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THE HISTORICAL PERSPECTIVES OF THE DEVELOPMENT OF SYSTEMS OF STATE REGULATION OF ESTATE PROPERTY IN UKRAINE

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Abstract

The article is about the development of the legal regulation in the matter of the registration of law of estate on estate property beginning from the Kyiyv Rus times till nowadays. The registration of rights on estate property is a newish phenomenon for the majority of governance systems and whereas it was unmethodical and unsystematic before the early 20th century, in the beginning of the 20th century the state registration of rights, objects or transactions is complied as a fully functional institution. Besides the main historic periods of development of the systems of legal regulation in the matter of the state registration of the rights on the estate property is reviewed.

Key words

estate property, property, title to estate property, property rights, state registration.

1. Introduction

The reforming process in the matter of the state registration of the rights on the estate property is taking place in Ukraine. Thus, the institute of registration of the rights on the estate property still remains the less researched in modern science. Before the end of the 20th century the registration institute was in the process of the long-term development and was disordered and non systematic. And only beginning from the end of the XIX century the state registration of the rights, objects and legal deed with the estate property were clearly distinguished.

The characteristics of the main historic periods of the development of the systems of the state

regulation in terms of the estate property are the object of the present article.

2. Historical tools to protect the rights to land lots and to estate property (X–XVI centuries)

We should agree with those scholars who believe that the origins of instruments for the protection of real property rights is the situation of the ancient customs and traditions aimed at providing security of land property from illegal encroachments by others. Indeed, land property appeared much earlier than the property to the estate property objects that

were built using human labor. It should be remembered the fact that for long time farming was considered as the only method of farm management and production that resulted in land wars and disputes on it. According to some sources the Institute of mandatory registration of estate property (or preconditions for its appearance – from the author) existed in the I century BC in Ancient Egypt. Besides, similar institutions were found in the organization of the society of American Indians, the Aztecs of pre-Columbian era (Романюк, 2010).

Without resorting to in-depth analysis of the preconditions of the origin of the property on the land and instruments of protection of the relevant rights note that specific circumstances that were the impetus for the development of the public-enforcement mechanisms for the protection of property rights to estate property and in the construction of the system of land accounting are fixed rules of law, are obligatory normative character. On the territory of Ukraine one of the first uniform acts, which regulated social relations was “Rus’ka Pravda”.

The distinction between the concepts of “landed estate” and “tenure” in the X–XIII centuries by incorporating customary rules in the provisions of the “Russkaya Pravda” can be considered as a starting point in the regulation of relations in the sphere of turnover of the estate property, particularly land.

One of the tasks of the “Rus’ka Pravda” was the protection of private property that was clearly from some of its provisions. In particular in article 71 of the Prostorovoy Pravdy, the destruction of property signs on the trees was fined in the amount of 12 UAH that, in fact, meant the implementation and protection of the principle of the private property (Мартинюк, 2007). In addition, a penalty in the same amount fixed in article 34 of the Korotkaya Pravda for the violation of the land limits. For comparison, the fine for stealing the Knyaz’s horse was set at 3 UAH (Рубаник, 2002). In this regard, we can make two assumptions – either the right to the land property was under special protection in that time due to its status as an object of circulation, or, according to I. P. Safronova and V. E. Rubanok, such penalties were established for violations in the sphere of the tenure of the land, but only for those that were directed against the property rights of the Knyaz (Рубаник, 2002).

The specifics of statutory regulation of property relations of land lots in Kievan Russia was the fact that the statements of the “Rus’ka Pravda” laid the foundation for the record of the land lots and the defense of rights of them, besides it also laid down the foundation for the formation of the institute of the state registration of the legal deeds as the rights

on the estate property were verified by the princely credentials for a long time.

Due to the lack of the developed notions about the measurement of the land in the Kievan Russia and their fixation in relation to each other, we can assume that a clear accounting of kniazes and of other lands didn’t exist, and in fact could not exist, because in fact, until the XVIII century on the territory of modern Ukraine in the relations of the property acted in the different interpretations of the principle of “squatting” (Мартинюк, 2007; Slobodyanyuk, 2010). When a person, holding a certain social position had the right to process and use “abandoned” land rights had not been assigned to anyone (squattings – the development of vacant land by the slaves and dependent peasants; “okniazinia”, “oboyarenia” is the seizure of the land in the neighborhood local communities (Рубаник, 2002). In this regard, if we assume that there was a certain order of registration of the lands in Kievan Russia, it was fairly conventional. In addition, in favor of the fact that such an order still existed is evidenced by the fact that one of the ways of acquiring ownership or other rights over the land in Kievan Russia was to receive the knyaz’s lands for its service and for the duty. Such reception was accompanied by granting the person immunity – the rights to perform certain, independent of the direct will of the Knyaz of action in this domain (Рубаник, 2002). The above mentioned circumstances show that the Knyaz had to take up their possessions in order to be able more or less accurately to divide them and to emit the member of a voluntary public order squad or the boyars for their special achievements before the Knyaz, or to serve, for example, in the border regions. In this regard, the only possible way and the principle by which account is taken of the land was the principle benefits of ownership of the Knyaz over the property of the other entities, i.e. everything that does not belong to anyone in particular belongs to the Knyaz. The conventional way of the measuring land could be settlements, and in the era of feudal decentralization, patrimony, specific knyaz, boyar etc.

A significant role in the development of the institute of state registration in turn of the estate property played statutory source of Lithuanian-Russian state and The Polish-Lithuanian Commonwealth. The specific feature of the legal relations in XV–XVI centuries was the fact that the rights to the land lots in particular the title to estate property were regulated by the relevant party – the knyaz, Council of Messieurs etc. inspite of the way the land came into property – whether from the lands of the State, the Knyaz or under agreement of the people. The documents confirmed the property rights to the land

were the grand-ducal letters, the judicial decisions, written permissions, testaments as well as the letters to the on-duty estate property.

For example, the Lithuanian Statute in the edition of 1566 established that if the owner wished to sell he owned estate property, he or by old custom is bound to be the Grand Knyaz of Lithuania, or to the provincial government, to declare the disposition of property and to record this fact to Zemsky books (Мартинюк, 2007). This means that the Lithuanian Statute for the first time expressly established the necessity for mandatory confirmation of the ownership of the estate property to move into civil circulation (Бойко, 2008; Слободянюк, 2011).

In our opinion, this moment should be considered as a clear description of the functions of the public authorities (speaking about a particular subject or body) in the regulation of the relations, the subject of which is estate property. If in the times of Kievan Rus it had an episodic form, with the development of mechanisms of the legal regulation of the social relations it emerges in a clear required by the state, what happened on the stage when the part of the modern territory of Ukraine was part of the *Rech Pospolita*. We can say that in this period the quasi-mechanism of the state registration in the estate property turnover was formed, which has not yet been divided into registration of the object, rights or transactions.

In addition, it is possible to distinguish two stages of the system development authorization (legalization) of the emergence and change of the ownership or other rights to land. The first stage, characterized by legitimizing the nature of the relevant actors – representatives of public authorities, and the lack of clear requirements regarding the establishment of boundaries of land ownership. For the second stage is characterized by the existence legitenberg nature of the relevant actors and the introduction of a clear mapping of the land boundaries, rights which arise or pass. In time the first stage existed before the middle XV century and the second from the mid-fifteenth century to mid sixteenth century (the time of liberation war) is continuous, and in principle up to the present time.

3. Historical tools to protect the rights to land lots and to estate property in Russian Empire in XVII–XX centuries

In the times of the Russian Empire when the part of modern Ukraine was under its control the mechanism of estate property accountancy as well as the rights to it were formed almost as they are in nowadays.

By the way such significant act for Ukraine as “The rights using to judge the Little Russian (Ukrainian) people” (1743 year) clearly defined the procedure of granting the force of legal deed for passing the estate property in the property. The provisions of the Chapter 14 of this regulatory legal act defined the obligation of the parties to real estate transactions, contact the local authorities to make inscriptions in the books, by the alienation of immovable property. In particular, if the owner was willing to alienate its immovable property, he had first write a letter of the assignment of the property in the presence of and signed by two or three witnesses (respectable citizens). After that, the owner needs to come to the local authority and in the presence of officials to disclose the contents of the letter. Officials had to check the legality of ownership and when there were no reasons that prevent making appropriate entries in the books, then made their contents the text of the letter. According to the results of the entries of the corresponding book was published extract with the print of authorized persons.

Deviation from this procedure caused a consequence in the form of the impossibility of further alienation of the estate property by the new owner (Мартинюк, 2007). Legally this meant that the failure to comply with public law the registration procedure caused the consequence in the form of the non-recognition by the state of the fact of the transfer of rights, and therefore their occurrence from the new owner in the connection with the relevant transaction was one that was made. This mandatory mechanism indicates the direct interference of the state in the administration processes in the sphere of turnover of the immovable property and rights and legitimate interests of the parties to the transaction.

In the aspect of the reporting provisions of the legislation of the epoch of the Russian Empire, it was impossible to assert whether the right or the legal deed was subject to registration. Most probably, it was registration of act and right to be certified. The positive point of such registration is the possibility to keep a record of the estate property that is in the turnover and also the storage of the history of the legal fate of the relevant land lots. The parties who arranged the relevant actions were the public persons of self-governing authorities.

In general, we cannot say that the institution of the state registration in the estate property circulation of the left-bank Ukraine was formed under a powerful influence of laws of the Russian Empire, at least until the early eighteenth century. In support of this conclusion is evidenced by the fact that the public authority in the territory of Ukraine before the signing of the “March articles” (1654) used the state

registration to administer the real estate. In this regard, the institution of registration on the territory of Ukraine was developing its own power.

Is that because in the organization of the life of the Cossack society has not found distribution legal act as a source of the regulation of the social relations, they were guided by customs, and therefore the question of fixing of the rights on the land are not very acute, especially bearing in mind the principles of "free conduct" which did not envisage the need for the strict regulation of property relations. In addition, as noted in her dissertation, V. V. Senchuk, the tumultuous events of the Liberation war (1648–1654 years from the author) led to the complete destruction of the existing system of the land tenure (Сенчук, 2009).

At the same time, after the authorities of the Hetmanate, it was established in accordance with the "March articles" how public education has been forced to devote attention to the organization of management of various spheres of the public life in their territories in connection with the accounting of the land was put on the Hetman's administration (Мартинюк, 2007), which performed the functions of registration of the rights to the land, certification of transactions, checking the legality of the ownership of the real estate. In common practice those days, the appropriate entries are reflected in the various books.

As for the right-bank Ukraine, on its territory for political reasons these Laws were those of the Austrian Empire, which also assumed the existence of the Institute of the state registration. In particular, article 321 of the civil Code of the Austrian Empire of 1811 it was assumed that legitimate possession of the property right over real estate is acquired only through proper registration in the public books. Moreover, according to the article 431 of the Code specified for the transfer of the ownership of the immovable property, the acquisition must be made in public for his books (Романюк, 2008). The fact is, as noted in their study, V. V. Senchuk (Сенчук, 2009), the so-called "Teresian cadastre" was introduced in Austria-Hungary in 1751, and subsequently appeared the classic "phreatic" ("land") books. However, perfect and correct idea underlying the registration of the rights to real property, worked well in Germany, but in Ukraine it was completely discredited by the technical deficiencies in the maintenance of the current registration. The low level of the reliability and accuracy of the initial registration resulted in the fact that over time, it became impossible to use the phreatic books with reference to this the Law of December 11, 1906 was provided for the introduction of the new books for the actual condition of the property,

however, continuous improvement and state registration of peasant land ownership was halted by the First world war (Сенчук, 2009).

Returning and concluding the consideration of the question of the state registration of rights to estate property during the stay of the Ukrainian lands under the influence of the Russian Empire, it should be noted that with the final dissolution of the autonomy of Ukraine the legal impact of the empire got empowerment on its territory. In connection with this the system of the registration of the rights on the estate property adopted the traits of imperial analogue. On the territory of modern Russian Federation the system was well-developed. From the end of XV century (the time of the acquisition of property during conquest by Ivan the Terrible), first locally and then in the General system, there started "Pistceva books" – the acts of economic and financial description of the land relating to all counties of the cottages and mills, with an indication of the tracts, wetlands, settlements and other household supplies every possession. Pistceva book also served as a legal certificate of the ownership, found the clerk in this or that area, but not postul rights that could exist without the reflections in this book even though in Pistceva book was looking for the information about an estate property object (description of the component parts of a city or a county) and about who or what right (private or state) has the relevant estate property (Победоносцев, 2004). "Pistceva book" was the prototype of the modern land cadastre, whose main purpose is, first of all, the registration of the land, rights to them. Although, at the same time, modern inventories are combined, and therefore they may contain information about the estate property objects and rights to them (Дьоміна, 2012).

In addition to cadastre there were also watch books and correction books that contained the additions and corrections that were made with the former description to align the changes that have taken place in a particular locality and their rights to appropriate real property. Buildings and abatis books were made to build cities, jail or bins in the wild steppes. They were described as constructed buildings and structures and land transferred to the serving men. Boundary books describing the boundaries of the land holdings, sometimes with the measurements lands of its borders – in such cases, the book is called dimensional (Победоносцев, 2004). Since the XV century the functions of the registration of the land lots and conducting the registration of the changes of the feudal tenure were carried out by the Local izba (История..., 2013). Later, in the reign of Ivan IV the "order system" was formed as the registration of the rights to estate

property (Сенчук, 2009) according to which it was the obligation to produce bills of sale in the orders normatively, where it was recorded in the book of order and from that moment the person became the owner of the property. Till the XVII century, any transaction for the sale of real property recorded in the book of order (История..., 2013), which was the name of Pistceva book (Сенчук, 2009). In 1719 Peter I has created in at Justice College "office fortress" (House fortress Affairs), and in 1721 was created by the Central government authority – Patrimonial Board, which together with Fortified office was in charge of the land tenure issues and land boundary surveys. Under Catherine II the functions of the registration of liens transferred to provincial authorities. Instead of House fortress Affairs functions of making acts of the fortress was entrusted to the civil chamber and the district courts, under which are organized the institutions of the fortress of cases (История..., 2013). With the adoption of the Emperor Alexander I "Regulation on notarial part", dated 14 April 1866 as a logical continuation of the Sobornoye ulozheniye "Code of Laws of the Russian state" in 1649 (Ахмадгазизов, 2008; Сенчук, 2009), in capitals, provincial cities and, if necessary, in the provincial towns were the posts of notaries, which is entrusted with the registration of transactions. On the level with modern Notari notaries since 1866 checked the encumbrances on the estate property, certified to the transaction and thus provided them legal force. The base of patrimonial rights is not implemented. The when was the moment of making appropriate entries in the registry (Сенчук, 2009).

4. Historical tools to protect the rights to land lots and to estate property during Soviet and post-Soviet period (XX–XXI centuries)

As for contemporary times, pointed by Y. M. Romaniuk (Романюк, 2010), during Soviet period the special regime system of consolidation of rights to estate property was abolished. Private land property and the possibility of its passing from one person to another were forbidden. The reason was the social ideology that denied the private property on production means among them on land, and also due to social collectivization as a result of introduction this ideology to life. At the same time, the system of the registration of the estate property has intensified significantly in the connection with the beginning of the twentieth century the functions of such accounting was endowed with the NKVD, and then they gradually shifted to the people's Commissariat of agriculture of the RSFSR.

On the 21st of May 1927 at the meeting of the Economic RSFSR "On approval of the inventory of the property of local councils" the regulation was adopted. The features inventory and registration of the estate property agencies got Technical Inventory, which initially acted within the NKVD, and later – at the People's Commissariat of National Economy of the RSFSR.

According to the decree of the Council of Ministers of the USSR from 10th of February 1985 No. 136 "On the procedure of state registration of the housing Fund" the Bureau of technical inventory carried out registration and technical inventory of the housing stock in the country.

According to the Council of Ministers on February 10, 1985 № 136 "On the procedure for the state registration of housing stock" the Bureau of technical inventory registers and make technical inventory of housing stock in the country.

It should be noted that the provisions of the Civil code of the Ukrainian SSR, in particular article 227 the preconditions for the development of the Institute of registration of transactions were formed, as in accordance with contracts of sale and purchase of the residential houses subject to registration in the Executive Committee of local Council of people's deputies (Цивільний кодекс Української РСР, 1963).

With the independence of Ukraine and delineating the patterns of development of the country in 2004 it was adopted the Law of Ukraine "On the state registration of in rem rights to the estate property and their restrictions". The law laid foundations in regulation of relations within the state registration of in rem rights to estate property, specified a new structure of the bodies that have to exercise functions, fixed the distinctions of the information part of the implementation of the state registration.

However, paragraph 5 of section V "Final and transitional provisions" of the above Law was clearly established that before creation of uniform system of registration and before the formation of the State register of rights to estate property and their limitations in the composition of the state land cadastre registration of the real estate objects is carried out by utilities Bureau of technical inventory (Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень: Закон України, 2004).

In connection with a number of organizational and economic obstacles to implement the act fully failed in this connection to 1st of January 2013 the state registration of the land lots and rights to them were carried out by the territorial bodies of the State Committee of the land resources authorities (since 2010 the State Agency for land resources). The state registration of rights to estate property artificially

created Bureau of technical inventory and state registration of transactions and encumbrance of the rights to estate property – notaries. Registration of artificially created objects of immovable property as a single procedure for the registration or administrative procedure was not carried out.

The first of January is considered to be the start of the new system of state registration to the estate property and its encumbrance.

5. Summary

Summarizing the abovementioned, it is possible to define some features of the historical development of the institute of state registration of in rem rights to estate property in Ukraine.

Firstly, the state registration within the turnover of the estate property and the role of the public authority in managing of the origin, passing and termination of the rights to estate property is the essential part of the legal status of the estate property units and its turnover. Almost with the origin of property relations and the emergence of the estate property rights, particularly on the land of public education in the form of genera, tribes, communities or public education used a different kind of custom or the legal instruments for the protection of the real property rights, what then can be considered the prototype of the modern registration of the real property rights or the legal actions with estate property.

Secondly, up to the end of the 19th the registration institute has been developing for a long period of time without any system. Particularly, there was no due division on rights registration, estate property units or the documents on estate property, but at the same time the legal nature of the registration had high-profile legitimist character, i.e. it was directed to provide legal force to the definite facts of reality. And only in the end of XIX century the state registration of rights, lots and legal deeds were strictly delimited.

Thirdly, during all this historical period of development of institute of state registration in turnover of the estate property on the territory of today's Ukraine, the registration functions were executed by the self-governing bodies or by the government authorities.

At the same time, the trends of the late XIX century and in the modern conditions, the priority of the registration is provided to the government authorities. Today this practice is prevalent in the most countries of the world testifies to its effectiveness and prospects of the development.

Fourthly, before the beginning of the XX century the process of the one type record of estate property was duly delinked, because the information about the land lots could appear in several record books simultaneously, i.e. the record was non systematic. Only in the beginning of the XX century when passing to the new economic structure the state monopoly on the production means including on land made the background for the centralized record keeping of estate property, without registration of rights to it or to legal deeds at all.

Moreover, one should pay attention that, as noted above, the state registration of rights to estate property is a relatively new phenomenon for the most legal systems, and if at the beginning of the 20th century, it had a chaotic and unsystematic nature, since the beginning of the XX century the worldwide state registration of the rights, objects or transactions begins to form as a full-fledged Institute. This proves the fact that in the country where the lawyer takes part in almost all of the least important from a legal point of view the processes – England, compulsory registration of real property was stipulated by the Act on registration of land of 1925 (Martin, 2003).

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