

Protection of land ownership of foreigners in Ukraine

PhD. **Dmytro FEDCHYSHYN**¹
PhD. **Iryna IGNATENKO**²

Abstract

The restrictions and peculiarities of the realization of the right of ownership of land by foreign citizens in Ukraine are considered. The emphasis is placed on the functioning of the principle of proportionality, the provision and criteria of predictability by the law and compliance in relation to the restriction of the rights of foreigners in acquiring agricultural land. The peculiarities of acquisition of the right of ownership on land plots and rights to use land plots in Ukraine by foreign citizens, foreign legal entities and foreign states are revealed. The authors formulate the purpose of legal regulation of restrictions on the right of ownership of foreigners to land. The primary focus of the paper is efficiency analysis of the legislative prohibition on acquiring property rights on agricultural lands (moratorium) by foreigners in Ukraine. The need to abolish this moratorium on acquiring agricultural land in Ukraine for citizens of foreign countries is justified.

Keywords: *ownership rights; acquiring of land; agricultural lands; limitation of the rights of foreigners, land ownership, land rights.*

JEL Classification: D86, K11, P14, P48

1. Introduction

Land has always been one of the ways to invest in order to receive profit. The land of Ukraine is one of the most attractive objects for investing, because of the availability of valuable black soil. One of the main assets of Ukraine is fertile black soil, which occupy 8.7% of the world space. That's why the land of Ukraine is the main national wealth that is under the special protection of the state.

The right to own, use and dispose of property is one of the main constitutional human rights, which is enshrined in the Constitution of Ukraine³. However, both the Ukrainian legislation and the legislation of many member states of the European Union (hereinafter - the EU) set certain restrictions and peculiarities of the realization of this right by foreigners. First of all, it concerns the realization of the right of ownership of foreigners to land.

Constitution of Ukraine proclaims that the land, its subsoil, atmosphere, water and other natural resources within the territory of Ukraine, natural resources

¹ Dmytro Fedchyshyn – PhD. in Law, doctoral student of the department of civil law Zaporizhzhia National University, Ukraine, marlynk@gmail.com.

² Iryna Ignatenko – PhD. in Law, assistant of the department of land and agrarian law Yaroslav Mudryi National Law University, Ukraine, irena.nekosargot@gmail.com.

³ Конституція України від 28.06.1996 р. № 254к/96-ВР (Constitution of Ukraine dated 28.06.1996 №254к/96-ВР).

of its continental shelf and of the exclusive (maritime) economic zone shall be the objects of property rights of the Ukrainian people (p. 1 article 13). However, Ukraine, as a modern European country, is widely integrated into the international community of states on a variety of principles, including on the basis of international treaties. Ukraine is a member of the main standards in the sphere of legal regulation of property relations, among them: the Universal Declaration of Human Rights⁴ (1948) and the European Convention for the Protection of Human Rights and Fundamental Freedoms⁵ (1950), which cover almost all European states, including Ukraine. Article 17 of the Universal Declaration of Human Rights⁶ proclaims the right to private property as a fundamental and inalienable human right. The Convention for the Protection of Human Rights and Fundamental Freedoms, being an international treaty, establishes a certain list of the most important rights for a person's subjective rights. Some protocols that complement and develop its provisions are part of this Convention. Article 1 of Protocol No. 1 (1952) to the Convention⁷ establishes: "Every individual or legal person has the right to own his property peacefully. No one shall be deprived of his property except in the interests of society and under the conditions provided for by law or the general principles of international law". According to this Part 1 of Article 9 of the Constitution of Ukraine⁸ provides, that international treaties in force, consented by the Verkhovna Rada of Ukraine as binding, are an integral part of the national legislation of Ukraine. The current land legislation of Ukraine also widely recognizes the norms and principles of international law in the sphere of land relations.

2. Principle of provision

These constitutional provisions are reflected in the specific legal norms of the current Land Code of Ukraine⁹, which provide for the land rights of foreign subjects of law, namely foreign citizens, foreign legal entities and foreign states. They are recognized as the subjects of land relations under Ukrainian legislation, in particular, as subjects of ownership of land and rights to use land plots. This confirms the commitment of Ukraine to the general principle of provision. For example, foreign citizens are granted the same national legal status as citizens of their country of residence, except for those restrictions to this status provided for by national law for foreigners. Such restrictions are also contained in the land

⁴ The Universal Declaration of Human Rights. 10 December 1948.

⁵ The European convention for the protection of human rights and fundamental freedoms. 04 November 1950 (In force 3 September 1953).

⁶ The Universal Declaration of Human Rights. 10 December 1948.

⁷ The European convention for the protection of human rights and fundamental freedoms. 04 November 1950 (In force 3 September 1953).

⁸ Конституція України від 28.06.1996 р. № 254к/96-ВР (Constitution of Ukraine dated 28.06.1996 №254к/96-ВР)

⁹ Земельний кодекс України від 25.10.2001 р. № 2768-III (Land Code of Ukraine dated 25.10.2001 № 2768-III)

legislation concerning the right of ownership of land and the right to use land plots by foreign legal entities.

Unlike domestic subjects of law, which can acquire in ownership land plots of all categories of land in the country, foreign subjects of ownership of land plots are limited in the possibilities of their acquisition by categories of land, its location, purposes of use etc.

3. Principle of proportionality

Article 1 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁰ provides that limitation of property rights is possible only for the protection of the public interest. The practice of the European Court of Human Rights has proved that every restriction of rights must comply with the requirements of the principle of proportionality. In particular, the Convention establishes the impossibility of discrimination against membership of a particular state, but the European Court of Human Rights establishes the possibility of differentiating legal regulation if it is justified.

Stanislav Pohrebnyak¹¹ adheres to the point of view that the principle of proportionality is the fundamental principle of law, aimed at ensuring the legal regulation of the balance of interests. This principle is an integral part of the rule of law principle. It is often used to determine the proportionality of human rights restrictions. The essence of this principle lies in the reasonable balance between the purpose of state influence and the means of achieving this, while limiting human rights.

Nataliya Varlamova¹² argues that the European Court of Human Rights has established the following criteria of proportionality: 1) the restriction must be provided by a certain legal act (including individual ones); 2) the restriction must pursue a legitimate purpose; 3) the restriction must be necessary in a democratic society; 4) the restriction must be proportional to the legitimate purpose, which have to be achieved. In order to understand the functioning of the proportionality (*stricto iuris*), we should focus on limiting the rights of foreigners in acquiring agricultural land in Ukraine, since such restrictions are the most rigorous.

However, it should be noted that the prohibition established by the legislation of Ukraine on the right of ownership of foreigners to certain lands is not disproportional, since such a prohibition does not apply to all lands of our country. Thus, the criterion of predictability of the law from the formal point of view is

¹⁰ The European convention for the protection of human rights and fundamental freedoms. 04 November 1950 (In force 3 September 1953).

¹¹ Погребняк С.П. Основоположні принципи права (змістовна характеристика). Х.: Право, 2008. 238 с. (Pohrebnyak, S. Fundamental principles of law (content characteristic). Kharkiv: Pravo. 238 p.)

¹² Варламова Н. Верховенство права - базовый принцип европейской системы защиты прав человека. *Конституционное право*. 2002. 3 (41). - С.159-165. (Varlamova, Nataliya. The rule of law is the basic principle of the European system for the protection of human rights. *Constitutional law*. 3 (41). 2002. P. 159-165.)

fulfilled in most cases. The legitimate purposes of limiting the ownership of foreigners to land are always obvious, since they all relate to the protection of national interests, economic sovereignty, etc. Moreover, such purposes justify almost any restrictions imposed by the state, except those ones, which completely prohibit the right of ownership of foreigners to land.

4. Criterion of predictability by the law

As to the criterion of predictability by law, it is executed in most cases when such restrictions concern the ownership rights of foreigners. The relevant rules meet all the requirements of the principle of legal certainty, which can be defined as a set of requirements to regulatory legal acts in order to ensure a stable legal status of a person by improving the processes of law-making and law enforcement. Thus, the legal literature¹³ defines the basic requirements of the principle of legal certainty that can be used for this criterion in the context of restricting the rights of foreigners to land, as follows: 1) clear formulation of legal norms; 2) the uniqueness of law enforcement; 3) a clear formulation of the conditions under which the restriction or deprivation of a certain freedom or right is enforced, which is the main criterion for using the principle of proportionality.

5. Criterion of compliance

In addition, it is necessary to pay attention to the criterion of compliance. The essence of this criterion is the establishment and observance of a fair balance between limited rights and achieved purpose - the least restrictive means should be used to achieve the legitimate purpose. Restrictions of the rights of foreigners to the land itself are not disproportionate, because the land is a great value for the state and society. It should be noted that a complete prohibition of the rights of foreigners to land would be a disproportionate restriction, since it completely excludes the participation of foreigners in the market circulation of land in Ukraine. Such regulation restricts not only the right of ownership, but also the right to entrepreneurial activity. It should also be noted that while establishing the prohibition of the ownership of foreigners for agricultural land, the Ukrainian legislator does not limit other rights. The fact of the impossibility of acquiring agricultural land in ownership does not restrict foreigners from engaging in agricultural production. So, in most countries, where foreigners are forbidden to own agricultural land, they can get it on the right of rent and / or emphyteusis. In fact, the actions of the state can be considered disproportionate only in the event of a total prohibition of the right of ownership of foreigners to land, as it provided for by the legislation of Vietnam and Laos. In all other cases, the proportionality of "stricto iuris" will be respected, since the goal of setting limits is significant.

¹³ Приймак А. Принцип правової визначеності: поняття та окремі аспекти. *Наукові записки НаУКМА*. № 103. 2010. С. 53-55. (Pryimak, Andriy, The principle of legal certainty: concept and particular aspects. *Scientific notes of NaUKMA*. № 103. 2010. Pp. 53-55.).

6. Restrictions for acquiring ownership on land

Restrictions on foreigners for acquiring ownership of agricultural land exist in many countries. These rules can be enshrined in a special law (for example, Poland, the Russian Federation) or can be a part of the law in the sphere of land relations (for example, Ukraine). In particular, Art. 22, 81 and 82 of the Land Code of Ukraine¹⁴ contain norms, from which it is clear that restrictions on the right of ownership of foreigners to land are as follows:

1) a prohibition on the transfer of agricultural land to the ownership of foreign citizens, stateless persons, foreign legal entities and foreign states;

2) foreigners may acquire ownership rights to non-agricultural land plots within the settlements (for foreign legal entities - in case of purchase of real estate objects and for the construction of objects related to the business activity in Ukraine);

3) foreigners may acquire ownership rights to non-agricultural land plots outside the settlements, where the objects of real estate, which belong to them on the right of private property, are located.

6.1 Ownership of foreign citizens on land

Defining of a legitimate purpose is an important aspect in establishing restrictions on the right of ownership of foreigners to land. Since these restrictions are diverse and rather rigid, the tasks of such regulation should be weighty and important, as well as the result of legal regulation, which should be significant for society and the state.

So, for example, according to Part 2 of Article 81 of the Land Code of Ukraine, foreign citizens and stateless persons may acquire ownership rights to land plots of non-agricultural use within the boundaries of settlements, as well as to non-agricultural land areas outside the settlements where the objects of real estate, which belong to them on the right of private property, are located. In the above-mentioned land law there are, at least, three significant restrictions on the right of property of foreign citizens and stateless persons to land in Ukraine: restrictions on non-agricultural lands within settlements; restrictions on the same land outside the settlements with the objects of real estate, located on them; restrictions of the ownership of the latter on the right of private property.

Foreign citizens and stateless persons may acquire ownership rights to land plots in accordance with Ukrainian land legislation in the case of: purchase of them under a contract of sale, rent or other civil-law agreements; the redemption of land plots, where the objects of real estate, which belong to them on the right of ownership, are located; acceptance of the inheritance.

¹⁴ Земельний кодекс України від 25.10.2001 р. № 2768-III (Land Code of Ukraine dated 25.10.2001 № 2768-III).

In addition, Part 5 of Article 22 of the Land Code of Ukraine¹⁵ proclaims that agricultural land cannot be transferred to foreign citizens, stateless persons, foreign legal entities and foreign states. If such lands were acquired by foreign citizens, stateless persons or foreign legal entities into inheritance, then, according to of the Land Code of Ukraine (Part 4 of Article 81 and Part 4 of Article 82) they have to be alienated during the year.

In case of non-fulfillment by a foreign subject of the requirement for alienation of agricultural land plot within one year, ownership of a land plot may be compulsorily terminated by a court decision. However, this norm is sharply criticized by scientists. It is noted that establishment of such a ground for termination of ownership of a land plot does not correspond to the existing procedure for the proper termination of such a right. The Land Code of Ukraine does not detail the procedures for forced alienation. He also does not specify the subjects of appeal to the court with the requirement to alienate a land plot. All this does not contribute to the effective implementation of this norm. Also, according to Anatoliy Miroshnychenko¹⁶, ownership on the basis of this norm cannot be terminated in those situations, when citizens of Ukraine, who own such land plots, change their citizenship.

These provisions suggest that the current land legislation of Ukraine in general excludes the possibility of acquiring agricultural land in the ownership of foreign subjects of law. This is explained by the fact that according to Article 14 of the Constitution of Ukraine¹⁷ and Article 1 of the Land Code of Ukraine¹⁸ the land is the main national wealth, which is under the special protection of the state. Therefore, foreign entities cannot use it contrary to the rights and interests of citizens of Ukraine, domestic enterprises and the national community.

Consequently, it should be noted, that there are some restrictions on the appearance of the right of land ownership of foreign citizens and stateless persons in comparison with the citizens of Ukraine. They have the right to acquire land plots (based on civil agreements) within the settlement only for non-agricultural purpose, on which, as a rule, real estate objects are (or will be) located. Also, foreigners and stateless persons are not entitled to the free privatization of land plots. Unfortunately, Ukraine is far away from guaranteeing the right of citizens to own, use and dispose of their property. But the duty of the state to protect citizens' rights is not only limited by restoring or recognizing violated or disputed rights, but also to prevent their violation or appeal. The state should also prevent their violation or controversy.

¹⁵ Земельний кодекс України від 25.10.2001 р. № 2768-III (Land Code of Ukraine dated 25.10.2001 № 2768-III).

¹⁶ Мірошніченко А. М. Науково-практичний коментар до Земельного кодексу України Київ: Алєрта; 2011. 516 с. (Miroshnychenko, Anatoliy. Scientific and practical commentary to the Land Code of Ukraine. Kiev: Alerta, 2011. 516 p.).

¹⁷ Конституція України від 28.06.1996 р. № 254к/96-ВР (Constitution of Ukraine dated 28.06.1996 №254к/96-ВР).

¹⁸ Земельний кодекс України від 25.10.2001 р. № 2768-III (Land Code of Ukraine dated 25.10.2001 № 2768-III).

It should be noted that similar restrictions on ownership rights for foreigners to agricultural land are valid at national level in Ireland, Japan, Mexico, New Zealand, and at the regional level - Australia, Canada, and the United States. As Vyacheslav Komarov¹⁹ states, in some other countries, there are also restrictions on the possibility of acquiring agricultural land by foreigners. Such restrictions apply in Austria, the Czech Republic, Iceland and Turkey.

6.2 Land ownership of foreign legal entities

It is also necessary to emphasize the restrictions on the acquisition of ownership of land plots provided for foreign legal entities. Thus, according to Part 2 of Article 82 of the Land Code of Ukraine²⁰, foreign legal entities may acquire ownership rights to non-agricultural land: within the boundaries of settlements in those cases, when they acquire real estate or for the construction of facilities related to the business activity in Ukraine; outside of settlements in case of purchase of real estate. Acquisition of ownership of land by foreign entities is directly related to the acquisition of real estate on these lands. The principles of acquiring land ownership for the above purposes are similar to the grounds for their acquisition by foreign citizens or stateless persons.

The current national land legislation envisages the right to own land for joint ventures, founded with the participation of foreign legal entities and individuals. They, in accordance with Part 3 of Article 82 of the Land Code of Ukraine²¹ may acquire ownership of non-agricultural land in cases and in accordance with the procedure established for foreign legal entities. Consequently, joint ventures, established by domestic and foreign legal entities and individuals, are not foreign subjects of law, because they have a common (national and foreign) land legal personality. This should be taken into account in the regulation of land-legal relations with their participation.

Land, acquired by foreign citizens and foreign legal entities in the ownership of the land fund of the country, acquires the legal nature of private land ownership. All land plots, acquired by foreign citizens and foreign legal entities into the ownership from the land fund of Ukraine, acquires the legal nature of private land ownership. Ukrainian land legislation does not provide for communal or municipal property of foreign subjects of law. However, in principle, the transfer of land along with other real estate objects, for example, municipal representations of twin cities, which is sometimes encountered in practice, is not contrary to current Ukrainian legislation.

¹⁹ Комаров В. В. Нотаріат: перспективи унормування, законодавство, судова практика. Харків. Право, 2008. 536 с. (Komarov, Vyacheslav. Notary: Prospects for normalization, legislation, legal practice. Kharkiv: Pravo, 2008. 536 p.).

²⁰ Земельний кодекс України від 25.10.2001 р. № 2768-III (Land Code of Ukraine dated 25.10.2001 № 2768-III).

²¹ Земельний кодекс України від 25.10.2001 р. № 2768-III (Land Code of Ukraine dated 25.10.2001 № 2768-III).

6.3 Land ownership of foreign states

The regulation of the ownership rights of foreign states to land plots as part of the land fund of Ukraine is also very interesting issue. According to Article 85 of the Land Code of Ukraine, foreign states may acquire ownership of land plots for the placement of buildings and structures of diplomatic missions and other equated organizations, in accordance with international treaties. Of course, land plots for these purposes may be acquired by foreign states from the relevant categories of land fund of the country, with the exception of agricultural lands. However, by providing for such an exception, the land legislation does not determine the consequences of acquiring an agricultural land by a foreign state, for example, inheritance or other legal grounds that may nevertheless occur in real life. Consequently, the legal issues of such land plots should be resolved in the same way as their inheritance by foreign legal entities on the basis of the analogy of the law.

It should be noted that the relevant land plots may be acquired by foreign states in Ukraine with taking into account the international legal principle of reciprocity: on what legal basis a foreign state provides a land plot to the Ukrainian state, on such a legal basis, the Ukrainian state provides a land plot to a foreign state. This practice is not contrary to international norms and is regarded as a friendly act or act of goodwill.

However, in certain cases, it may conflict with the fundamental principle of national law, according to which a foreign subject of law in general and a foreign state in particular cannot have more rights in a national state than it is provided for national law and national state in a foreign country. The emergence or existence of such a situation is humiliating for national subjects of law, and especially for the legal personality of the national state as an equal subject of international relations.

6.4 The right of using of lands by foreigners

However, in Ukraine, foreigners and stateless persons are not deprived of the right to use agricultural lands. This may be the right to lease a land plot, which is guaranteed by Article 93 of the Land Code of Ukraine. This Article proclaims that land plots may be leased to citizens and legal entities of Ukraine, foreigners and stateless persons, foreign legal entities, international associations and organizations, as well as foreign states. In addition, the paragraph "B" Part 2 of Article 5 of the Law of Ukraine "On land lease"²² stipulates that tenants of land plots may be citizens and legal entities of Ukraine, foreigners and stateless persons, foreign legal entities, international associations and organizations, as well as foreign states.

This Law in Part 1 of Article 15 defines the essential terms of the lease agreement. These conditions must guarantee the lessor and the tenant their rights

²² Про оренду землі: Закон України від 6.10.1998 р. № 1211-IV (Law of Ukraine "On land lease", dated 6.10.1998 № 1211-IV).

and interests. Thus, the agreement must specify the object of lease (cadastral number, location and size of the land plot). The term of the contract is determined by the parties and cannot be more than 50 years. The long term of the land lease agreement is more advantageous to the tenant than the lessor, as it guarantees him the right to dispose of the land plot.

Also the essential condition for a land lease agreement is a rent with an indication of its size, indexation, forms of payment, terms, the procedure for its entry and revision, and liability for its non-payment. Law of Ukraine "On land lease"²³ in Part 2 of Article 21 stipulates that the size, form and timing of the payment of rent for land is determined by the agreement of the parties. The land lease contract must specify the terms of use and intended use of the land plot, which is transferred to the lease and conditions for the maintenance of its condition. The land lease agreement should contain terms of use and category of the land plot. Conditions and terms of transferring the land plot to the lessee and the conditions for its return to the lessor are also essential terms of the contract.

In addition, the land lease agreement should indicate the existing restrictions (encumbrances) regarding the use of the land and identify the party that will bear the risk of accidental destruction or damage to the leased object or part thereof. The absence in the terms of the contract of at least one of the listed essential conditions is, in accordance with Part 2 of Article 15 of the Law, the grounds for the recognition by the court of such agreement as invalid.

Thus, it may be noted, that the legislator does not restrict any of the categories of subjects, who can use land on the right of lease. This may be any of the nine categories of land in the lands of Ukraine, stipulated in Art. 19 of the Land Code of Ukraine, in the first place among which there are agricultural lands. According to Part 2 of Article 33 of the Land Code of Ukraine²⁴, foreigners may have land for private peasant farming on a lease. Part 2 of Article 35 of that Code also specifies the right of foreigners to have land plots for individual or collective horticulture on a lease.

7. The purpose of legal regulation of restrictions on the right of ownership of foreigners to land

It is understandable that the restriction of the possibility of acquiring property rights by foreigners or even prohibition of it are carried out for the specific purpose of protecting national interests and public order. In addition, the overall objective has a number of tasks that can be achieved by this regulation.

The main argument in favor of the need to restrict the right of ownership of foreigners to land in Ukraine is the consolidation of the concept of "ownership rights of the Ukrainian people to the land" in the Constitution of Ukraine.

²³ Про оренду землі: Закон України від 6.10.1998 р. № 1211-IV (Law of Ukraine "On land lease", dated 6.10.1998 № 1211-IV).

²⁴ Земельний кодекс України від 25.10.2001 р. № 2768-III (Land Code of Ukraine dated 25.10.2001 № 2768-III).

Restriction of the right of ownership of foreigners to land is explained precisely by the fact that it belongs to the entire Ukrainian nation, therefore land cannot be sold to foreigners. But the idea that the concept of ownership of the Ukrainian people on the land introduces a permanent prohibition of the possibility of acquiring land ownership by foreigners does not correspond to the purpose of regulation. In particular, according to Volodymyr Nosik²⁵ the prohibition of acquiring agricultural land, or specific regulation with a special procedure for acquiring it, are possible solutions of solving the problem of the right of ownership of foreigners to land in Ukraine in the context of the property rights of the Ukrainian people.

A similar concept exists in the UK. It is forbidden to sell agricultural land to foreigners there. This is motivated by the fact that, formally, all of the agricultural land in the UK belongs to the royal family, so it can be distributed only among subjects of the crown to protect national interests. In fact, the same concept of ownership of the people or the state exists in Israel, where all agricultural land «de iure» belongs to the state, and individuals have the right only to lease it. But real "owners" can dispose of their land plots completely free.

In addition, the prohibition on acquiring property rights on agricultural lands by foreigners is provided due to the fact that such lands are the main means of producing vitally important food products. In fact, such actions are also aimed at protecting national interests. Ukraine's food security plays an important role in this aspect. Mykhaylo Stupen²⁶ characterizes it not only by the availability of foodstuffs, but also by rational and environmentally safe use of lands, which used for the creation of such products.

The prohibition on the acquisition of land by foreigners in border areas is another type of prohibition in order to protect national interests. This situation has been developed in the Russian Federation. The entire list of such areas is approved there. They are considered not only as border, but also as economically profitable. It is obvious that such prohibition is aimed at protecting national security and the protection of the state border. If in Russia such prohibition applies to the whole territory of the administrative-territorial unit, in Peru the limit is set at 50 km from the border, and in Finland - only 5 km.

Some scientists even point out that the sale of land to foreigners poses a threat to national security, since a number of lands (agricultural and forest land) are aimed at satisfying public interests. Foreigners may own land, which is not of great value for national security and which is necessary for the normal existence of foreigners on the territory of Ukraine (land of industry, transport, housing and public construction, etc.).

²⁵ Носік В. В. Право власності на землю Українського народу. Київ, Юрінком Інтер, 2006. 544 с. (Nosik, Volodymyr. Ownership of the land of the Ukrainian people. Kiev, Yurinkom Inter. 2006. 544 p.).

²⁶ Ступень М.Г. Інвестиційна привабливість земельних ресурсів. Аграрний вісник Причорномор'я. Одеса, Астропринт. 2003. № 22. С. 460-467. (Stupen, Mykhaylo. Investment attractiveness of land resources. Agrarian Bulletin of the Black Sea Region. 2003. № 22. P. 460-467).

The development of the land market should be considered as an important aspect in determining the objectives of legal regulation of restrictions on the right of ownership of foreigners. Thus, some countries, including Bulgaria, note that the lack of a stable land market and legislative regulation of this area at the required level leads to the need to provide restrictions on the possibility of acquiring land into ownership of foreigners. So the purpose of the restriction is to protect national interests, to prevent the expropriation of valuable land until the land market, legal regulation of circulation and registration of land will be available.

Such purpose is actual for Ukraine today. But national legislators have gone further in this issue. In order to safe lands of the country before the establishment of the land, the sale of agricultural land is prohibited in Ukraine. Thus, the main purpose of restricting the right of ownership of foreigners to land in Ukraine is the protection of national interests, namely national security and economic sovereignty.

8. Conclusion

On the basis of the above, we can conclude that certain restrictions and peculiarities of the realization of the right of land ownership by foreigners are established only against real estate. Thus, a prohibition on the purchase of agricultural land, as well as the need to obtain permits for the purchase of some other property for foreigners (non-EU citizens), continues to exist in many EU countries. Speaking about prohibition on the possibility of ownership by foreigners of agricultural lands in Ukraine, due to Ukraine's accession to the EU, it will definitely establish a clause to abolish this moratorium on EU citizens and bring the Ukrainian legislation in this sphere in line with EU requirements (most likely from setting the appropriate transition period).

Bibliography

1. Погребняк С.П. Основоположні принципи права (змістовна характеристика). Х.: Право, 2008. 238 с. (Pohrebnyak, S. Fundamental principles of law (content characteristic). Kharkiv: Pravo. 238 p.).
2. Варламова Н. Верховенство права - базовый принцип европейской системы защиты прав человека. *Конституционное право*. 2002. 3 (41). - С.159-165. (Varlamova, Nataliya. The rule of law is the basic principle of the European system for the protection of human rights. *Constitutional law*. 3 (41). 2002. P. 159-165.).
3. Приймак А. Принцип правової визначеності: поняття та окремі аспекти. *Наукові записки НаУКМА*. № 103. 2010. С. 53-55. (Pryimak, Andriy, The principle of legal certainty: concept and particular aspects. *Scientific notes of NaUKMA*. № 103. 2010. Pp. 53-55.).
4. Мірошниченко А. М. Науково-практичний коментар до Земельного кодексу України Київ: Алерта; 2011. 516 с. (Miroshnychenko, Anatoliy. Scientific and practical commentary to the Land Code of Ukraine. Kiev: Alerta, 2011. 516 p.).

5. Комаров В. В. Нотаріат: перспективи унормування, законодавство, судова практика. Харків. Право, 2008. 536 с. (Komarov, Vyacheslav. Notary: Prospects for normalization, legislation, legal practice. Kharkiv: Pravo, 2008. 536 p.).
6. Про оренду землі: Закон України від 6.10.1998 р. № 1211-IV (Law of Ukraine “On land lease”, dated 6.10.1998 № 1211-IV).
7. Носік В. В. Право власності на землю Українського народу. Київ, Юрінком Інтер, 2006. 544 с. (Nosik, Volodymyr. Ownership of the land of the Ukrainian people. Kiev, Yurinkom Inter. 2006. 544 p.).
8. Ступень М.Г. Інвестиційна привабливість земельних ресурсів. Аграрний вісник Причорномор'я. Одеса, Астропринт. 2003. № 22. С. 460-467. (Stupen, Mykhaylo. Investment attractiveness of land resources. Agrarian Bulletin of the Black Sea Region. 2003. № 22. P. 460-467).
9. Конституція України від 28.06.1996 р. № 254к/96-ВР (Constitution of Ukraine dated 28.06.1996 №254к/96-ВР).
10. The Universal Declaration of Human Rights. 10 December 1948.
11. The European convention for the protection of human rights and fundamental freedoms. 04 November 1950 (In force 3 September 1953).
12. Земельний кодекс України від 25.10.2001 р. № 2768-III (Land Code of Ukraine dated 25.10. 2001 № 2768-III).



The Bucharest University of Economic Studies

Volume 8, Special Issue, October 2018

TRIBUNA JURIDICĂ
JURIDICAL TRIBUNE

Editura ASE
București
2018

Review edited by Law Department of the Bucharest University of Economic Studies

Juridical Tribune – Tribuna Juridica Journal has been published since 2011
and has 3 issues/year in printed and online version

www.tribunajuridica.eu
e-mail: office@tribunajuridica.eu

Journal is indexed in the following databases and online catalogs:

WEB OF SCIENCE



Ebsco, HeinOnline, C.E.E.O.L., ProQuest, ERIH Plus, WorldCat, Ulrichsweb, vLex, Juridica.lv, Cabell's Directories, DOAJ, SCIRUS, RePEc, Scipio, BASE, COPAC, IndexCopernicus, Academic Journals Database, OAJI, Academic Publications eJournal, SafetyLit, Sudoc, Genamics JournalSeek, NewJour, Open J-Gate, Miar, Max Perutz Library, ViFaOst, Zeitschriftendatenbank (ZDB), Bibliothekssystem Universität Hamburg, Wissenschaftszentrum Berlin für Sozialforschung (WZB), Elektronische Zeitschriftenbibliothek (EZB), Euro Internet, LivRe!, European University Institute Library, Harvard Library, Stanford University Libraries, Yale University Library, University of California – Irvine Libraries, Miami University Libraries, MOBIUS – Linking Missouri's Libraries, University of Maryland – Francis King Carey School of Law, St.Mary's University Libraries, Sarita Kenedy East Law Library, Jean and Alexander Heard Library, Biblioteca de la Universidad de Navarra, Hesburgh Libraries/University of Notre Dame, Bibliothèque uOttawa Library, The University of Hong Kong Libraries, University of Zurich, eLibrary@Cardiff, University of Nottingham Library, the University of York Library, UCL Library, University of Wisconsin-Madison Libraries, Israel Union Catalog (ULI), Tel-Aviv University Libraries, Tulips-University of Tsukuba Library, University of Iowa Libraries, WorldWide Science.org, GetInfo.

ISSN 2247-7195
e-ISSN 2248-0382
ISSN-L 2247-7195

Director

FLORENTINA CAMELIA STOICA – *The Bucharest University of Economic Studies, Romania*

Editor in chief

CĂTĂLIN-SILVIU SĂRARU – *The Bucharest University of Economic Studies, Romania*

Editorial Board

CATHERINE VINCENT – *University of Orléans, France*

JOSÉ JOÃO ABRANTES – *New University of Lisbon, Portugal*

ION DOGARU – *University of Craiova, corresponding member of the Romanian Academy*

ION TRAIAN ȘTEFĂNESCU – *The Bucharest University of Economic Studies, Romania*

CORNELIA LEFTER – *The Bucharest University of Economic Studies, Romania*

RALUCA DIMITRIU – *The Bucharest University of Economic Studies, Romania*

BRÂNDUȘA ȘTEFĂNESCU – *The Bucharest University of Economic Studies, Romania*

SMARANDA ANGHENI – *University „Titu Maiorescu”, Romania*

NICOLAE POPA – *former President of the Constitutional Court of Romania, former President of the High Court of Cassation and Justice of Romania*

NINA GUMZEJ – *University of Zagreb, Croatia*

REZARTA TAHIRAJ – *University „Aleksandër Xhuvani”, Elbasan, Albania*

HARSH PATHAK – *Advocate Supreme Court Bar Association, New Delhi, India*

CSONGOR ISTVÁN NAGY – *University of Szeged, Hungary*

CHARLES SZYMANSKI – *Vytautas Magnus University, Kaunas, Lithuania*

Editors

SILVIA CRISTEA – *The Bucharest University of Economic Studies, Romania*

BRÎNDUȘA VARTOLOMEI – *The Bucharest University of Economic Studies, Romania*

ANA MARIA LUPULESCU – *The Bucharest University of Economic Studies, Romania*

OVIDIU MAICAN – *The Bucharest University of Economic Studies, Romania*

Editura ASE

Piața Romană nr. 6, sector 1, cod 010374, București, Romania

Telefon: +4(021) 319.19.00 / int. 401, 146

editura@ase.ro

www.ase.ro

www.editura.ase.ro

Redactor-șef: Simona Bușoi

Redactor: Silvia Răcaru

Tehnoredactor: Emilia Velcu

Coperta: Violeta Rogoian

CONTENTS

STUDIES AND COMMENTS

Diana Flavia BARBUR Fashion law. Concept and beginnings in European Union and Romania	6
Viorel BĂNULESCU Considerations regarding consumer protection in Romanian and European law. The notion of consumer.....	20
Dmytro FEDCHYSHYN, Iryna IGNATENKO Protection of land ownership of foreigners in Ukraine	27
Cristinel GHIGHECI Regulating negligence in German and in Spanish criminal law.....	39
Jakub HANDRLICA, Marianna NOVOTNÁ The Vienna convention on civil liability for nuclear damage: past, evolution and perspectives.....	48
Oana ADĂSCĂLIȚEI The 1989 Salvage Convention and the protection of the environment – should the actual compromise continue?	64
Gheorghe RENIȚĂ The impact of monopolization of the gambling sector in the Republic of Moldova on criminal liability for manipulation of an event and arranged bets	74
Howard CHITIMIRA, Tapiwa Victor WARIKANDWA Unmasking some challenges associated with the enforcement of issue estoppel in South African commercial-related disputes with reference to with reference to the case <i>Prinsloo NO v Goldex</i>	97
George-Cristian IOAN The effects of Regulation no. 679/2016 on the Romanian commercial environment. The new obligations in the field of personal data.	110
Hamed ALAVI The European Union external competencies and maritime industry.....	128
Mioara-Ketty GUIU Legal classification and judicial syllogism	139