the activity of a self-employed person, corresponds to the legal status of a household plot. Although the purpose of these farms is different (in a household plot – is to meet the personal needs of its members; in a farm – to make a profit), but the means to achieve it are not very different: for a household plot – is the production, processing and consumption of agricultural products, as well as the realization of its surpluses; for farming – production of marketable agricultural products, its processing and realization.

That is, in both cases – it is the realization of marketable agricultural products [6, p. 109]. However, it is not always necessary to equate the concept of family farming and household plot, because in the first case it is an activity registered in the manner prescribed by law that brings income to local, territorial, state budgets, and the second is only the actual employment of a person who thus realizes its natural needs in the form of food and existence in the case of the realization of “leftovers”.

The agricultural sector in the country has always been not in the last place, but at some point in time this system failed in part, which is expressed in insufficient state support for private farms and household plots, that led to the formation of two groups of sectors of the agro-industrial complex. On the one hand, the corporate sector is large and very large agricultural structures, and on the other hand, household plots and farms, which share agricultural production approximately equally. But the first sector, which employs only 20 % of the economically active rural population, meets the needs of exports and large domestic supermarkets, and the second – consumer and local markets. At the same time, the management of export-oriented agricultural holdings has led to the destruction of agro- and biocenosis, soil degradation, a rapid decline in the welfare of the rural population, the decline of rural areas, the disappearance of almost 700 villages from the map of Ukraine. The activity of agricultural holdings has resulted in a threatening level of indicators related to the environment: the application of mineral fertilizers since 2000 has increased 6 times, the application of organic fertilizers – decreased by almost 3 times; the level of arable land use intensity increased from 79.7 % in 2000 to 85.4 %; the share of the most profitable corn, sunflower and rapeseed, which are extremely depleting arable land, in the sown area increased from 16.6 % in 2000 to

41 % in 2016. Due to low profitability, agricultural holdings drastically reduced livestock, which significantly reduced forage crops. As a result, perennial grasses have disappeared from the structure of sown areas as a guarantor of restoring soil fertility, and also negatively affected the supply of meat and dairy products to the population of Ukraine, led to protein deficiency, lack of animal products in the diet, which has a detrimental effect on the health of nation [7, p.13].

It should be noted that agricultural holding is one of the forms of association of farms. The Law of Ukraine “On Holding Companies in Ukraine” stipulates that a holding company is a joint-stock company that owns, uses and disposes of holding corporate blocks of shares (parts, units) of two or more corporate enterprises [8]. Based on the legal definition of a holding company, we can conclude that a group of legal entities engaged in agricultural activities and selling of agricultural products should be considered an agricultural holding.

In total, the national agricultural complex of Ukraine consists of agricultural holdings, as one of the largest representatives of the agricultural sector of the economy, farms, including family and household plots.

Together, they create the Agro-Industrial Complex, which is an integral part of Ukraine’s economy and includes a set of legal, scientific, research, economic and technical means that combine the production, processing, treatment and realization of agricultural products. In addition, the above mentioned performs the functions of maintenance and repair of technical means necessary for the functioning of the mechanism of the agro-industrial complex.

Today, Ukraine is one of the leading exporters of some agricultural products and food, often Ukraine is called “the granary of Europe”. Support from government agencies is important for any area of agricultural activity. Due to not very stable economic indicators, the Verkhovna Rada of Ukraine adopted amendments to the Law of Ukraine “On State Support of Agriculture of Ukraine”, which guarantee family farms that are registered single tax payers of the fourth group, state subsidies, additional financial support is provided through the surcharge mechanism in favor of insured persons – members/heads of family farms of a single contribution to the obligatory state social insurance from the state budget, which are allocated and directed to the state support of agricultural producers [9].

Subparagraph 4 of paragraph 291.4 of Article 291 of the Tax Code of Ukraine establishes that the fourth group of single tax payers includes agricultural producers:

- a) legal entities, regardless of the organizational and legal form, in which the share of agricultural production for the previous tax (reporting) year is equal to or exceeds 75 percent;
- b) self-employed persons who carry out activities exclusively within the framework of a farm registered in accordance with the Law of Ukraine “On Farming”, provided that they carry out exclusively cultivation, fattening of agricultural products, harvesting, catching, processing of such self-grown or fattened products and its sale, carry out economic activity (except for supply) at the place of tax address and do not use the work of employees, as well as the area of agricultural land and/or water fund lands owned and/or used by farm members is not less than two hectares, but not more than 20 hectares [9].

In addition, financial support is reduced to a formula according to which the head pays for him/herself and for each member of his/her farm, if they are not subject to insurance on other grounds, a single contribution to compulsory state social insurance in the amount not less than a certain percentage of the minimum insurance premium.

Modern farms have a certain specialization in the type of product which is produced at this enterprise; they can be divided into three groups.

The first group includes farms in which products of animal origin predominate (breeding, milk, meat, fish products, and beekeeping), the second – vegetable origin, and the third – mixed.

Conclusions. Thus, farms occupy special important place in Ukraine as an agrarian state. They hidaimed at ensuring food security, there are rural employment policy, economic strong basis of rural areas, and legislation on Farming in Ukraine is an important agricultural institution legislation of Ukraine.

However, today we are watching many problems in solving which will help to create agricultural service cooperatives that would unite farms as well as introduce public lending to farmers and tax benefits, simplification of the procedure for obtaining state support by farms.

REFERENCES

1. Pro fermers'ke hospodarstvo [About farming] : Zakon Ukrainy No. 973-IV vid 19.06.2003 r. URL: <https://zakon.rada.gov.ua/laws/show/973-15> [in Ukrainian].
2. Pro vnesennya zmin do Podatkovoho kodeksu Ukrayiny ta deyakykh zakoniv Ukrayiny shchodo stymulyuvannya utvorennya ta diyal'nosti simeynykh fermers'kykh hospodarstv [About modification of the Tax code of Ukraine and some laws of Ukraine concerning stimulation of formation and activity of family farms] : Zakon Ukrainy No. 2497-VI vid 10.07.2018 r. URL: <https://zakon.rada.gov.ua/laws/show/2497-19> [in Ukrainian].
3. Simeynyy kodeks Ukrayiny [Family Code of Ukraine]: Zakon Ukrainy No. 2947-III vid 10.01.2002 r. URL: <https://zakon.rada.gov.ua/laws/show/2947-14> [in Ukrainian].
4. Pro derzhavnu reyestratsiyu yurydychnykh osib, fizychnykh osib – pidpryyemtsiv ta hromads'kykh formuvan'. [About the state registration of legal entities, physical persons – businessmen and public formations] : Zakon Ukrainy No. 755-IV vid 15.05.2003 r. URL: <https://zakon.rada.gov.ua/laws/show/755-15#n851> [in Ukrainian].
5. Lushpaêv, S. (2017). Pravove stanovyshche simeynoho fermers'koho hospodarstva: okremi pytannya. [The legal status of the family farm: some issues]. *Pidpryyemstvo, hospodarstvo i pravo. Ahrarne pravo*. No. 3. P. 107–110 [in Ukrainian].
6. Mekhanizmy publicnoho upravlinnya fermerstvom v Ukrayini [Mechanisms of public management of farming in Ukraine]. 2019 r. P. 48. URL: <https://knute.edu.ua/file/NjY4NQ==/b235451a0b8ff23afcc8e383aabdf791.pdf> [in Ukrainian].
7. Pro kholdynhovi kompaniyi v Ukrayini [About holding companies in Ukraine] : Zakon Ukrainy No. 3528-IV vid 15.02.2006 r. URL: <https://zakon.rada.gov.ua/laws/show/3528-15> [in Ukrainian].
8. Pro derzhavnu pidtrymku sil's'koho hospodarstva Ukrayiny. [About the state support of agriculture of Ukraine] Zakon Ukrainy No. 1877-IV vid 24.06.2004 r. URL : <https://zakon.rada.gov.ua/laws/show/1877-15> [in Ukrainian].
9. Podatkovyy kodeks Ukrayiny [Tax Code of Ukraine] : Zakon Ukrainy No. 2755-VI vid 02.12.2010 r. URL: <https://zakon.rada.gov.ua/laws/show/2755-17#n6944> [in Ukrainian].

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ФЕРМЕРСЬКІ ГОСПОДАРСТВА: ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ

Проаналізовано законодавство про фермерське господарство в Україні. Досліджено проблеми правового регулювання діяльності фермерських господарств. Сформульовано пропозиції щодо вдосконалення чинного законодавства про фермерське господарство.

Проаналізовано правове регулювання створення та діяльності сімейних фермерських господарств. Існує три типи фермерських господарств: фермерське господарство зі статусом юридичної особи, фермерське господарство зі статусом юридичної особи сімейного типу, сімейне фермерське господарство без статусу юридичної особи.

Наведено переваги особистого селянського господарства, порівняно з сімейним. Особисті селянські господарства можуть використовувати для виробництва лише невеликі земельні ділянки, надані для їх діяльності, натомість фермери мають право використовувати землі, надані

як для ведення фермерського та особистого селянського господарства, так і для ведення товарного сільськогосподарського виробництва. Ці суб'єкти не є рівноправними учасниками сільськогосподарського ринку, не мають статусу сільськогосподарських товаровиробників. Також не є застрахованими особами члени селянських фермерських господарств.

Не менш важливим аспектом є наявність діючих програм бюджетної підтримки агросектору, що наразі можливо лише для фізичних осіб-підприємців, які мають статус сімейного фермерського господарства.

Проаналізовано низку законодавчих актів та наукових праць і зроблено висновок, що подібність правового статусу та можливість подальшого набуття статусу сімейних фермерських господарств, які діятимуть на підставі реєстрації фізичної особи-підприємця, стосується лише тих особистих селянських господарств, діяльність яких спрямована на отримання надлишку в майбутньому, їх функціонування буде пов'язане з виробництвом товарної сільськогосподарської продукції. Внесено пропозиції щодо зміни вимог до сімейного фермерського господарства без статусу юридичної особи як платника податку четвертої групи спрощеної системи оподаткування.

Ключові слова: фермерське господарство, сімейне господарство, законодавство про фермерське господарство, сільськогосподарське виробництво, аграрне законодавство.