

**Yaroslav Sydorov, PhD in Law**

*Zaporizhzhia National University, Ukraine*

## **THEORETICAL AND PRACTICAL ASPECTS REGARDING LEGAL REGULATION OF ACTIVITY OF AGRARIAN HOLDING COMPANIES IN UKRAINE**

This article aims to consider theoretical and practical aspects of legal regulation of agrarian holding companies in Ukraine; it also shows advantages and risks of large agrarian businesses. The author defines organizational and legal peculiarities of agrarian holdings, their competitiveness and contribution into development of domestic agricultural sector, specifics of investment activity and role in socio-economic development of rural areas and ensuring food security of a state. The necessity to strengthen public-legal principles in regulation of the above-mentioned sphere of social relations is stressed in this article. The paper also analyzes and summarizes works of different scientists, who reveal the peculiarities of legal regulation of holding's activity in the agrarian sphere. It was concluded that there is an urgent need to regulate peculiarities of legal status of agrarian holdings as business entities.

**Key words:** agrarian organizational and management relations, agrarian holding, food security, agriculture, socialization of law, holding company.

The issue of incipience and activity of agrarian holding companies is relatively new and one of the most urgent for domestic legal science nowadays. The Strategy of development of agriculture and rural areas for 2015-2020, recently developed by the Ministry of Agrarian Policy and Food of Ukraine, states: "process of consolidation of the land use which the last ten years took place in Ukraine, led to emergence of large, vertically integrated agrarian holding companies. The number of corporate agricultural enterprises declined sharply from nearly 17,700 in 2004 to 14,724 in 2013. A growing number of these enterprises came under the control of agrarian holding companies, created for different purposes, having different sizes, specialization, organizational and legal forms, but have common characteristics. In 2014, agrarian holding companies processed more than 6 mln. ha. of agricultural land in Ukraine (27 percent of total agricultural land). Agrarian holding companies produced about 21 percent of total gross agricultural production of the country in 2012, including 18.7 percent of total crop production and 24.8 percent of total livestock products".<sup>1</sup>

In recent decades, active development of large agrarian business was conditioned by several objective and subjective factors. Firstly, after a period of prices decline for agricultural products (which began in the seventies of the last century with the so-called "green revolution") started and continued global trend towards increased demand and prices for agricultural products and foodstuffs. Secondly, globalization of economics and law intensified integration processes in international trade and finance, accelerated movement of capital and resources, enhanced role and importance of transnational companies that invest in agricultural sector, including Ukrainian. Thirdly, emergence and development of agrarian holding companies was contributed by internal factors, mainly by development of market relations and the reform of agricultural sector of the economy (including agrarian law), which promoted a significant accumulation of land, financial and human resources, that allowed to improve the efficiency of agriculture in domestic and foreign markets and recognize businesses and agrarian holding companies as the most effective agents of agrarian relations.

However, expert community expresses pessimistic views on "quasi-market" economy and non-system reforms as factors for emergence of agrarian holding companies, whose activity is evaluated negatively. Thus, O. Borodina and I. Prokopa believe that the results of transformation processes in the agricultural sector of Ukraine occurred to be opposite to expectations. One of the main tasks of the agrarian reform was to involve a real investor, but it turned to Ukrainian agricultural into expansion of big business,

<sup>1</sup> Єдина комплексна стратегія розвитку сільського господарства та сільських територій на 2015-2020 роки (проект). *Сайт Міністерства аграрної політики та продовольства України*. <<http://www.minagro.gov.ua/node/16025>> (2016, червень, 25).

and the market economy, deformed by mass corruption and dominant motivation for "fast money", has formed a specific model of agricultural sector, which hallmark is its dual organizational structure. Within this structure two types (sectors) of manufacturers are distinguished: corporate (agricultural holding companies, vertically integrated structures, business partnerships, etc.) and individual (real farmers and farms of population). This duality hides unequal position of different types of producers; relations between them acquire antagonistic traits, which are manifested in monopolization of resource markets by corporate sector; this especially takes place in financial sector, sales channels (value chains), favorable prices, means of state support and influence on state agrarian policy<sup>1</sup>.

V. Chopenko claims that Ukrainians have lost not only traditions of growing and producing agricultural products, but also respect for its lands, bread, private economic activity. Politics of the current government returns these traditions in a distorted form: rich minority has the ability to buy larger shares of land and peasant majority has to serve this minority. According to V. Chopenko, some businessmen and politicians are interested in privatization of land, but not in the situation of village and its inhabitants. Thus, agrarian holding companies are nothing like a monopolistic, illegal formation, which harms interests of the state.<sup>2</sup> In the opinion of V. Lanovyi, Ukraine now is in transition, when landowners have not yet become "oligarchs" - those who work in five sectors, have 10 companies in each, subordinated media, MPs, government bonds and several football clubs. Landowners have not become an established oligarchy, but they left just one step. It is only in order to influence the government. It is important that business executives were major entrepreneurs. The oligarchs will try to destroy farmers, because they need larger markets. Large enterprises have already started to form a monopoly on processing plants, oil production and will dictate the rules for sunflower producers. Thus, V. Lanovyi states, village economy is seized<sup>3</sup>.

Thus, evaluation of agricultural holdings is debatable, but indisputable is the fact of increase of their role and value as actors of agrarian relations. It should also be emphasized that agrarian lobby is gaining more weight that can influence the state agrarian policy and legislative process. In this context, the agrarian-legal science has the task of more professional and deep study of agricultural holding companies, their relationships with the state and main directions of their legal regulation.

Gradually, increasingly more agrarian science scholars turn their views to problems of legal regulation of these units (eg, H. Aliyeva, V. Yermolenko, P. Kulinich, V. Semchyk, V. Urkevych, etc). Attention to activities of large agribusiness has increased among representatives of economic theory (works of V. Andriichuk, S. Demianenko, T. Zinchuk, M. Kropyvka, P. Sabluk, A. Suderikin and others). Analysis of doctrinal and publicistic sources of legal and economic orientation suggests the existence of different approaches to agrarian holding companies importance for food security and rural social sphere. The attention of scientists is focused on organizational and legal features of agrarian holding companies, their competitiveness and contribution into development of domestic agricultural sector, specifics of investment activity and role in socio-economic development of rural areas. These issues of activity of agrarian holding companies are the most relevant and require analysis by agrarian-legal science both at theoretical and practical levels of government and legal regulation, which can be defined as the purpose of this research paper.

As it was already indicated, agrarian holding companies are relatively new subjects of agrarian relations, so because of well-known inertia of law they are not yet subjected to adequate legal regulation. Currently, the Commercial Code of Ukraine and the Law of Ukraine "On holding companies in Ukraine" of March 15, 2006, contain just general provisions on holding companies, excluding specific of operation of agrarian holding companies, which, by the way, were created not in the form of a classic holding company, but through mechanisms of merger and acquisitions of agricultural enterprises, mainly through a concession of rights to lease agricultural lands.

Accordingly, there are following organizational features of agrarian holding company: 1. Deep specialization in activity of organizational components in which parent company (registered in offshore

<sup>1</sup> Прокопа, І., Бородіна, О. Яка модель агросектору потрібна Україні? *Газета Дзеркало тижня*. <[http://www.gazeta.dt.ua/ECONOMICS/yaka\\_model\\_agrosektoru\\_neobhidna\\_ukrayini.html](http://www.gazeta.dt.ua/ECONOMICS/yaka_model_agrosektoru_neobhidna_ukrayini.html)> (2016, червень, 25).

<sup>2</sup> Костюк, Б. Українську землю ще можна врятувати – експерти ООН і Світового банку. *Радіо Свобода*. <<http://www.radiosvoboda.mobi/a/24788212.html>> (2016, червень, 25).

<sup>3</sup> Лановий, В. Про безпеку перетворення агробаронів у «закінчених олігархів». *Сайт AgroPolit.com*. <<http://agropolit.com/blog/64-pro-nebezpeku-peretvorennya-agrobaroniv-u-zakinchenih-oligarhiv>> (2016, червень, 25).

zone) specializes in financial and investment activities; its main enterprise is a trader specializing in marketing and trading activities; subsidiaries and affiliates specialize in processing and storage of agricultural products; and a foundation of agrarian holding company is absorbed or controlled agricultural enterprises. 2. Implementation of agricultural production in scattered rural areas (districts, regions) and leased lands. A significant part of them do not register subsidiaries in placements of leased land, and convert absorbed agricultural enterprises in structural units.<sup>1</sup>

Undoubtedly, it is difficult to overestimate effectiveness of big agrarian production. According to the National Center "Institute of agrarian economy" agrarian holding companies produce today a fifth part of agricultural products and this portion is growing every year. Positive sides of agrarian holding companies are investment and innovation direction of their activities. Experts estimate that market value of public economic agro-food companies and the opportunity to enter international financial market is growing. Thus, according to Fitch Ratings analysts, Ukrainian agrarian holding companies may attract 20-30 billion dollars in the next 5-10 years.<sup>2</sup>

In turn, investment opportunities increase innovation component of agrarian holding companies, allow actively update production facilities, implement and use the latest technology, re-equip technical and technological equipment, concentrate better staff and constantly improve their skills, investing in staff training. All this contributes to both the intensification of agricultural production and increase its volume and improve the quality of agricultural products produced holdings, ensuring their competitiveness in the domestic and foreign markets. Among all agrarian subjects only agrarian holding companies have the largest share of agricultural exports, which in turn is one third of foreign exchange earnings in the country's economy (according to the government); this is especially relevant in light of the Strategy to develop agriculture and rural areas in 2015-2020 and course to export-oriented agriculture.

However, the strategy of increasing export volumes is not unanimously supported. Thus, according to M. Kalinchak, it indicates a strong desire to solve problems of the state budget due to exclusion of peasants from the land, extension of exports of agricultural and processed products by agrarian holding companies, ignoring the needs of population living in rural areas. Because such growth rates can only be provided by active support of agrarian holding's growth, while small farms can not provide so "striking" results. M. Kalinchak concludes that to develop strategies for agricultural sector, without consideration monopolization of lands by dozen owners, and thus to monitor savagery of the countryside, is, to say the least, inhumane towards people; he notes that developed countries, first of all, reach full sufficiency of its own population with food and only thereafter increase exports of agricultural and processed products<sup>3</sup>.

So, activity of agrarian holding companies can not be absolutely positively assessed; it generates some negative effects and risks, a number of which is related to the worldwide trend to concentrate production in agriculture. Thus, over the pages of The Guardian European experts have expressed their concerns about large-scale seizure of agricultural lands in Europe by speculators, reach foreign buyers and different funds. First of all, it is a question of "land activity" of Chinese corporations, Middle East nouveau riche, various international hedge funds and Russian oligarchs who have purchased huge tracts of European land in a private form of ownership. According to research of International Institute Via Campesina and other organizations, a half of all agricultural land in the EU is now owned by only three percent of large farms, which size is over 100 hectares.

In some EU countries, land ownership has become just as unequal as in Brazil, Colombia or the Philippines. The concentration of land ownership is accelerated in Germany, where compared to 1 million 200 thousand landholdings in the 60-ies, now remains only slightly less than 300 thousand farms. This occurs in Italy and France. In the UK, 70 percent of the land is owned by less than one percent of the population. This trend is noticed by experts from Europe and Ukraine, where 10 giant agrarian companies hold up to 3 million hectares of land and only one oligarch in Ukraine has more than half a million hectares of land. Chinese corporations are buying up land in Bulgaria, rich Middle East businessmen – in Romania.

<sup>1</sup> Лупенко, Ю.О., Кропивко М.Ф. (2013). Агрохолдинги в Україні та посилення соціальної спрямованості їх діяльності. *Економіка АПК*, 7, 6-7.

<sup>2</sup> Лупенко, Ю.О., Кропивко, М.Ф. (2013). Агрохолдинги в Україні та посилення соціальної спрямованості їх діяльності. *Економіка АПК*, 7, 10.

<sup>3</sup> Дубровик, А., Калінчак, М. Стратегія розвитку аграрного сектору економіки України: чи існує вона? *День. Київ. ua*. <<http://day.kyiv.ua/uk/article/ekonomika/strategiya-rozvitku-agrarnogo-sektoru-ekonomiki-ukrayini-chi-isnuie-vona>> (2016, червень, 25).

Gradually Europe gets all the same agrarian problems as Africa, South America and Asia. In Europe, particularly in Spain and Austria, increasingly more young people protest against dominance of large estates of land. Experts blame EU politicians in this process, who legislatively allowed such a dangerous concentration of land in one hands<sup>1</sup>.

Here is another example. This year, reportedly to Reuters, the Australian government has blocked a deal to sell the company S.Kidman & Co, which is one of the major national farmers, to Chinese investors, declaring that this agreement is not in the national interests<sup>2</sup>. As for Ukraine, according to economic experts, abovementioned processes in Ukraine (as in most post-Soviet countries) can be named overconcentration of production<sup>3</sup>.

The latter, according to experts, can lead to establishment of latifundia in private and rental form, a threat to "enslavement" by lasting lease agreements, loss of independence and transformation into a dependent associated structures of processing industry, monopolism in food markets, creation of a "pyramid" of ownership with hardly recognizable principal owner, expansion of foreign capital. In addition, using fairly long time strong government support and promotion of corporate sector of agricultural economy to increasing their own economic and political weight, agrarian holding companies have not contributed into social development of rural areas, and focusing on growing of paid back and export-oriented crops together with non-compliance of environmental requirements increase the level of environmental threat.

The possibility to optimize taxation of associations and growth of agrarian lobbies consisting of large agribusiness' owners in the absence of a clear state policy in this area increase the risks for social welfare in village (emergence of surplus labor and loss of jobs, establishment of low wages, lack of appropriate funding for social infrastructure, etc.).

It should be noted that some of the big agribusiness (for example, such holdings as Astarta-Kyiv, Ukrzernoprom, SvarohVestHrup, Nibulon) implement specific directions of socio-economic support for rural areas, in particular: creation of new jobs, help for kindergartens, schools, orphanages, nursing homes, churches, funding initiatives of local communities to address social issues and other activities. We should positively assess the practice of some agrarian holding companies to make Agreements on social responsibility and Agreements on social partnership.

At the same time, researchers point to aggravation of social problems with the advent of holdings to agriculture sector; occurred a situation of co-existence of marginal degrading village and effectively working enclaves. In addition, support for rural territories is usually charitable in nature and can be performed as once-only so and systematically. These activities are carried out at discretion of such associations, which means their optionality. Of course, these measures are approving, but unfortunately we have to state non-universality of such support<sup>4</sup>.

Economic interests of agrarian holding companies are based on enhancing competitiveness of agricultural production and maximum profit from agriculture and related activities; these will have specific social content only when they will be combined with the growth of rural population and social, ecologically safe environment for it. Contribution of holdings in social development of rural areas is primarily in strengthening economy of rural areas, increasing the level of rent for land use and payment to employees, creating jobs for residents of rural areas, development of social infrastructure of these areas, formation of revenues to state and local budgets<sup>5</sup>.

<sup>1</sup> Vidal, J. Land 'grabs' expand to Europe as big business blocks entry to farming. *The Guardian*. <<http://www.guardian.co.uk/global-development/2013/apr/17/land-grabs-europe-big-business-farming?INTCMP=SRCH>> (2016, червень, 25).

<sup>2</sup> Австралія відмовилася продати землю китайцям – угода не відповідає національним інтересам. *УНІАН. Інформаційне агентство*. <<http://economics.unian.ua/other/1334701-avstraliya-vidmovilasya-prodati-zemlyu-kitaytsyam-ugoda-ne-vidpovidaie-natsionalnim-interesam.html>> (2016, червень, 25).

<sup>3</sup> Андрійчук, В.Г. (2009). Надконцентрація агропромислового виробництва і земельних ресурсів та її наслідки. *Економіка АПК*, 2, 3-10.

<sup>4</sup> Судеркін, А.М. Роль агрохолдингів у соціально-економічному розвитку сільської території. *Бібліотека ДВНЗ КНЕУ ім. Вадима Гетьмана*. <<http://ir.kneu.edu.ua:8080/bitstream/2010/1174/1/Suderkin.pdf>>. (2016, червень, 25).

<sup>5</sup> Лупенко, Ю.О., Кропивко, М.Ф. (2013). Агрохолдинги в Україні та посилення соціальної спрямованості їх діяльності. *Економіка АПК*, 7, 5-20.

A steady trend of recent years is public awareness of the need to "socialization" of economic system (in political science circles have become increasingly popular thesis about "socialism as the upward trend of our time"), which involves increasing role and importance of state involvement in regulation of social and economic relations, and therefore, resolving the issue of effective legal support to these processes. For agricultural sector, considering its importance for food security, it is particularly important and hence the need to strengthen public component of agricultural organizational-management relations, including measures to limit negative impact of large agribusiness on the process of law-making and law enforcement. Through regulation of agrarian relations, the state should provide the full range of real public interests of society, as realization of public interests is a prerequisite for realization of private interests.

Current regulation of agrarian holding companies is far behind the realities and does not provide balance of public and private interests. We should support proposal, expressed by the experts of agricultural law, on the need for special regulations concerning operation of agrarian holding companies<sup>1</sup> and development and adoption of the Law "On agrarian holding companies in Ukraine", which is to emphasize the features of legal status of these formations<sup>2</sup>.

Thus, global conditions at food markets and processes of international economic integration (external factor), and increased development of market relations against the backdrop of some uncertainty in state regulation of agrarian sphere (internal factor), led to the emergence and rapid development of large agribusiness. On the one hand, we must recognize that activity of agrarian holding companies is crucial in ensuring competitiveness of agricultural products on the internal and external markets, and therefore the state should make every effort to create transparent and effective rules for working and saving motivation of big business. On the other hand, regulation of agrarian holding companies should provide measures to minimize negative effects of their activities, which can be classified for:

1) elimination of a threat for monopolization of land and "overconcentration of production" (e.g., determining maximum amount of land for individual holdings within a single administrative unit);

2) improvement of fiscal policy on agrarian holding companies (prevention of abuses in tax optimization, establishing the need to participate in formation of local budgets by making tax payments of eligible tenants);

3) strengthening of socially-oriented component in work of agrarian holding companies and supporting of rural development (affirming the right for prior employment for a landlord, introduction of the norm for number of jobs, etc.).

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<sup>1</sup> Уркевич, В. Правові проблеми функціонування агрохолдингів в Україні. *eNULAIR - Електронний архів-репозитарій Національного юридичного університету імені Ярослава Мудрого*. <<http://dspace.nulau.edu.ua/bitstream/123456789/5943/1/Urkevych.pdf>> (2016, червень, 25).

<sup>2</sup> Алієва, Х.Н. (2010). *Правове регулювання реформування аграрних відносин за законодавством України та Російської Федерації: порівняльно-правовий аналіз: автореферат дисертації на здобуття наукового ступеня кандидата юридичних наук: спеціальність 12.00.06 «Земельне право; аграрне право; екологічне право; природоресурсне право»*. Харків.

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