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The peculiarities of restitution of agricultural land in Ukraine[2]

Abstract

In the post-Soviet space, two main approaches formed the basis of land reforms: 1) restitution, i.e., the return of land ownership to former owners (as in the Baltic countries, Romania, Slovakia, Albania, etc.), and 2) privatisation of land plots (as in Ukraine, Belarus, etc.). Ukraine lacks legislation regarding property restitution, as the country has not yet decided on this matter. Worldwide, property restitution is carried out to restore property rights violated by communist and national-socialist (Nazi) totalitarian systems. The state must acknowledge its unlawful seizure of private property by recognising the act of violence by the state during the acquisition of property rights. The adoption of the Land Code on March 13, 1992, marked the beginning of land privatisation in Ukraine. The initial years of land reform and privatisation primarily focused on agriculture. In the sphere of agrarian production, a reform was necessary to provide land to workers. For this reason, starting from 1992 rural lands in Ukraine, which were previously owned by the state and used by agricultural enterprises, were transferred to peasants. During the war in Ukraine beginning in 2022, existing legislation prohibits both the formation of land plots through free privatisation, as well as specifying their boundaries and registering them in the state land cadastre.

Key words: *restitution, nationalisation, collectivisation, agricultural land, land.*

Ukraine has decided to move towards the European development vector, hoping to implement the positive experiences of other European countries in its own growth. For this reason, the country's leadership is conducting numerous reforms in almost every sphere of public activity. However, land reform, which has

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been ongoing for over two decades, is the country's most significant challenge. Ukrainians who gained property rights to land in the late 1900s still had no right to use it freely. This is because in 2001, a moratorium on selling agricultural land was introduced in Ukraine. The process of returning property to former owners, known as property restitution, is used in Eastern and Central Europe as one of the criteria for assessing the democratic progress of countries seeking membership in the European Union and the North Atlantic Treaty Organization (NATO). According to the official position of the United States, a successful property restitution program indicates how well the rule of law operates in a democratic country. The World Jewish Restitution Organization (WJRO), representing Jewish people worldwide in resolving claims to restore Jewish property in Europe outside Germany and Austria, actively supports restitution. Ukraine, as it is known, seeks to become a member of NATO and the EU, which may necessitate such a property restitution procedure.[3]

It should be noted that Ukraine lacks the same land restitution procedure as other European states. There was only a petition in 2019, indicating that Ukraine's law on coupon privatisation should be reconsidered. Instead of a restitution law, the suggestion was to have a law on the return of expropriated land and property, or compensation for its value at European prices to the descendants of former landowners - for everything destroyed, stolen, or taken by the Bolsheviks during the Soviet regime.[4] All developed countries adhere to a standard that if it is impossible to return property or land, monetary compensation is paid to the victim. Additionally, there are currently two different mechanisms for gathering evidence, each differing in every country. The first duty is for the individual to collect all necessary documents for filing a lawsuit. For instance, this is the case in neighbouring Poland, where there is no specific restitution legislation because it was unnecessary. Even during the so-called Warsaw Pact, Polish people had private property, including land. In Poland, there are also no issues with obtaining relevant written evidence regarding the chain of "new" owners. The second approach, used for example in Slovakia and Austria, requires the existence of special state authorities. Victims or legitimate heirs can turn to these authorities. Officials then gather information themselves from registers, archives, contracts, and decisions of government bodies. This helps to confirm what was lost, when, and how documentarily.

Conducting civilised restitution in Western Ukraine is easier because the Soviet government came to power there a whole generation later than in Eastern Ukraine.[5]

3 | Аврамова (Avramova) 2019
4 | Ганко (Hanko) 2019
5 | До Євросоюзу Україну не приймуть. Якщо в державі не появиться інститут реституції (Do Yevrosoiuzu Ukrainu ne pryimut. Yakshcho v derzhavi ne poiavytsia instytut restytutsii) 2021

1. Historical note.

Despite the absence of land restitution in Ukraine, it has undergone a complex historical path to achieve independence, contributing to the development of land relations in the country. Due to its fertility and favourable geographical location, Ukrainian land has been the subject of many disputes and wars throughout its existence.

In Ukraine, the first attempts at administrative-territorial division can be considered the existence of land principalities during the time of Kyivan Rus. In the 9th to 12th centuries, the territory of modern Ukraine was divided into the Kyivan, Chernihiv-Siversky, Pereyaslav, Volyn, and Halych lands, all of which were part of the Kyivan state. Due to lower economic and political development, some smaller lands were part of the Kyiv principality, including the Polyanian (Rus), Turov-Pinsk, and Drevlyanian lands. The land principalities were divided into volosts, with cities serving as their centres (*gorods)*. From the mid-12th century, the decline of the Kyivan state began. The direct successor to the political and cultural traditions of Kyivan Rus was the Halych-Volyn Principality, which continued the early period of Ukrainian statehood. From the 13th to the first half of the 14th century, a significant part of the Ukrainian ethnic territory was united within the Galician-Volhynian state.

After the death of Yuri II Boleslav in 1340, the decline of the Galician-Volhynian state began. Foreign states annexed Most Ukrainian lands in the second half of the 14th century. In 1387, the prolonged wars between Poland, Hungary, and Lithuania for Galicia concluded with the annexation of this territory to the Kingdom of Poland. After the conclusion of the Lublin Union between Poland and Lithuania in 1569, all Ukrainian lands, except for Brest and Dorogychyn, Transcarpathia[6], Bukovina,[7] and Chernihiv, came under the direct rule of the Kingdom of Poland. The defeat of Ukrainian national liberation struggles from 1917 to 1921 led to the elimination of national statehood and another change in the political-administrative system of Ukrainian lands in the 1920s and 30s. During the interwar period,

6 | After Hungary captured Transcarpathian Ukraine (finally in the thirteenth century), the Hungarian administrative-territorial system was introduced on this territory. The Ukrainian lands were divided into seven comitates (zhupas): Spysh, Zemplin, Sharyz, Uzhan, Uhochany, Berezny, and Marmaros. The head of the comitatus was a żupan appointed by the king. In the early 16th century, due to Hungary's loss of independence, most of Transcarpathia fell under the rule of the Principality of Transylvania (Semygorod). Since 1699, all of Transcarpathian Ukraine was part of Austria.

7 | These lands were part of the Galicia-Volhynia state in the 12th - first half of the 14th century. The decline of the Galicia-Volhynia principality strengthened Hungary's position in the region in the middle. XIV century. In this region, Hungary's position was strengthened. In 1774, Bukovyna (except for the Khotyn district) came under Austrian rule and, in 1786, was governed by a military command. In early 1787, the Bukovinian lands became part of Galicia. The territory of the Khotyn district came under the rule of the Russian Empire under the Treaty of Bucharest in 1812.

Ukrainian ethnic territories were part of four states: the Soviet Union, Poland, Czechoslovakia, and Romania.

Therefore, until 1945, the territory of Ukraine underwent significant changes. From the 1950s to the 1980s, the government structure of Ukraine experienced no substantial alterations. After the Act of Declaration of Independence of Ukraine on August 24, 1991[8], the legislative and executive bodies of the country took a series of important measures to improve the administrative-territorial structure of Ukraine and bring it in line with the new status as an independent state.

Considering that the territory of modern Ukraine has undergone constant changes, there are several historical stages in the development of land relations 1. Communal land ownership, where community and communal land ownership existed in Ukrainian lands for a long time, with each family having property rights to the land. 2. Feudal ownership, signifying that land belonged to feudal lords who utilised the labour of dependent peasants. 3. Peasant landownership, where peasants paid rent to their feudal lords, princes, and nobles - who were significant landowners - during the land cultivation. 4. Manor ownership, where after Ukrainian lands became part of the Polish-Lithuanian Commonwealth, peasants received intermediary lands for which they had to pay monetary dues and natural taxes and perform manorial duties. 5. State or collective ownership, in which selling land by peasants to feudal lords (serfdom) was prohibited. 6. Private ownership without the right of sale. When the Zaporizhian Sich was established in the territory of Ukraine, peasants gained freedom and property rights to their land. The land belonged to Orthodox monasteries, elders, higher clergy, Cossacks, minor nobility, and townspeople.

The land of wealthy landowners and landlords returned to their owners after Ukrainian territories came under the control of two empires: Russia and Austria-Hungary. During this period, a number of significant events took place: 1) On February 19, 1861, serfdom was abolished in the Russian Empire. 2) The Stolypin agrarian reform led to peasants acquiring land in private ownership, while the land owned by landlords was bought and sold to peasants on favourable terms. 3) In 1848-1849, there was a peasant reform in Austria-Hungary, where peasants gained independence from landlords and acquired land through redemption.

The procedure and principles of transferring land ownership to the state fund were specified in the articles of the Land Reform Law of the Western Region of the Ukrainian People's Republic (UNR) dated April 14, 1919. It stated that not only were the large land holdings of landlords (tabular lands) subject to nationalisation, but so too was the land owned by the Austro-Hungarian Empire, as well as monastery and church lands, episcopal lands, lands used by owners for speculation and enrichment, and land grants exceeding the established norm. Lands confiscated without

8 | Про проголошення незалежності України (Pro proholoshennia nezalezhnosti Ukrainy) 1991

the right to compensation included those owned by individuals who fought against the UNR army and lands acquired through speculative means during 1914-1918 and 1919 wars. Forests and pastures were placed under state management, while water bodies and meadows came under the jurisdiction of the rural community. Agricultural machinery and remnant assets were seized from the owners and utilised by the community.[9] In 1920, peasants received 12,154 thousand desyatins of land, accounting for 83.5% of the confiscated area. The remaining land was used by sugar factories and collective farms.[10] Before the People's Commissariat of the Ukrainian SSR in 1922, the task was set to carry out nationalisation within occupied Ukraine through three pathways:

1. through the confiscation of aristocratic land ownership, land owned by merchants, and shares of joint-stock companies
2. through the transition of former cabinet and urban lands under state control
3. through the abolition of the ownership of rural communities and the ownership of individual citizens over purchased or endowed agricultural lands.[11]

Drawing on the statistics from the reports of the People's Commissariat of Agriculture of the Ukrainian SSR for 1922 - materials from archival institutions - R.D. Lyakh reports the nationalisation of around 30 thousand estates, 96 thousand residential and farm buildings, 360 thousand units of agricultural inventory of various purposes, 80 thousand working oxen, and 46 thousand breeding cows. He adds that the confiscation of landownership from the kurkuls did not become a widespread phenomenon in Ukraine.[12]

The Central Executive Committee of the USSR adopted the General Principles of Land Use and Land Management on December 15, 1928.[13] This provided preferential rights for poor and middle-class members of the community to acquire better and more conveniently located plots. Collective formations were granted additional privileges in land use. Wealthy peasants, who were labelled with the derogatory term 'kurkul' in the evolution of land use in Ukraine, were prohibited from holding leadership positions in the community, which violated democratic principles. Kurkuls were classified into three categories: 1) organisers of mass anti-Soviet uprisings and terrorist acts, and therefore subject to isolation; 2) large kurkuls and former semi-landowners, who were resettled in sparsely populated areas of the USSR; 3) all other kurkuls, who were resettled on lands outside collective farms. The resolution also abolished laws allowing land leasing and hired labour in agriculture, introducing the confiscation of means of production from kurkuls. The implementation of this resolution led to the de-kurkulisation

9 | Луцький (Lutskyi) 2014, 168.
10 | Житков (Zhytkov) 2018, 324-325
11 | Лях (Liakh) 1975, 60.
12 | Лях (Liakh) 1975, 62-67.
13 | Бойчук (Boichuk) 2017, 8

of 70,407 peasant households and the eviction of 31,593 families, comprising 146,229 individuals, beyond the borders of the republic.[14] The implementation of measures accompanying the comprehensive collectivisation led to a reduction in the number of peasant households. Between 1928 and 1931, their number decreased by 352,000.[15] The adoption of this document eliminated the communal method of land distribution by lottery and introduced a class-based principle: the poor and members of collective farms were endowed with land plots near populated areas and with better soils, creating conditions for further collectivisation. Less favourable lands, located farther from the village, were allocated to the kurkuls.[16]

The collectivisation of agriculture served as one of the sources of industrialisation. Simultaneously, it provided control over the peasantry. The transition to collectivisation was facilitated by the grain procurement crisis of 1927-1928. With the increasing market price of bread, the peasantry refused to sell grain to the state at lower prices. In January 1928, the Politburo of the Central Committee of the Communist Party of the Soviet Union (CC CPSU) decided on the forced requisition of grain surpluses from the peasantry and the necessity of forced collectivisation of agriculture.

To encourage peasants to join collective farms, the state artificially revived the issue of the 'kurkul danger' and launched a campaign against them. However, according to the central statistical management of the Ukrainian SSR, as of 1927, only 4% of 5114.7 thousand peasant farms exhibited signs of being kurkul farms. After abandoning the New Economic Policy (NEP), a significant number of such farms tried to eliminate signs of being kurkul, resulting in a decrease in their share to 1.4% in 1929.[17] However, the necessity to create an atmosphere of intimidation, an integral condition for collectivisation, led to labelling all those who disagreed with the party line as kurkuls. Comprehensive collectivisation began in 1929, known as the "year of the great turning point". It was acknowledged that Ukraine had everything necessary to implement collectivisation ahead of other republics. A commission led by the People's Commissar of Agriculture of the USSR, Yakov Yakovlev, established the deadlines for comprehensive collectivisation in the main grain-producing regions.[18] The resolution of the Central Committee of the Communist Party of the Soviet Union (CC CPSU) dated January 5 1930, titled "On the pace of collectivisation and measures to assist the state in collective farm construction," assigned Ukraine to the group of regions where

14 | Кульчицький (Kulchytskyi) 2009, 486.
15 | Історія колективізації сільського господарства Української РСР 1917—1939 (Istoriia kolektyvizatsii silskoho hospodarstva Ukrainskoi RSR 1917—1939 rr.) 1965, 476.
16 | Паньків (Pankiv) 2012, 116.
17 | Кульчицький (Kulchytskyi) 1995, 145; Кульчицький (Kulchytskyi) 1991, 234
18 | Кульчицький (Kulchytskyi) 2013, 110

collectivisation was to be completed by the autumn of 1931 or spring of 1932.[19] However, Ukrainian party leaders shortened the terms of collectivisation by 1-1.5 years.

The beginning of collectivisation revealed that peasants were unwilling to give up their property and transfer it to collective farms. This is because not only were means of production being socialised, but also productive livestock, poultry, and remnants. Achieving this was possible only through brutal violence. The main essence of the government's policy in agriculture was the collectivisation of individual farms. Peasants were forced to join collective farms using various coercive methods, including tax pressure.[20] Faced with a hopeless situation, the peasantry began to sell or slaughter livestock and hide or spoil remnants. In the years 1928-1932, almost half of the livestock in Ukraine was exterminated, and it would take decades to rebuild it.[21]

The next step of the communist authorities in the reform of land use was the resolution of the Presidium of the All-Union Central Executive Committee of the USSR on February 3 1930. This resolution abolished land communities, transferring their rights and responsibilities to the rural councils.[22] On the eve of mass collectivisation, 66.2% of peasant households followed the courtyard land use form, 20.7% followed the communal form, 6.7% followed the strip form, 1.4% followed the farmstead form, and only 3.7% followed the collective form. Collectives produced only 4% of the gross agricultural output, maintained 48,000 head of livestock out of 11.8 million, and cultivated 315,000 hectares of grain out of 25.2 million hectares of sown area.[23] The active advance of Denikin's army temporarily forced the Bolsheviks to abandon plans for mass collectivisation.

In the Ukrainian SSR, as in the former Soviet Union, land was nationalised, and the state was considered the sole owner. The land was only transferred to citizens, agricultural enterprises, organisations, and institutions for use. It is considered that the dominance of complete state ownership of land became one of the main reasons for the low level of its effective use. The Soviet planned economy, like the entire artificially created socialist system, began to experience a collapse.[24] The main goal of the agrarian policy of the Soviet government in the post-war period was the restoration of land use that had previously been utilised by collective farms. As collective farms began to decline in the mid-1980s, the restoration of leasehold land relations in Ukraine began. Ukrainians believed that the land belonged to them, not the state.

19 | Колективізація і голод на Україні: 1929-1933; Історія Українського селянства : нариси. (Kolektyvizatsiia i holod na Ukraini: 1929-1933; Istoriia Ukrainskoho selianstva : narysy) 2006, 345
20 | Кравчук (Kravchuk) 2020, 29
21 | Кондратюк (Kondratiuk) 2003
22 | Марочко (Marochko) 1995, 123
23 | Паньків (Pankiv) 2012, 117
24 | Ковалів (Kovaliv) 2016, 159

In most former Soviet republics, the main reason for land reform was the low productivity of agricultural production. This differed from Eastern European and Baltic countries, where the primary goal was the return of property to former owners.

Inherited from socialist land use, independent Ukraine faced an imbalanced structure of land resources, with 72.2% occupied by agricultural land and 57.5% ploughed territory. Forests and other wooded areas constituted 16.4% of the total area of the country (9.9 million hectares), with the main forest massifs concentrated in the Polissia and Carpathian regions of Ukraine. In terms of forest area, forest density, and timber reserves, Ukraine belongs to the forest-deficient states. Among the tree stands, coniferous trees occupy 42.2%, hardwoods 43.3%, and softwoods 13.6%. Forest lands are state-owned, and for forestry management they are leased to the State Forest Management Committee (68.3%) and the Ministry of Agrarian Policy (24.0%).[25]

In the 1990s, the first stage of land reform began in Ukraine, primarily focusing on agrarian aspects. Its main slogan was "land for the peasants". Until the late 1980s, agricultural production was predominantly carried out by large farms that operated with hired labour from collective farm members and state farm workers, but had no means of production.

In 1990, the Supreme Council of the Ukrainian SSR adopted a resolution "On Land Reform" which, over time, was supplemented by other legislative acts emphasising the need for new methods of effective land use, conservation, and restructuring of land relations in light of market developments[26]. This resolution stipulated that all lands in the country would undergo reform even before the declaration of Ukraine's independence. The concept of denationalisation and privatisation of enterprises, lands, and residential property, approved by the Verkhovna Rada of Ukraine on October 31, 1991, envisioned the redistribution of land ownership. However, the rural population deemed this concept unacceptable as it granted every adult citizen of Ukraine the right to privatise an equal-sized land plot. A second idea for land reform emerged during the development and adoption of a new version of the Land Code of Ukraine on March 15, 1992. This code regulated the denationalisation of lands, their transfer into private and collective ownership, and the right to a land share for social sector workers in rural areas and members of collective agricultural enterprises. Lands for public use in settlements; lands for mining, transport, communication, defence, and the unified energy and space system; lands for health, environmental, recreational, and historical-cultural purposes; lands of the forest and water fund; lands for agricultural research institutions and educational establishments; lands for agricultural research and educational institutions; and lands for agricultural

25 | Паньків (Pankiv) 2012, 163

26 | Формування ринку землі в Україні (Formuvannia rynku zemli v Ukraini) 2006, 9

purposes were all specified. Collective agricultural enterprises (CAEs), agricultural cooperatives, and gardening farms were examples of entities with collective ownership rights to land. The area transferred into collective ownership was determined as the difference between the total area of lands owned by the respective council and the total area of lands owned by the state and private entities. In the event of the termination of CAE activities, each member had the right to a share of the land determined by dividing the total area of agricultural land by the number of pensioners and workers in the social sector (education, health care, culture, domestic services, communication, trade, public catering, law enforcement agencies).

Thus, the following land reforms were implemented in Ukraine:

1. The land reform of 1861. As a result of this reform serfdom was abolished, and peasants were given the opportunity to obtain land in communal ownership, usually through redemption.
2. The Stolypin reform from 1906 to 1912. This reform involved the transfer of land to communities rather than communes.
3. The land reform of 1917. Consequently all private lands were confiscated, leading to nationalisation.[27] By the Decree on Land, certain fundamental principles of Soviet land legislation were established. According to the decree, the right to private land ownership was abolished. Moreover, lands belonging to landowners, feudal lords, cabinet officials, monasteries, churches, and possession lands were confiscated and placed under the control of land committees and county councils of peasant deputies.[28]
4. Currently, Ukraine is undergoing its fourth land reform. Denationalisation of land, which involves transferring state-owned land to private individuals, is the main objective of the reform. Thus, it plays a crucial role in the agrarian reform, aiming to change ownership relations of material and technical production means, as well as other aspects of the functioning of Ukraine's agricultural sector. To ensure the efficient use of land, it is necessary to strengthen planning components with maximum consideration of societal needs. Additionally, an increase in the role of land information systems in land management is expected as a tool for state regulation of land use and protection. Furthermore, the multifunctional cadastre is anticipated to play a growing role as a decision-making tool for both public and private enterprises.[29]

27 | Заставнюк (Zastavniuk) 2011, 25
28 | Життя і розвиток Земельного законодавства України у XX – на початку XXI століття науково-практичний посібник для суддів та кандидатів на посаду судді (Zhyttia i rozvytok Zemelnoho zakonodavstva Ukrainy u XX – na pochatku XXI stolittia naukovo-praktychnyi posibnyk dlia suddiv ta kandydativ na posadu suddi) 2018
29 | Tretyak 2002, 111-112

2. Ideological approaches to the restitution of agricultural lands after the collapse of Soviet dictatorships.

The issue of restitution has been the subject of scientific research by renowned scholars such as S. Vilnyansky, M. Gordon, O. Dzera, N. Kuznetsova, R. Maydanik, V. Maslov, N. Moskalyuk, O. Pushkin, N. Saniakhmetov, E. Kharitonov, Ya. Shevchenko, and many others.

In the 1990s, during the privatisation processes, legislators managed to alleviate some of the social tension. For instance, those who were tenants of state-owned housing were granted the right to privatise, those working in collective farms gained the right to a land share, and those employed in factories were entitled to a share in the property of their enterprise. Everyone seemed to have the right to obtain a portion of state property, but it was not the same share that individuals had lost due to the communist regime in the past. Therefore, social justice was not restored.

Ukraine's affirmation of its desire to become a member of the European Union has once again brought this issue to the forefront, as all EU member states have gone through the process of regaining lost property rights or receiving compensation for their loss. For each country, this has been a path that required significant financial expenditures and immense political will. So, if Ukraine wants to be part of the European community in the future, it must address the issue of restitution. For Ukraine, the complication arises from the fact that state property, which could have been transferred into private hands through privatisation processes, has already been effectively distributed. Therefore, scholars and practitioners logically question: what is there to restore now? In our opinion, a compromise solution needs to be sought.

Restitution (from the Latin 'restituere': to compensate, restore, or bring back into order) is commonly considered the general consequence of the invalidity of legal transactions in civil law. This invalidity leads to the need to restore violated property rights and bring them back to the state that existed at the time of the action causing harm - i.e., the restoration or return of material assets of the same value.[30]

According to N.B. Moskaluk, there is a considerable number of doctrinal interpretations of restitution, many of which are almost identical. Therefore, it is not practical to list them all within the scope of our research. However, we managed to group certain interpretations and provide a brief characterisation. A significant group of researchers adheres to the position that restitution is a type of conduction or that restitution is essentially a consequence of unjust enrichment. This position is substantiated by the idea that rights are not acquired through an invalid legal

30 | Москалюк (Moskaliuk) 2021, 255

transaction, making the enrichment unjustified. Another group of scholars argues that "the claim for the return of unjustly acquired property is a form (method) of exercising the right to restitution."[31]

It is worth noting that all the mentioned perspectives have serious theoretical justification, and the reason for their diversity is that national legislation, unfortunately, does not provide answers to all questions. Furthermore, restitution can be applied to both contemporary invalid legal transactions and state-compelled measures that resulted in the violation of property rights. We support the idea of an expanded interpretation of the concept of restitution and a clear classification of it, either as a civil law institution or an international law one. In the civil law sense, it involves restoring the state of affairs that existed before the commission of a legal act, declared invalid by law or recognised as such by a court order. Its essence is that each party is obligated to return to the other party in-kind everything it received under the contract. In the case of impossibility of such return, especially when what was received consists of the use of property, work performed, or services provided, the obligated party must compensate the value received according to the prices existing at the time of compensation (Part 1 of Article 216 of the Civil Code of Ukraine). If we talk about international law, "restitution" is considered a form of material legal responsibility that commits an act of aggression or another internationally wrongful act. In this case, restitution involves the duty of the state to eliminate or reduce the material damage caused to another state and restore the previous state.[32] Under the current civil legislation, restitution is defined as the restoration of the state of affairs that existed before the commission of a legal act, declared invalid by law, or recognised as such by a court order (Part 1 of Article 216 of the Civil Code of Ukraine). This concept is further detailed by the Supreme Court of Ukraine, which states in a resolution: "Despite the fact that restitution is not provided for in Article 16 of the Civil Code of Ukraine as one of the means of protection, it can be considered a separate means of protecting civil rights violated due to the invalidity of a legal act. Without delving into theoretical discussions on these ambiguous issues, it is worth noting that restitution (aiming at the 'actual state of affairs') is an exceptional consequence (and recognising legal acts regarding the invalidity of the transfer of property rights to real estate should be considered exceptional in itself), which should be applied only in exceptional cases (at least, such an understanding of restitution should be pursued to maintain the stability of turnover of land plots and other immovable property)."

31 | Москалюк (Moskaliuk) 2020, 190; Пояснювальна записка до проекту Закону України «Про відновлення дії Закону України «Про перелік об'єктів права державної власності, що не підлягають приватизації» (Poiasniuvalna zapyska do proektu Zakonu Ukrainy «Pro vidnovlennia dii Zakonu Ukrainy «Pro perelik obiektiv prava derzhavnoi vlasnosti, shcho ne pidliahaiut pryvatyzatsii»).

32 | Мирошниченко, Попов, Рипенко (Myroshnychenko, Popov & Rypenko) 2012

However, Ukraine lacks sufficient experience in restitution. This concerns not only the termination of property rights but also the return by the state of church property, which was less problematic. Certainly, there are issues related to the church's ability to maintain the property transferred to it by the state, but there are also other problems. Political and social factors also influence the property rights of churches. Before 2014, protests were associated with the transfer of state property to the Ukrainian Orthodox Church of the Moscow Patriarchate, but after 2014 protests came from the opposite side.[33] It is worth noting that during the Soviet era, both the Catholic and Orthodox churches were persecuted. Thus, to prevent conflicts between denominations, these issues should be resolved through dialogue between the churches. It is clear that the question of returning church property should be approached from the perspective of restoring it to the church from which it was confiscated. This would be both legally correct and socially just.

N.B. Moskalyuk compared restitution in Ukraine with other Eastern European countries, and highlighted objective reasons that hinder or complicate the process: 1) ownership of disputed property by individuals who acquired it through inheritance or privatisation agreements. These individuals, being legitimate owners, have a right to protection and should be safeguarded. Besides, the significant lapse of time between the violation of property rights and restitution is a major obstacle; 2) lack of proper documentation establishing rights to nationalised property; 3) the absence of a restitution law in Ukraine leads to attempts to address issues of unlawful property acquisition, often involving corruption, document falsification, and engagement with law firms that sell rights to former owners or their heirs, ultimately leading to the completion of the case; 4) if buildings or other structures were destroyed, their heirs might demand the return of the land on which they stood. Given the existing land rights issues in Ukraine and the fact that most of these lands are already developed or in public use, satisfying such demands is challenging; 5) problems related to the national context, particularly in western Ukraine, which was annexed to the eastern part of Poland in the mid-20th century; 6) foreign citizens who, after restitution, become owners of property in another country, often selling or leasing it. Such actions, though reasonable for the owner, have a negative impact on society. When commercial companies purchase real estate, the local budget does not benefit, unlike privatisation. In such cases, the complex process of property restitution, which could be replaced by monetary compensation, is unnecessary. When renting out housing, individuals who previously rented it but had it confiscated during restitution in favour of the legal successor of the former owner become tenants. Depriving individuals of property rights under such circumstances is a painful matter, and the new owner, charging a higher rent, takes advantage of the fact that people who have lived in the house for a long time do not wish to move. The local budget is also responsible for paying

33 | Василець (Vasylets) 2016

rent to residents.[34] The conclusion is that restitution in Ukraine is impossible, both practically and legally.

3. Legal sources of agricultural land reform after the collapse of the Soviet-type dictatorship, including the evolution or modification of this legislation over the past decade.

All spheres of life for Ukrainians would differ from the Soviet era when Ukraine gained independence. To achieve this goal, reforms were implemented in all areas of social activity in Ukraine, including land management. The Resolution of the Verkhovna Rada of Ukraine, dated December 18, 1990, "On Land Reform",[35] envisaged the redistribution of lands that were transferred to private and collective ownership. In March 1991, the first Land Code of Ukraine came into effect.[36] At that time, all land was declared the subject of the reform. Ukraine opted out of the restitution of land plots as a method of reforming land ownership relations, steering towards demonopolisation and denationalisation of land. The institution of perpetual hereditary possession of individual land plots was introduced accordingly. In accordance with the resolution,[37] the main task of the land reform was to redistribute land while simultaneously providing perpetual hereditary ownership to citizens, permanent ownership to collective farms, state farms, and other enterprises and organisations, as well as granting land use for the purpose of creating conditions for the equal development of various forms of economic activity on land, forming a diversified economy, and ensuring the rational use and protection of land.[38] During that time, to pass the law on private land ownership, it was necessary to suspend the alienation of land for six years. In March 1992 a new version of the Land Code of Ukraine was adopted. In particular, Article 17 of the Land Code stipulated that owners of land plots transferred by the Supreme Council were not allowed to sell or otherwise alienate this land plot within six years from the moment of acquiring ownership rights, except for transferring it by inheritance or back to the Supreme Council under the same conditions as it was transferred. The

34 | Москалюк (Moskaliuk) 2020, 109.
35 | Про земельну реформу, (1990), (Постанова не застосовується на території України згідно із Законом від 21.04.2022 р. Про дерадянізацію законодавства України) (Pro zemelnu reformu 1990, (Postanova ne zastosovuietsia na terytorii Ukrainy zghidno iz Zakonom vid 21.04.2022 r. Pro deradianizatsiiu zakonodavstva Ukrainy)), 2022.
36 | Земельний кодекс України (Zemelnyi kodeks Ukrainy) 2001
37 | Про земельну реформу, (1990), (не діє на території України від 2022 р.), внаслідок прийняття закону Про дерадянізацію законодавства України (Pro zemelnu reformu 1990, (ne diie na terytorii Ukrainy vid 2022 r.), vnaslidok pryiniattia zakonu Pro deradianizatsiiu zakonodavstva Ukrainy) 2022
38 | Ковалів (Kovaliv) 2016, 24.

court, at the owner's request, could shorten this period if there were valid reasons. The only article related to land restitution in the current Land Code is Article 212, which states that illegally occupied land cannot be returned to owners or land users without compensation for the expenses incurred during their unlawful use. Unauthorised occupation of a land plot involves actions such as fencing off the land plot, constructing on it, etc. Individuals or legal entities that have unlawfully occupied land are obliged to restore it to a condition suitable for use, including the demolition of buildings and structures. The court orders the return of unlawfully occupied land. In 1992, the Verkhovna Rada of Ukraine adopted a resolution on March 13, 1992, "On Accelerating Land Reform and Land Privatisation",[39] due to the lack of state control over the implementation of land reform. The president of Ukraine's decree "On Urgent Measures to Accelerate Land Reform in Agricultural Production", dated November 10, 1994,[40] was issued to ensure equal development of various forms of ownership and economic activity on the land. It provided for the division of large farmlands into shares. In the late 1990s, Ukrainians received free land shares due to these presidential decrees. In 2001, the Verkhovna Rada of Ukraine adopted the Law "On the Agreement on Alienation of Land Share" dated January 18, 2001,[41] which temporarily prohibited the owners of shares from buying, selling, or gifting them.

In the same year, the Land Code of Ukraine was adopted on October 25 2001, which prohibited land alienation until January 1, 2005. It temporarily banned entering into agreements for buying, selling, gifting, or otherwise alienating these shares, except for their inheritance and repurchase of land plots for the needs of the state and community. The main role in this process of reforming land relations was assigned to local councils, which were under the control and complete dependence of the leaders of collective farms and state farms. Part 1 of Article 81 of the Land Code of Ukraine provides that among the grounds for Ukrainian citizens to acquire ownership of land plots can be: gratuitous transfer from state and communal ownership, privatisation of land plots previously provided to them for use, and allocation in kind (on-site) of their land share (share).

In addition, certain types of land cannot be transferred into private ownership. Lands belonging to this category include: lands under objects of the natural reserve fund; lands under objects of historical, cultural, and recreational purposes; lands for forestry purposes, except in certain cases; lands of the water fund, except in certain cases; and so on. Furthermore, the Land Code applies to both shares

39 | Про прискорення земельної реформи та приватизацію землі (Pro pryskorennia zemelnoi reformy ta pryvatyzatsiiu zemli) 1992

40 | Про невідкладні заходи щодо прискорення земельної реформи у сфері сільськогосподарського виробництва (Pro nevidkladni zakhody shchodo pryskorennia zemelnoi reformy u sferi silskohospodarskoho vyrobnytstva) 1994

41 | Про угоди щодо відчуження земельної частки (паю), (2001), (втратив чинність) (Pro uhody shchodo vidchuzhennia zemelnoi chastky (paiu) 2001, (vtratyv chynnist))

and land plots for commercial agricultural production and farming, regardless of ownership form.

As for forests,[42] those in state ownership may include forests in Ukraine, excluding forests in communal or private ownership. The right of state ownership of forests, as specified in the provisions of the Forest Code of Ukraine, is acquired and exercised by the state through the Cabinet of Ministers of Ukraine, the Council of Ministers of the Autonomous Republic of Crimea, and local state administrations in accordance with the law.

In February 1992 the Law of Ukraine, "On Collective Agricultural Enterprise",[43] was adopted, marking the beginning of determining the property share of each member of the collective farm. At that time, peasants were told, "You have a share in every tractor, machine, and cow, and dividing them into pieces is impossible."

After that, the moratorium was used several times, as confirmed by laws amending the Land Code from 2006 to 2019. When examining these documents, it is important to note that the moratorium on the sale of land was introduced as a temporary measure but unfortunately turned into a prolonged one, lasting for 20 years.

Among the normative sources of Ukraine that define the possibility and procedure for establishing lease relations regarding agricultural land owned by the state, it is also necessary to mention:

- The Constitution of Ukraine (1996),[44] which in Article 14 proclaims: "The right to land ownership is guaranteed. This right is acquired and exercised by citizens, legal entities, and the state exclusively in accordance with the law"; The Land Code of Ukraine as of October 25, 2001, which in Article 84 establishes the state's right to land ownership, and in Chapter 21 outlines the basics of selling land plots or rights to them on a competitive basis;
- The Law of Ukraine "On Land Lease" defines the procedure for establishing, amending, and terminating lease relationships concerning land in Ukraine. Article 4 specifies the lessors, stating that "The lessors of land plots belonging to state ownership are executive authorities who, in accordance with the law, transfer land plots into ownership or use";
- The Law of Ukraine, dated December 5, 2019, No. 340-IX, amends several legislative acts of Ukraine,[45] including the Land Code of Ukraine and the Law of Ukraine "On Land Lease". This law is aimed at combating raiding, an extremely negative phenomenon unfortunately present in Ukraine;

42 | Лісовий кодекс України (Lisovyi kodeks Ukrainy) 1994
43 | Про колективне сільськогосподарське підприємство (Pro kolektyvne silskohospodarske pidpryiemstvo) 1992
44 | Конституція України (Konstytutsiia Ukrainy) 1996
45 | Про внесення змін до деяких законодавчих актів України щодо протидії рейдерству (Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo protydii reiderstvu) 2019

| Several subordinate normative legal acts aimed at implementing the norms of laws in practice. Among them, one can mention the Cabinet of Ministers of Ukraine Resolution dated March 3, 2004, No. 220, Presidential Decree of Ukraine dated December 3, 1999[46], No. 1529/99,[47] and others.

4. Procedural issues: how the restitution took place in terms of the relevant procedures, and evidence of former ownership.

Land allocation of state farms and other state agricultural enterprises is carried out after their transformation into collective agricultural enterprises.[48] The transformation is considered completed from the moment of the state registration of the newly created legal entity, and the state registration of the termination of the legal entity as a result of the transformation.

In 1995, the procedure for dividing lands transferred into collective ownership was adopted.[49] According to the procedure, land sharing involves determining the size of the land share in the collective land ownership of each member of a collective agricultural enterprise, agricultural cooperative, agricultural joint-stock company without allocating land plots in kind (in the area). Members of a collective agricultural enterprise, agricultural cooperative, or agricultural joint-stock company - including pensioners who previously worked in it and remain members of the specified enterprise, cooperative, or company - had the right to a land share, in accordance with the list attached to the state act on the right of collective ownership of land. Certificates of land ownership were issued to citizens.[50] When allotting, the value and size in conditional cadastral hectares of land shares of all members were considered equal (regardless of seniority).[51]

46 | Про затвердження Типового договору оренди землі (Pro zatverdzhennia Typovoho dohovoru orendy zemli) 2004
47 | Про невідкладні заходи щодо прискорення реформування аграрного сектора економіки (Pro nevidkladni zakhody shchodo pryskorennia reformuvannia ahrarnoho sektora ekonomiky) 1999
48 | Про надання роз'яснення (Pro nadannia roziasnennia) 2009
49 | Про порядок паювання земель, переданих у колективну власність сільськогосподарським підприємствам і організаціям (Pro poriadok paiuvannia zemel, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam) 1995
50 | Про затвердження форми сертифіката на право на земельну частку (пай) і зразка Книги реєстрації сертифікатів на право на земельну частку (пай) (Pro zatverdzhennia formy sertyfikata na pravo na zemelnu chastku (pai) i zrazka Knyhy reiestratsii sertyfikativ na pravo na zemelnu chastku (pai)) 1995
51 | Чому розміри та вартість земельних паїв, вказаних у сертифікатах, були для всіх членів КСП однакові, якщо стаж роботи в колгоспі у всіх не однаковий? (Chomu rozmiry ta vartist zemelnykh paiv, vkazanykh u sertyfikatakh, buly dlia vsikh chleniv KSP odnakovi, yakshcho stazh roboty v kolhospi u vsikh ne odnakovyi?) 2001

The size of the land share was calculated by commissions formed in enterprises from among their employees, the composition of which was approved by general meetings (meetings of authorised members).[52]

The value of the land share was calculated by dividing the monetary value of the agricultural land by the number of persons entitled to the land share.[53]

The number of individuals entitled to a land plot (share) is determined based on the list attached to the state deed granting collective ownership rights to the land. This list, if necessary, is clarified and signed by the heads of the respective council and enterprise. The roster of citizens, as an appendix to the state deed, is compiled by the enterprise itself in accordance with the statute, reviewed, and approved by the general assembly, then signed by the mayor and the head of the collective agricultural enterprise.[54]

Members of the collective agricultural enterprise included: permanent employees; members of the collective agricultural enterprise; pensioners who previously worked in a collective agricultural enterprise and remained members, regardless of their place of residence; conscripted military personnel, if they had not left the collective agricultural enterprise; persons sent for training, if they remained members of the collective agricultural enterprise; women who were on leave due to pregnancy and childbirth, or on leave to take care of a child under the age of three; and members of a collective agricultural enterprise who held elected positions in state authorities or local self-government bodies, if their retention of membership was provided for in the charter of the collective agricultural enterprise.[55]

Citizens who work in the association or worked there at the time of the land transfer into collective ownership, as well as retirees who previously worked in the association (or in the enterprise whose successor became the association) and remain its members, have the right to a land plot (share), regardless of whether they are shareholders of this association or not. Citizens who may be shareholders of the association but were not members of the association at the time of the land transfer into collective ownership and, therefore, were not included in the appendix to the state deed granting collective ownership rights to the land do not have rights to a land plot (share). Newly admitted members to the association may be provided with land plots equivalent to a land plot (share) from the reserve land fund, subject to prior transfer, by the decision of the local council, into the collective ownership

52 | Методичні рекомендації щодо паювання земель, переданих у колективну власність сільськогосподарським підприємствам і організаціям (Metodychni rekomendatsii shchodo paiuvannia zemel, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam) 1996

53 | Ibid.

54 | Про земельний пай для спадкоємця (Pro zemelnyi pai dlia spadkoiemtsia) 2001

55 | Хоменко (Khomenko) 2004

land of the association and making the necessary amendments to the state deed granting collective ownership rights to the land.[56]

If a citizen was erroneously not included in the appendix to the state deed granting collective ownership rights to the land before the land redistribution and issuance of certificates, they needed to address co-owners' assembly regarding the inclusion of their name in the appendix. If the land redistribution has already taken place, then with the consent of all certificate owners, a re-distribution should occur. The dispute should be resolved solely through legal proceedings if no consensus is reached.[57]

Rural and township councils establish a reserve land fund within their territory, with the area agreed upon with the land user, up to 15 percent of the total area of all agricultural lands, including those within respective settlements. The reserve land fund remains state-owned and is designated for further redistribution and purposeful use.[58] Local councils have authority over the disposition of reserve and surplus lands. Current legislation states these lands can be temporarily leased or permanently used.[59]

In accordance with recommendations on the redistribution procedure of reserve lands for their purposeful use,[60] parcels of land from the reserve land fund are transferred into collective ownership for members of non-state agricultural enterprises in an amount equivalent to the average land plots (shares) needed by the newly admitted citizens to these enterprises. Land plots can also be allocated for individuals engaged in the social sphere in rural areas. Local self-government bodies may allocate land parcels from the reserve land fund for redistribution among members of a reorganised collective agricultural enterprise, if their membership is established after the redistribution of the enterprise's lands.[61]

Membership in non-state agricultural enterprises is regulated by the enterprise's statute, which also outlines that disputes arising from membership relations are resolved either through general assemblies or through legal proceedings.

56 | Щодо паювання сільськогосподарських угідь, переданих в колективну власність (Shchodo paiuvannia silskohospodarskykh uhid, peredanykh v kolektyvnu vlasnist) 2000

57 | Щодо надання права на земельну частку (пай) із земель резервного фонду особам, що були помилково (безпідставно) не включені до списку-додатку до державного акта на право колективної власності на землю (Shchodo nadannia prava na zemelnu chastku (pai) iz zemel rezervnoho fondu osobam, shcho buly pomylkovo (bezpidstavno) ne vkliucheni do spysku-dodatku do derzhavnoho akta na pravo kolektyvnoi vlasnosti na zemliu), 2002

58 | Щодо земель резервного фонду, переданих у колективну власність сільськогосподарським підприємствам і організаціям (Shchodo zemel rezervnoho fondu, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam) 2001

59 | Щодо передачі земель у колективну власність сільськогосподарським підприємствам (Shchodo peredachi zemel u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam) 2001

60 | Рекомендації щодо порядку перерозподілу земель резервного фонду з метою використання їх за цільовим призначенням (Rekomendatsii shchodo poriadku pererozpodilu zemel rezervnoho fondu z metoiu vykorystannia yikh za tsilovym pryznachenniam) 1998

61 | Практика розгляду судами земельних спорів (Praktyka rozghliadu sudamy zemelnykh sporiv) 2003

To address membership matters within the enterprise, individuals must submit personal applications to the general assemblies (or authorised meetings). In case membership in the enterprise is positively resolved, additional land parcels equivalent to their land plots (shares) from the reserve land fund may, by the decision of the local council, be transferred into collective ownership. Upon the district state administration's decision, corresponding certificates will be issued to them.[62]

The court is not authorised to grant demands for the allocation of a land plot (share) from the reserve land fund without the consent of the local council. The authority to manage this fund solely belongs to the local council, which is not obliged to provide land plots from this fund to individuals who acquired rights within a collective agricultural enterprise at the same level as other members.[63]

Furthermore, heirs of those members of the collective agricultural enterprise who had the right but passed away before the issuance of land certificates could also obtain a land share. Individuals who became members of the enterprise after the list was approved were added to the list by the decision of the general assemblies of the collective agricultural enterprise. Such decisions were approved by the district council, which issued state deeds granting collective ownership rights to the land. The right to a land plot did not directly depend on a citizen's work experience, productivity indicators, personal merits, place of residence, and so forth. Even if a person stopped working in the collective agricultural enterprise or moved elsewhere after receiving the certificate, they did not lose the right to the land share. This right was guaranteed by Ukrainian legislation, and revoking this right was only possible through a court decision.[64]

Lawsuits filed by citizens related to land shares (including claims for recognition of the right to a land plot, its size, unlawfulness of refusal to issue a certificate, allocation of the share in kind, etc.) could be subject to court proceedings. Defendants in such cases could include collective agricultural enterprises, agricultural cooperatives, the district state administration that approved the share size and decided on certificate issuance, as well as the executive body or local self-government body responsible for the allocation of the land share in kind, and so on.[65]

In practice, courts do not differentiate between the concepts of labour participation in collective farms (and later collective agricultural enterprises) and membership in these collectives. If the labour relations of individuals with these collectives arose based on an employment contract rather than membership in the collective, they do not entail the right to obtain a land share. Only members who

62 | Про право на земельну частку (пай) (Pro pravo na zemelnu chastku (pai)) 1999

63 | Практика розгляду судами земельних спорів (Praktyka rozghliadu sudamy zemelnykh sporiv) 2003

64 | Хто має право на одержання земельного паю? : питання-відповідь (Khto maie pravo na oderzhannia zemelnoho paiu? : pytannia-vidpovid) 2001

65 | Про практику застосування судами земельного законодавства при розгляді цивільних справ (Pro praktyku zastosuvannia sudamy zemelnoho zakonodavstva pry rozghliadi tsyvilnykh sprav) 2004

remained in the collective agricultural enterprise at the time of land privatisation have the right to a land plot. Legislation does not provide for considering the days worked, work schedules, or the nature of work performed by individuals who seek to obtain a land share.[66]

For instance, in one court case, the plaintiff had worked in a collective agricultural enterprise for less than three years at the time of land redistribution. However, the enterprise's statute stipulated that a person needed to work in the enterprise for at least three years to qualify for a land plot. The court ruled that this provision was unlawful, narrowed the circle of individuals entitled to a land plot and violated the rights of the collective agricultural enterprise members.[67]

Another unlawful provision was found in the statute of an agricultural joint-stock company, which tied the right to a land share for company shareholders to their labour relations with the company at the time of land allocation. The courts interpreted that the right to a land share for members of the agricultural joint-stock company actually arose not solely from this basis but from their membership in the company at the time of land allocation. Moreover, the list of individuals entitled to a land share in the company, as approved at the time of land allocation, should correspond to the registry of the company's shareholders at the same time. Such a provision in the statute limits the rights of shareholders.[68]

Decisions made by the general assemblies of collective agricultural enterprises, refusing to include individuals in the appendix to the state deed granting collective ownership rights to the land based on not meeting the minimum workdays requirement, do not comply with legal requirements.[69]

Court practice also highlights that seasonal work in collective farms does not warrant the acquisition of a land share.[70] Additionally, the employment record book does not indicate membership in a collective agricultural enterprise, agricultural cooperative, or agricultural joint-stock company but merely denotes labour relations with these entities.

A person acquires the right to a land share under the presence of three conditions: (1) being a member of a collective agricultural enterprise at the time of sharing; (2) inclusion in the list of persons added to the state act on the right of

66 | Практика розгляду судами земельних спорів (Praktyka rozghliadu sudamy zemelnykh sporiv) 2003
67 | Ibid.
68 | У сільськогосподарському акціонерному товаристві, якому земля передавалась у колективну власність, право на земельний пай набували його учасники - громадяни, які були акціонерами на момент передачі (U silskohospodarskomu aktsionernomu tovarystvi, yakomu zemlia peredavalas u kolektyvnu vlasnist, pravo na zemelnyi pai nabuvaly yoho uchasnyky - hromadiany, yaki buly aktsioneramy na moment peredachi) 2001
69 | Praktyka rozghliadu sudamy zemelnykh sporiv 2003
70 | Федієнко (Fediienko) 2003

collective ownership of land; (3) receiving by a collective agricultural enterprise of this act[71].

The right to a land share can be inherited.[72]

However, this right is contingent upon whether the individual was a member of the enterprise at the time of the issuance of the state deed granting collective ownership rights to the land.[73] The ownership right to a land share does not arise from the moment of inclusion in lists appended to the state deed, the verification, refinement, or approval of these lists. Instead, it originates from issuing the state deed granting collective ownership rights to the specific enterprise the person is a member of.[74] A member of the collective agricultural enterprise included in the list appended to the state deed granting collective ownership rights to the land acquires the right to a land share from the date of issuance of this deed. In the event of their death, the inheritance of the land share occurs even if, for various reasons, they could not obtain the certificate for the land share before their death.[75]

However, if a citizen passed away before the issuance of the state deed granting collective ownership rights to the land and, therefore, was not included in the appendix list, their heirs do not have inheritance rights to the land share.[76]

In such cases, if the court recognised that a person has the right to a land share directly or by way of inheritance, but at the time it was mistakenly not included in the lists of persons added to the state deed on land ownership, then depending on the real possibilities during the consideration of the case, the court in the decision must specify in which way this right should be realised: 1) if in the collective, which received land ownership on the basis of a state act, there were undivided lands, then at the expense of these lands; 2) if the local council agreed to the transfer of land from the reserve fund to the collective to meet the demands of persons who were mistakenly not included in the mentioned lists, then at the expense of these lands; 3) if at the time of resolution of the dispute, the land transferred to the ownership of the collective is completely unsoldered, the local council does not give

71 | Постанова Верховного Суду від 4 серпня 2021 року у справі № 617/537/19 (Postanova Verkhovnoho Sudu vid 4 serpnia 2021 u spravi № 617/537/19)

72 | Під час реорганізації КСП людина померла, не отримавши ані земельного, ані майнового сертифікату. Але в списках членів КСП її прізвище було (Pid chas reorhanizatsii KSP liudyna pomerla, ne otrymavshy ani zemelnoho, ani mainovoho sertyfikatu. Ale v spyskakh chleniv KSP yii prizvyshche bulo.) (2001)

73 | Щодо права на земельну частку (пай) (Shchodo prava na zemelnu chastku (pai)) 2006

74 | Про визнання права на земельну частку (пай) у порядку спадкування законом (Pro vyznannia prava na zemelnu chastku (pai) u poriadku spadkuvannia zakonom) 2004

75 | A member of a collective agricultural enterprise included in the list attached to the state act on the right of collective ownership of land acquires the right to a land share (plot) from the date of issuance of this act. In case of his death, inheritance of the right to a land share is carried out in accordance with the provisions of the Civil Code of Ukraine, including in the case when, for various reasons, he was unable to obtain a certificate of the right to a land share.

76 | Щодо успадкування права на земельний пай (Shchodo uspadkuvannia prava na zemelnyi pai) 2000

consent to the allocation of land from the reserve fund to satisfy the claims of the plaintiff, the court, citing the stated reasons, may satisfy the claims of the plaintiff by charging the value of the land share in cash.[77]

Therefore, upon leaving the enterprise, a citizen has the right to a land share in kind, in cash, or in securities. Disputes arising from exercising this right are resolved by the court.[78]

In 1996, methodological recommendations on the procedure for transferring a land share in kind from collective ownership lands to members of collective agricultural enterprises and organisations were approved.[79] According to these recommendations, the transfer of a land share in kind is conducted to a citizen who holds a certificate for the right to a land share, based on their application, and is carried out after the creation of a Land Division Scheme for the collective ownership lands. The creation of these schemes is undertaken by land management and other authorised organisations. These schemes are developed with the participation of leaders and specialists of collective agricultural enterprises (organisations), agricultural cooperatives, agricultural joint-stock companies, including those formed on the basis of state farms, and other state agricultural entities. These schemes are approved by general assemblies of these enterprises and organisations and are coordinated with district (city) state administrations (executive committees of city councils).

The allocation of a land plot in kind, in accordance with the scheme, is approved by the executive management body of the enterprise within a month of the time of the co-owner's application to leave the company. The creation of these schemes is funded by budgetary allocations as well as by the enterprises or citizens who wish to receive land plots (shares) in kind. In cases where the scheme is not developed, the allocation of the land plot (share) being transferred is approved by a relevant decision at the subsequent general assembly of the enterprise, but no later than three months from the time of submitting the application to leave the company. In cases demanding immediate allocation of a land plot in kind, it is granted within the current agricultural year, but not exceeding 12 months.

The establishment and delineation of the boundaries of the land plot in kind were carried out with the participation of the citizen to whom the land plot is being

77 | Практика розгляду судами земельних спорів (Praktyka rozghliadu sudamy zemelnykh sporiv) 2003

78 | Про вирішення спорів щодо відшкодування паїв при виході громадянина з приватизованого колективного сільськогосподарського підприємства (Pro vyrishennia sporiv shchodo vidshkoduvannia paiv pry vykhodi hromadianyna z pryvatyzovanoho kolektyvnoho silskohospodarskoho pidpryiemstva) 1997

79 | Методичні рекомендації щодо порядку передачі земельної частки (паю) в натурі із земель колективної власності членам колективних сільськогосподарських підприємств і організацій (1996), (втратив чинність) (Metodychni rekomendatsii shchodo poriadku peredachi zemelnoi chastky (paiu) v naturi iz zemel kolektyvnoi vlasnosti chlenam kolektyvnykh silskohospodarskykh pidpryiemstv i orhanizatsii (vtratyv chynnist).) 1996

transferred, a representative from the enterprise, as well as the owners of adjacent land plots and land users. After determining the boundaries in kind, an act of transferring the land plot from the collective ownership lands to the ownership of the citizen is drawn up.

To obtain the state act[80] for the right to private ownership of land, one should apply to the local council for the allocation of the land share in kind. The application should be accompanied by a certificate for the right to ownership of the land plot (share). The local council decides to grant permission to allocate the land plot and issues a state act for the right to private ownership of the land. The certificate holder orders the land management organisation to develop the technical documentation for transferring the land share into private ownership and to conduct a set of land management works for land allocation on-site. Upon completion of the documentation, defining the boundaries in kind, and marking the plot, the local council issues a state act for the right to private ownership of the land. Subsequently, the certificate is withdrawn (returned to the respective district state administration that issued it). Ownership of the land arises after the land management organisation establishes the boundaries of the land plot in kind (on-site), and you receive the state act for the right to private ownership. The state act is a document certifying that the person to whom it is issued is the rightful owner of the land plot.[81] The individual covers the cost of land surveying works necessary to allocate a land share in kind (on-site) and prepare a state act.[82]

Upon the liquidation of the respective collective agricultural enterprise, agricultural joint-stock company, or agricultural cooperative, the right of collective ownership of the land ceases to exist.[83]

There are instances where a land share remains unclaimed, meaning the person entitled to it does not actualise their right. Before delineating the lands between state and communal ownership, the authority to manage lands within populated areas, excluding those transferred to private ownership, lies with the respective rural, township, or city councils. Beyond populated areas, it rests with the corresponding executive authorities. Consequently, in line with these provisions, the council or administration may lease out a land share whose owner hasn't exercised their right while abiding by these regulations. This lease agreement might include terms specifying the duration (for example, the agreement remains

80 | Про затвердження форм державного акта на право власності на земельну ділянку та державного акта на право постійного користування земельною ділянкою (втратила чинність) (Pro zatverdzhennia form derzhavnoho akta na pravo vlasnosti na zemelnu dilianku ta derzhavnoho akta na pravo postiinoho korystuvannia zemelnoiu diliankoiu (vtratyla chynnist).) 2002
81 | Потапенко (Potapenko) 2002
82 | Мачуська (Machuska) 2005
83 | Ibid.

valid until a certain condition is met - either the identification of the owner or a request by the inheritor for the land share).[84]

Undistributed (unclaimed) land plots or shares are not part of state or communal ownership. Their provision for use occurs without conducting land auctions, based on a decision made by the respective executive authority or local self-government - after preparing technical documentation through land surveying - to compile a document certifying the right to the land plot.[85]

The right to claim a land plot (share) in kind, as evidenced by the certificate of land ownership, can differ in size from what is indicated in the certificate.[86] This discrepancy can be either larger or smaller. This variation occurs because, according to the law, the quality of the received land is taken into account during the allocation of land shares in kind. If the soil of the allocated plot's soil is higher than the enterprise's average, the plot's size will be smaller than the size indicated in the land certificate. Conversely, if the soil quality is poorer than the average, the size of the plot will be larger than what is stated in the land certificate. If there is disagreement regarding the justification for the change in the size of the land share, the individual has the right to appeal to the court to protect their rights.[87]

In 1998, the president of Ukraine issued a decree "On the Protection of the Rights of Owners of Land Shares (unit),"[88] which stipulated that in case of alienation through sale-purchase transactions of the right to a certified land share (unit), the preferential right to acquire it belongs to the members of collective agricultural enterprises, agricultural cooperatives, agricultural joint-stock companies, peasant (farmer) households, and individuals entitled to create them. Sale-purchase, donation, exchange agreements of the right to a certified land share (unit), after notarial certification, must be registered by the district state administration at the location of the respective collective agricultural enterprise, agricultural cooperative, or agricultural joint-stock company, with corresponding changes recorded in the Book of Registration of Certificates for the Right to Land Shares (units).

The next stage was the reform of the agricultural sector, initiated by the decree of the president of Ukraine in 1999.[89] It involved a shift in ownership forms, with collective agricultural enterprises being transformed into private market-oriented

84 | Щодо порядку паювання земель, переданих у колективну власність сільськогосподарським підприємствам і організаціям (Shchodo poriadku paiuvannia zemel, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam) 2006
85 | Про надання роз'яснення (Pro nadannia roziasnennia) 2012
86 | Щодо оподаткування спадщини (Shchodo opodatkuvannia spadshchyny) 2007
87 | Щодо правомірності зміни площі паю без згоди власника (Shchodo pravomirnosti zminy ploshchi paiu bez zghody vlasnyka) 2007
88 | Про захист прав власників земельних часток (паїв) (втратив чинність) (Pro zakhyst prav vlasnykiv zemelnykh chastok (paiv) (vtratyv chynnist)) 1998.
89 | Про невідкладні заходи щодо прискорення реформування аграрного сектора економіки (Pro nevidkladni zakhody shchodo pryskorennia reformuvannia ahrarnoho sektora ekonomiky) 1999

entities and peasants becoming actual owners of land and property shares.[90] In 2001, a moratorium was imposed on the alienation of land shares (plots).[91]

During that same year, the Basic Directions of Land Reform for 2001-2005[92] were defined. On October 25, 2001, a new Land Code of Ukraine was adopted, which remains in effect to this day.[93]

According to statistics, from 1991 to 2000, due to the redistribution of land resources, 49.7% of the land remained in state ownership. The privatisation involved the allocation of 26.4 million hectares of land in collective ownership to 11,419 enterprises. 6.5 million citizens acquired the right to land share (units). The average land share (unit) size stood at 4.1 hectares. Mass allocation of land share (unit) and issuance of state acts confirming private ownership rights to land began. A reserve land fund was created, totalling 3,070.3 hectares. Owners of land shares (units) leased out 22.4 million hectares of land, with lease payments in 2000 exceeding 1.6 billion hryvnias. 11 million citizens privatised their land shares, covering an area of 3,256 hectares, and 37006 farm enterprises utilised nearly 2 million hectares of agricultural land.[94]

In many cases, legitimate expropriation may only be considered justified if full compensation is associated with the value of the property. Article 1 of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms of 1950 does not guarantee the right to full compensation under all circumstances. Lawful purposes in 'public interest', such as goals pursued within the framework of economic reform measures or actions aimed at achieving greater social justice, may require less than total market value compensation ("Schembri and others v. Malta").[95] In another case, "Case of Mango v. Italy",[96] authorities gained custody of the land on July 14, 1987. On 1 October 1990, the applicant sued Moiano Municipality for damages in Benevento District Court. He claimed that the land was illegally occupied and that development had been completed without expropriation or compensation. He sought the market value of the land and damages for loss of enjoyment during legitimate occupation. Article 41 of the convention states: "If the Court finds a violation of the Convention or its protocols, and if the relevant High Contracting Party's domestic legislation provides only partial compensation, the Court, if necessary, shall provide just satisfaction to the injured party." The court ruled after 25 years. Adjusted for inflation and interest, the petitioner sought compensation

90 | Дайджест від 6.04.2000 р. (Daidzhest vid 6.04.2000 r.)
91 | Про угоди щодо відчуження земельної частки (паю) (втратив чинність). (Pro uhody shchodo vidchuzhennia zemelnoi chastky (paiu) (vtratyv chynnist)) 2001
92 | Про Основні напрями земельної реформи в Україні на 2001-2005 роки (Pro Osnovni napriamy zemelnoi reformy v Ukraini na 2001-2005 roky) 2001
93 | Земельний кодекс України (Zemelnyi kodeks Ukrainy) 2001
94 | Про Основні напрями земельної реформи в Україні на 2001-2005 роки (Pro Osnovni napriamy zemelnoi reformy v Ukraini na 2001-2005 roky) 2001, 986.
95 | Case «Schembri and Others v. Malta» 2009
96 | Case Of Mango V. Italy 2015

for building damage, agricultural destruction, and land value. The applicant demanded legal occupation pay. The March 2008 declared total was 84,380 euros after inflation and interest. In Iatridis v. Greece (just satisfaction),[97] a violation decision requires the respondent to fix the damage to restore the pre-violation situation. The Grand Chamber changed constructive expropriation damage appraisal rules in Guizot-Gallisay v. Italy (just satisfaction).[98] The court rejected the applicant's claims based on the land's worth at the time of its ruling and did not include state-building costs when determining substantial injury. The court determined that pecuniary damage compensation should equal the property's market value on the date the applicants lost title, following national rules, based on court-appointed experts. When petitioners renounced title, the national sum paid must be converted to the land's market worth, accounting for inflation. This money will be subject to simple legal interest (applied to capital gradually adjusted) to compensate claimants for lengthy landlessness. The Benevento District Court ruled the applicant lost land ownership on July 14, 1990. Benevento District Court evaluated the land at 6,213,000 lire (3209 euros). The court awarded the applicant 8800 euros plus any taxes on the difference between the land's market worth when they lost their title and the national amount, augmented by inflation and interest and based on equity. Article 41 legal and other fees must be fair and necessary, citing court precedent (Can v. Turkey, no. 29189/02, section 22, January 24, 2008). The court awarded 5000 euros for proceedings.

Based on the statistics of privatisation within the framework of the first land reform, we can observe that the balance between public and private interests can be maintained not only through the application of the restitution institution (which is particularly challenging for Ukraine considering that western and eastern lands were annexed after the establishment of the communist regime) but also through the right to free privatisation of land by every citizen within the norms established by land legislation.

5. The role of judicial power and constitutional courts in restitution procedures.

The constitution states that the land, its subsoil, atmospheric air, water, and other natural resources within the territory of Ukraine, including the natural resources of its continental shelf and exclusive (maritime) economic zone, are objects of ownership rights of the Ukrainian people. The Constitution of Ukraine guarantees the right to property, including land (Articles 13-14).[99]

97 | Case Of Iatridis V. Greece 1999
98 | Guiso-Gallisay v. Italy (just satisfaction) 2008
99 | Конституція України (Konstytutsiia Ukrainy) 1996.

The Constitutional Court of Ukraine in its practice has repeatedly emphasised the principle of inviolability of property rights, which primarily entails non-interference by anyone in the exercise of the owner's rights concerning possession, use, and disposal of property, prohibiting any infringements on the owner's rights against their interests and will.[100] The property right is not absolute and can be limited, but interference with this right can only occur on legal grounds, observing the principles of legal certainty and proportionality. Proportionate measures, which are less burdensome for the rights and freedoms of individuals among all available measures, may be considered when limiting property rights in the interest of society.[101]

Interference with an individual's right to peaceful possession of their property may occur due to the authorities' inability, without fault, to sell agricultural land by establishing a moratorium (case of "Zelenchuk and Tsitsyura v. Ukraine").[102]

Currently, the possibility for Ukrainian citizens to freely exercise the right to alienate agricultural land plots holds significant social and political significance.

As previously mentioned, with the law's enactment in July 2021,[103] the moratorium on the sale of agricultural land was lifted.

A constitutional motion was filed with the domestic body of constitutional jurisdiction regarding the law's constitutionality.[104] The authors of the motions assert that land, as an object of property rights of the Ukrainian people and a fundamental national asset, is under special state protection, particularly concerning agricultural land. According to their conviction, the adoption of the Law by the Verkhovna Rada of Ukraine violated the constitutional procedures for consideration and adoption, and its provisions contradict the provisions of the Constitution of Ukraine. Ukrainian MPs emphasize that only the Ukrainian people have the right to make decisions regarding the disposal of land, as this requires a nationwide referendum. This aligns with the Constitution of Ukraine, which stipulates the right to a referendum (Article 38).

100 | Рішення Конституційного Суду України у справі про захист права власності організацій споживчої кооперації (Rishennia Konstytutsiinoho Sudu Ukrainy u spravi pro zakhyst prava vlasnosti orhanizatsii spozhyvchoi kooperatsii) 2004

101 | Рішення Конституційного Суду України у справі за конституційною скаргою товариства з обмеженою відповідальністю «МЕТРО КЕШ ЕНД КЕРІ Україна» (Rishennia Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinoiu skarhoiu tovarystva z obmezhenoiu vidpovidalnistiu «METRO CASH AND CARRY Ukraina») 2019.

102 | Case «Zelenchuk and Tsytsyura v. Ukraine» 2018

103 | Про внесення змін до деяких законодавчих актів України щодо умов обігу земель сільськогосподарського призначення (Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo umov obihu zemel silskohospodarskoho pryznachennia) 2020

104 | Конституційне подання щодо офіційного тлумачення положень першого речення ч.1 ст. 13, ч.1 ст. 14 Конституції України у системному зв'язку із положеннями речення першого Преамбули, положень ст. 1, ч. 2 ст. 3, ч. 2 ст. 5, ч.4 ст. 13 Конституції України. (Konstytutsiine podannia shchodo ofitsiinoho tlumachennia polozhen pershoho rechennia ch.1 st. 13, ch.1 st. 14 Konstytutsii Ukrainy u systemnomu zviazku iz polozhenniamy rechennia pershoho Preambuly, polozhen st. 1, ch. 2 st. 3, ch. 2 st. 5, ch.4 st. 13 Konstytutsii Ukrainy.)

In early November 2020, in order to determine public opinion, a draft resolution was published stating that this issue should be resolved only through an all-Ukrainian referendum.[105] However, it is evident that due to political pressure, the resolution of this issue has been postponed for 3 years (in 2020[106] and in 2023).[107] The primary reason is the judges' refusal to participate in the case, resulting in a lack of quorum. Currently, the constitutional submission remains in open proceedings awaiting review.

Constitutional experts point out that such a decision has led to a constitutional crisis in the country.[108] During a court session in the country, rallies against the considered law took place near the court building.[109] Simultaneously, the presidential party registered a draft law that deprived the sole body of constitutional jurisdiction of budgetary funding.[110] Furthermore, by revoking the acts of the previous president, the president of Ukraine dismissed two judges of the Constitutional Court of Ukraine,[111] though his act was deemed unlawful and subject to repeal by the Supreme Court.[112]

The postulate about the significance of an impartial judiciary for democracy and justice does not require separate evidence. Political pressure on the judicial branch is unacceptable in a rule-of-law state, as is disregard by state authorities for judicial acts. This concerns statements by the Head of the State Geocadastre that, regardless of the decision made by the Constitutional Court of Ukraine, the sale of agricultural land will commence.[113]

Land legislation is based on the principle of non-interference by the state in citizens', legal entities', and territorial communities' exercise of their rights to ownership, use, and disposition of land, except as provided by law. In other words,

105 | Рішення Конституційного Суду України у справі за конституційним поданням 46 народних депутатів України щодо офіційного тлумачення положень першого речення ч.1 ст. 13, ч.1 ст. 14 Конституції України (Rishennia Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinym podanniam 46 narodnykh deputativ Ukrainy shchodo ofitsiinoho tlumachennia polozhen pershoho rechennia ch.1 st. 13, ch.1 st. 14 Konstytutsii Ukrainy) 2020

106 | У розгляді справи щодо офіційного тлумачення положень першого речення ч.1 ст. 13, ч.1 ст. 14 Конституції України (U rozghliadi spravy shchodo ofitsiinoho tlumachennia polozhen pershoho rechennia ch.1 st. 13, ch.1 st. 14 Konstytutsii Ukrainy) 2020

107 | У розгляді справи щодо конституційності Закону України „Про внесення змін до деяких законодавчих актів України щодо умов обігу земель сільськогосподарського призначення" та окремих положень Земельного кодексу України (U rozghliadi spravy shchodo konstytutsiinosti Zakonu Ukrainy „Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo umov obihu zemel silskohospodarskoho pryznachennia" ta okremykh polozhen Zemelnoho kodeksu Ukrainy) 2023

108 | Жуков (Zhukov) 2020

109 | КСУ продовжує розгляд справи про відкриття ринку землі, під судом – мітинг. (KSU prodovzhuie rozghliad spravy pro vidkryttia rynku zemli, pid sudom – mitynh) 2021

110 | Симоненко (Symonenko) 2020

111 | Про деякі питання забезпечення національної безпеки України (Pro deiaki pytannia zabezpechennia natsionalnoi bezpeky Ukrainy) 2021

112 | Рішення Верховного Суду (Rishennia Verkhovnoho Sudu) 2022

113 | Симоненко (Symonenko) 2020

the landowner has the authority over ownership, use, and disposal, and the state should not intervene in citizens' exercise of their right to manage the land, except as prescribed by law.[114] The same applies to the free transfer of state and communal land plots into private ownership, which should not impose restrictions on citizens' rights.[115]

The Grand Chamber of the Supreme Court notes that since the prohibition on alienation was imposed, the state failed to ensure a proper mechanism for the realisation of property rights on agricultural land for many years. However, considering the content of the ECHR decision ("Zelenchuk and Tsitsyura v. Ukraine"), it is justified to state that this ECHR decision cannot be interpreted as a specific permit for the free circulation, particularly exchange, of agricultural land plots, irrespective of the provisions of Ukraine's regulatory acts.[116]

Therefore, after the establishment of independent Ukraine, the right to private land ownership became one of the fundamental rights of citizens guaranteed by the constitution. Courts made a significant contribution to the privatisation process within the framework of the first land reform by providing legal protection and safeguarding citizens and their successors from the unlawful deprivation of their right to land. The Constitutional Court of Ukraine plays a crucial role in interpreting the right to private land ownership, as it has the authority, in compliance with the requirements of the Basic Law, to preserve, on behalf of citizens, the legitimacy concerning Ukrainian land.

6. Conclusion.

The privatisation of land plots for peasants in Ukraine occurred through the overall collectivisation, which involved the transfer of land from state to collective ownership, and subsequently into virtual private ownership in the form of land shares without physical division. The restitution of agricultural land ownership rights in Hungary, Romania, Lithuania, Latvia, and Estonia also included urban pensioners and other individuals who were not actively engaged in agriculture. In most cases, they lacked qualifications and the desire to engage in agricultural production, attempting to sell their property. The surplus of agricultural land on the market led

114 | Postanova Velykoi Palaty Verkhovnoho Sudu 2019

115 | Рішення Конституційного суду України у справі за конституційним поданням 51 народного депутата України щодо відповідності Конституції України (конституційності) положень статті 92, пункту 6 розділу X "Перехідні положення" Земельного кодексу України (справа про постійне користування земельними ділянками) (Rishennia Konstytutsiinoho sudu Ukrainy u spravi za konstytutsiinym podanniam 51 narodnoho deputata Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) polozhen statti 92, punktu 6 rozdilu Kh "Perekhidni polozhennia" Zemelnoho kodeksu Ukrainy (sprava pro postiine korystuvannia zemelnymy diliankamy)) 2005

116 | Постанова Верховного Суду (Postanova Verkhovnoho Sudu) 2021

to price reductions and an increase in uncultivated land. This issue was particularly evident in Latvia and Hungary. To counter these processes, authorities had to create bodies tasked with developing such land (for instance, Hungary established the State Land Fund in 2002 for this purpose) or delegate the responsibility of developing unused lands to existing governmental bodies (as in Latvia).[117]

The value of the land share was calculated by dividing the monetary value of the agricultural land subject to sharing by the number of persons entitled to the land share. The number of persons entitled to the land share is accepted according to the list attached to the state act on the right of collective ownership of land, which, if necessary, is specified and signed by the heads of the relevant council and enterprise. The list of citizens, as an appendix to the state act, is formed by the enterprise itself in accordance with the charter, is reviewed and approved by the general meeting of the enterprise, and is signed by the chairman of the city council and the chairman of the collective agricultural enterprise. Members of a collective agricultural enterprise included: permanent employees; members of a collective agricultural enterprise; pensioners who previously worked in a collective agricultural enterprise and remained its members, regardless of their place of residence; conscripted military personnel if they have not left the collective agricultural enterprise; persons sent for training, if they remained members of the collective agricultural enterprise; women who were on leave due to pregnancy and childbirth or on leave to take care of a child under the age of three; and members of a collective agricultural enterprise who held elected positions in state authorities or local self-government bodies, if their retention of membership was provided for in the charter of the collective agricultural enterprise. The formation of a full-fledged land market in Ukraine must be preceded by a significant modernisation of the institutional structure of the economic system based on the indicated shortcomings and contradictions in land relations. Based on the conducted research, we support the following system of institutional parameters that will form the basis of the future land market: protection of private property rights; ensuring the authority of the state in matters of land ownership; developed infrastructure in the field of lease relations (commercial lending, leasing, etc.); effective implementation of the rule of law; separation of state and commercial structures; restoration of the tradition of working on the land; compensation for the impact of urbanisation on the demographic structure; modernised cadastre of land resources (with expanded parametric database); a clearly regulated system of interaction between the State Agency of Land Resources, the Bureau of Technical Inventory, notary agencies, the State Land Cadastre, and land auctions; focus on long-term land ownership with the management of land use changes.[118]

117 | Гуторов (Hutorov) 2010, 134
118 | Virchenko 2013

It should also be noted that considering case No. 6-3104цс16, which was filed with the Supreme Court of Ukraine on March 29, 2017,[119] regarding the prosecutor's claim in the interests of the state to invalidate a sales contract and property ownership certificate, cancel property ownership records, decisions on state registration of rights, and the obligation to return a land plot, the court concluded that restitution as a means of protecting civil rights (part one of article 216 of the Civil Code of Ukraine) is applicable only if there is a contract between the parties that is either void or declared invalid. Consequently, only the party affected by the invalid transaction can demand the return of property transferred under that invalid transaction, following the rules of restitution. A claim for the return of alienated property to a third party cannot be based on the provisions of part one of Article 216 of the Civil Code of Ukraine. Claims by property owners to invalidate subsequent transactions regarding property alienation made after an invalid transaction cannot be satisfied. On the other hand, the general rule stipulated in Article 387 of the Civil Code of Ukraine provides that an owner has the right to reclaim someone else's property that does not belong to them. Based on part one of article 388 of the Civil Code of Ukraine, the right of the owner to claim property from a bona fide acquirer depends on the manner of its acquisition. This rule encompasses various situations wherein an owner has the right to reclaim property from a bona fide acquirer. One of these grounds is the removal of property from the owner or the person to whom it was transferred against their will. When an owner intends to transfer their property to another person, they cannot reclaim it from a bona fide acquirer. Therefore, in Ukraine, restitution applies to the recovery of property from another's unlawful possession but does not extend to land plots that were confiscated in Ukraine while it was part of the Soviet Union.

For Ukraine to join the EU the completion of land restitution is necessary, returning property to individuals or states from whom it was illegally taken - to illegitimate heirs, or to rightful owners. It aims to restore justice and the legal basis of communities after decades of lawlessness and revolutionary plundering, by returning property, especially land, to its former owners by taking it away from the 'new' ones. However, restitution is often seen as another redistribution of property in our increasingly divided society. It is a complex, expensive, and lengthy process, and its social consequences are difficult to predict. Yet due to the considerable passage of time and the physical destruction of much property, land restitution in Ukraine is practically impossible. Furthermore, an ill-considered privatisation policy has essentially made this unfeasible. As a result, compensation payments are one of the potential means of restitution. However, this requires the establishment of appropriate state archives, the creation of compensation funds, and, most importantly, having the necessary legislative framework. Since

119 | ВСУ роз'яснив коли застосовується реституція (VSU roziasnyv koly zastosovuietsia restytutsiia) 2017.

the physical possibility of returning land is minimal, the only viable solution for now is compensation for the expropriated lands if the necessary documentation is available. It would be appropriate to confiscate unused, illegally alienated, unreasonably altered lands, or those used for non-target purposes (plots), regardless of who currently owns, uses, or manages them. Balancing interests also demands the revocation of provisions regarding the right to sublease, emphyteusis, sale, and pledge of lease rights for land and other non-transparent grounds, especially concerning land plots that were gratuitously transferred to peasants during their delinking from state ownership and privatisation.

Ukraine should establish rules for compensating property lost under the communist and Nazi regimes. Given that new owners already possess this property on legal grounds, despite these laws stemming from legal nihilism, it is evident that returning a significant portion of the looted property in kind is practically impossible. The issue could have been at least partially resolved if legislators in the 1990s had considered restitution and granted former owners preferential privatisation rights. Since this didn't happen, and new owners have no connection to previous owners, the only way to address the problem is through monetary compensation. We acknowledge the burden compensation might pose on the budget, so we allow capping the maximum amount, or providing compensation in the form of vouchers for participation in the annual privatisation of state property in Ukraine. Considering a similar experience in Hungary, it could be applied at the national level.

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89. Хоменко Н. [Khomenko N.] (2004). Про права щодо одержання земельного паю : питання-відповідь. *Голос України.* [Pro prava shchodo oderzhannia zemelnoho paiu : pytannia-vidpovid. Holos Ukrainy.] № 54.

90. Хто має право на одержання земельного паю? : питання-відповідь. [Khto maie pravo na oderzhannia zemelnoho paiu?: pytannia-vidpovid.] 08.05.2001. № 0208. *Земельна реформа: питання і відповіді.* Київ, [Zemelna reforma: pytannia i vidpovidi. Kyiv,] 2001. Available at: https://zakon.rada.gov.ua/rada/show/p0208697-01#Text

91. Член колективного сільськогосподарського підприємства, включений до списку, що додається до державного акта на право колективної власності на землю, набуває права на земельну частку (пай) з дня видачі цього акта, і в разі його смерті успадкування права на земельний пай здійснюється за нормами Цивільного кодексу України, в тому числі й у випадку, коли з різних причин він не зміг отримати сертифікат на право на земельний пай : Ухвала (Витяг) Верховного Суду України від [Chlen kolektyvnoho silskohospodarskoho pidpryiemstva, vkliuchenyi do spysku, shcho dodaietsia do derzhavnoho akta na pravo kolektyvnoi vlasnosti na zemliu, nabuvaie prava na zemelnu chastku (pai) z dnia vydachi tsoho akta, i v razi yoho smerti uspadkuvannia prava na zemelnyi pai zdiisniuietsia za normamy Tsyvilnoho kodeksu Ukrainy, v tomu chysli y u vypadku, koly z riznykh prychyn vin ne zmih otrymaty sertyfikat na pravo na zemelnyi pai : Ukhvala (Vytiah) Verkhovnoho Sudu Ukrainy vid] 25.04.2002. *Вісник Верховного суду України. [Visnyk Verkhovnoho sudu Ukrainy.]* 2003. № 2. С. 21.

92. Чому розміри та вартість земельних паїв, вказаних у сертифікатах, були для всіх членів КСП однакові, якщо стаж роботи в колгоспі у всіх не однаковий? : питання-відповідь. [Chomu rozmiry ta vartist zemelnykh paiv, vkazanykh u sertyfikatakh, buly dlia vsikh chleniv KSP odnakovi, yakshcho stazh roboty v kolhospi u vsikh ne odnakovyi? : pytannia-vidpovid.] 14.05.2001. № 0218 / Земельна реформа: питання і відповіді. Київ, [Zemelna reforma: pytannia i vidpovidi. Kyiv,] 2001. URL: Available at: https://zakon.rada.gov.ua/rada/show/p0218697-01#Text

93. Щодо земель резервного фонду, переданих у колективну власність сільськогосподарським підприємствам і організаціям : Лист Державного комітету України по земельних ресурсах від [Shchodo zemel rezervnoho fondu, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam : Lyst Derzhavnoho komitetu Ukrainy po zemelnykh resursakh vid] 17.05.2001 № 14-17-11/2473. *Урядовий кур'єр. [Uriadovyi kurier].* 2001. № 104.

94. Щодо надання права на земельну частку (пай) із земель резервного фонду особам, що були помилково (безпідставно) не включені до списку-додатку до державного акта на право колективної власності на землю: Лист Державного комітету України по земельних ресурсах від [Shchodo nadannia prava na zemelnu chastku (pai) iz zemel rezervnoho fondu osobam, shcho buly pomylkovo (bezpidstavno) ne vkliucheni do spysku-dodatku do derzhavnoho akta na pravo kolektyvnoi vlasnosti na zemliu: Lyst Derzhavnoho komitetu Ukrainy po zemelnykh resursakh vid] 17.01.2002 № 14-17-6/319. *Урядовий кур'єр. [Uriadovyi kurier].* 2002. № 87.

95. Щодо оподаткування спадщини: Лист Державної податкової адміністрації від [Shchodo opodatkuvannia spadshchyny: Lyst Derzhavnoi podatkovoi administratsii vid]] 11.06.2007 № 2913/Т/17-0715. *Бізнес: законодавство та практика.* [Biznes: zakonodavstvo ta praktyka]. 2007. № 14. С. 45. 95.

96. Щодо паювання сільськогосподарських угідь, переданих в колективну власність: Лист Державного комітету України по земельних ресурсах від [Shchodo paiuvannia silskohospodarskykh uhid, peredanykh v kolektyvnu vlasnist: Lyst Derzhavnoho komitetu Ukrainy po zemelnykh resursakh vid] 9.11.2000 № 14-17-11/4388. *Урядовий кур'єр. [Uriadovyi kurier].* 2001. № 9.

97. Щодо передачі земель у колективну власність сільськогосподарським підприємствам: Лист Державного комітету України по земельних ресурсах від [Shchodo peredachi zemel u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam: Lyst Derzhavnoho komitetu Ukrainy po zemelnykh resursakh vid] 29.03.2001 № 14-17-2-С489/1458. *Урядовий кур'єр. [Uriadovyi kurier].* 2001. № 66.

98. Щодо порядку паювання земель, переданих у колективну власність сільськогосподарським підприємствам і організаціям: Лист Регіональної податкової адміністрації від [Shchodo poriadku paiuvannia zemel, peredanykh u kolektyvnu vlasnist silskohospodarskym pidpryiemstvam i orhanizatsiiam: Lyst Rehionalnoi podatkovoi administratsii vid] 19.09.2006 № 10435/10/31-039. *Урядовий кур'єр. [Uriadovyi kurier].* 2006. № 190.

99. Щодо права на земельну частку (пай): Лист Державного комітету України по земельних ресурсах від [Shchodo prava na zemelnu chastku (pai): Lyst Derzhavnoho komitetu Ukrainy po zemelnykh resursakh vid] 27.02.2006 № 14-17-2-Я254/1549. Available at: *https://zakon.rada.gov.ua/rada/show/v1549219-06#Text*

100. Щодо правомірності зміни площі паю без згоди власника: Лист Міністерства аграрної політики України від [Shchodo pravomirnosti zminy ploshchi paiu bez zghody vlasnyka: Lyst Ministerstva ahrarnoi polityky Ukrainy vid] 5.07.2007 № 37-17-1-16/10396. Available at: *https://zakon.rada.gov.ua/rada/show/v37-1555-07#Text*

101. Щодо успадкування права на земельний пай: Лист Державного комітету України по земельних ресурсах від [Shchodo uspadkuvannia prava na zemelnyi pai: Lyst Derzhavnoho komitetu Ukrainy po zemelnykh resursakh vid] 26.06.2000 № 14-17-V-1066/2611. *Урядовий кур'єр. [Uriadovyi kurier].* 2000. № 175.