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# INTERNATIONAL EXPERIENCE OF LEGAL ENSURING THE MANAGEMENT OF LAND CADASTRES IN UKRAINE

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**Annotation.** The article describes the foreign experience of land cadastre management, which is a necessary element for the formation and improvement of the national cadastral accounting system, therefore it is useful for every country to use foreign experience.

It has been established that in order to ensure the sustainable development of land relations in Ukraine, it is necessary to improve the current land cadastral system, but in the same way that foreign countries used, being at the same stage of development as Ukraine is now.

It is well-founded that the state cadastre system plays an important role in the economy, law and management of the world's leading countries, so their experience is important, especially since Ukraine does not have sufficient such experience. Moreover, the existing experience is even harmful, because it is built on the Soviet cost model of economic and regulatory assessment of land and technical inventory of buildings.

It has been proven that until now, society does not understand the importance of cadastral registration of real estate in accordance with world traditions. The consequences of the state monopoly on land, buildings and structures of Ukraine's Soviet past are traced in the exclusion of the term «real estate» from official use for many years. Until 1962, there was no cadastre, while the land cadastre of Great Britain has been operating since the middle of the 11th century, Sweden since the 16th century, and Prussia since the 18th century. The land cadastre in most countries of Western Europe serves as the basis for building and maintaining various types of cadastre and is based on land plots. Information systems have a significant effect in this. In most countries, objects of immovable property are firmly connected with the land. In order to solve the question, one should carefully study the original

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interpretation of the «single object of real estate», which is used in Spain and Great Britain. Apparently, in accordance with the principle of «a single real estate object», sooner or later Ukraine will also come to some certainty.

Based on the analysis of world experience in this field, it was established that the registration of land rights occupies one of the main places in the compilation and maintenance of the state land cadastre. However, the domestic land registration system is not perfect and requires the development of adaptation measures to the conditions of the European Union (EU). Based on the legal analysis, it was concluded that the development of the national cadastre is practically in its initial state, which is why the experience of other countries is so important to us.

**Key words:** land, land cadastre, cadastral system, real estate object, land register.

**Formulation of the problem.** Consideration of the foreign experience of legal support for land cadastre management in Ukraine is conditioned by regulatory changes provided for by national legislation, because, despite the consolidation of the main legal norms and features of cadastral accounting of land plots, the problem of their practical application and understanding remains relevant, therefore, it is determined by the desire for its improve. It is important to objectively analyze the foreign experience on the formation and functioning of the land cadastral system and single out those factors that will have a positive impact on the development of land relations in Ukraine.

**Analysis of recent research and publications.** Nowadays, scientific studies in the field of world experience in land cadastre management are small and devoted only to certain aspects of it. The analysis of scientists' works shows that they have a segmentary nature of research. The scientific-theoretical basis of the research was the works of the following leading Ukrainian legal scholars, in particular: V.I. Andreytseva, N.S. Gavrish, A.P. Hetmana, S.L. Goshtinar, I.I. Karakasha, M.V. Krasnova, P.F. Kulynycha, T.V. Lisova, R.I. Marusenko, A.M. Miroshnichenko, M.V. Shulga and others. In the process of writing the article, the works of experts in the field of cadastre were of some interest: D.I. Hnatovych, A.S. Danylenko, D.S. Dobryak, O.P. Kanash, M.G. Lyhogrud, B.P. Magazinshchikova, A.H. Martyna, L.Ya. Novakovsky, L.L. Perovicha, A.S. Popov, M.G. Stupenia, A.M. Tretyak and other scientists.

The **purpose** of the article is a comprehensive study of foreign experience regarding the legal support of land cadastre management in Ukraine, as well as the formulation of theoretical and methodological categories of scientific direction in this field.

**Methods.** In the process of writing the article, a set of methods was used for researching issues of foreign experience regarding the legal support of land cadastre management in Ukraine. In particular, general scientific methods of dialectical cognition, systemic synthesis and analysis, formal-logical and structural-functional methods and special legal methods were used: comparative legal method, historical legal method and other scientific research methods.

Research results. Currently, the concept of «land cadastre» is accepted in foreign practice, approved by the UN together with the International Federation of Surveyors (FIG) in Bogorska (Vodog, Indonesia, March 18-22, 1996), and then in Bafertska (Bathurst, Australia, October 22, 1999) declarations: «Cadastre is a modern land information system, usually based on land plots (parcels), containing records of real estate rights (eg rights, restrictions and obligations). It usually includes a geometric description of the land, associated with other records describing the nature of the rights, the ownership or management of those rights, and often the value of the land and its improvements. A cadastre can be used for fiscal purposes (such as valuation and equitable taxation), legal purposes (such as registering the transfer of ownership of real estate), to assist in the management and use of land (such as planning and other administrative purposes), and provides an opportunity for sustainable development and environmental protection» [1, p. 5].

Data from cadastral accounting in most countries of the world greatly influence the general land management policy of the country, therefore the most accurate information about the size and condition of land resources is extremely important, and hence the increased attention to cadastral accounting. Historically, it happened that: – land cadastre data were used in the distribution, redistribution, and unification of land plots in the course of land transactions, based on which documents certifying the right to land ownership (use) were issued; – land cadastral information was used by authorities of various levels to make management decisions in the field of land use (land use planning, land development control, etc.); – on the basis of the land cadastre, accounting and assessment was carried out not only of land plots that were considered real estate, but also of other objects of immovable property related to land (buildings, engineering structures, etc.), which provided an informational basis for taxation; – the materials of the land cadastre served landowners as a tool that gave them the opportunity to service their land ownership in a complex: to coordinate the construction of various objects (buildings and structures, roads, water supply and sewage systems, recreational and shopping centers), to carry out land agreements, to agree on the use of their lands with public interests.

Despite the fact that the vast majority of countries are characterized by a significant diversity of economic and geographical conditions, a general requirement to support the effective functioning of the land market is mandatory state registration of land transactions and land rights. In global practice, in the formation of the land resources management system, in addition to the regulation of legal relations to land, the central place is occupied by the management of the land cadastre and the formation of the cadastral valuation of the land [2, p. 130].

Currently, reforms of national registry systems are taking place in Europe with the aim of bringing cadastral and registration systems up to unified standards, which are, in particular, the following: maintaining a system of registration of rights to real estate based on records of land plots (land

plot and immovable property are considered as a single real estate object); registration of rights to land plots and immovable property is carried out in one register of rights; registration of rights and maintenance of cadastral maps is carried out by one institution; registration of rights is an administrative function (state registration of rights must be separate from judicial and (or) notary bodies); system services are primarily focused on the user; the rights registration system should be self-supporting [3].

Land cadastre abroad includes not only technical actions, but also a defined land cadastral process related to the registration of land plots and other objects of immovable property and agreements with it. In the end, the information obtained as a result of conducting the land cadastre is inextricably linked with the concept of accounting, assessment of the value of land resources, assessment of the condition and possibility of use for one purpose or another. Initially, the land cadastre played the function of a fiscal cadastre, and only from the end of the 19th century, its legal role related to the registration and protection of land rights grew. It is worth noting that in foreign practice, the concept of «cadastre» is most often associated with the concept of «real estate». And under real estate is meant a social description, which contains data on the number, value, ownership of plots of land and other immovable property firmly tied to the land.

In most member countries of the UN Economic Commission for Europe (USA, Great Britain, Sweden, etc.), a land plot has long been defined as a three-dimensional real estate object. A plot of land is understood as a cone from the center of the earth, which intersects the earth's surface along the boundary of the plot and goes up into outer space. A land plot includes deposits of mineral raw materials that are separated in one way or another from the land, building or part of buildings (which are separated horizontally, vertically or in some other way).

As a result of this definition, the rights to the land plot are divided in a vertical direction. Rights also include easements, rights and other benefits over/under or on the surface of the land or extracted from it. Usually, the rights to such a plot of land are regulated vertically by different branches of legislation: on the subsoil, on airspace, land and civil legislation. Conventionally, four main blocks of countries can be distinguished, which differ in the peculiarity of the development of cadastral and registration systems: – countries with the German system (for example, Germany, Austria, Switzerland); – block of Scandinavian countries; - countries with the so-called Napoleonic administrative system (southern European countries, including France, Spain, Italy); – a group of English-speaking countries, which includes both Great Britain itself and other countries of the world that have been influenced to one degree or another by English «common law», including the USA and Canada.

Great Britain stands out among European countries. The basis of the land management system is the so-called «Her Majesty's Land Register» (Her Mesty Land Register), which, in fact, is a register of ownership rights to real estate, a register of titles and contains information on the following three

most important items: data on the property ; the state of the right to this property; obligation.

Robert Richard Torrens' system of guaranteeing land ownership deserves special attention. In 1857, Torrens proposed his project of a system of guaranteeing land ownership in the parliament of the colony of South Australia, and already on July 2, 1858, the first legislative act was adopted, which introduced this system. The practice of using this system has shown that it will require detailed amendments and changes. And already on August 7, 1861, the Real Estate Law, the so-called Torrens Law, after amendments, was perfected. This led to the creation of a completely solid new cadastral system, which was later somewhat developed by law in 1878. This system was reproduced in many former English colonies (East Africa, in certain states of the USA and Canada, in New Zealand), in a fairly close version to the original .

This registration system refers to the systems of registration of rights to land plots, according to which the state guarantees the accuracy of the title that is in the register, insuring against errors, and according to which unregistered deeds do not give rise to legal relations between subjects who are not participants in the deed. This the system is close to the domestic system of registration of rights: when rights and encumbrances are subject to registration. The transfer of ownership when applying the Torrens system is carried out at the request of the alienator [4]. Although the Australian cadastral system was created under the strong influence of English common law, the main emphasis was shifted to taking into account the needs of a huge country in which property relations began to develop intensively. The result was a unique registration system. The main difference between this system and European systems is that the Torrens system is based on cadastral surveys of individual land plots for individual owners in order to legally support real estate transactions [5, p. 184]. And what is impressive is that conservative Great Britain itself took advantage of this experience, but here the land cadastre has its own history.

The English cadastre system [6], which is quite widespread in the world and was launched in 1862, contains more than 85% of all real estate objects in Great Britain. In Scotland and Northern Ireland there are separate real estate registers. They have three components: the real estate register, the register of rights, and the tax register in which real estate valuation and the mortgage register are performed.

The land cadastre in Great Britain involves the physical and economic classification of land. In the case of physical classification, all lands of the country, depending on the degree of influence of physical factors (climate, topography, height above sea level, steepness of slopes, features of the soil cover), are grouped into five classes of land suitability for use in agricultural production. For example, the first class includes lands that, according to physical factors, are fully suitable for growing most agricultural crops and provide high productivity. The following classes include lands with small, medium, serious and very serious restrictions for agricultural use [7, 8]. The economic classification of land is based on the determination of the value

of the own standard net production of agricultural crops grown on the corresponding classes of land according to generally accepted technology. To evaluate land in the country, the National Advisory Board of Agriculture was established, which, based on mass physical data, calculated for the main areas the average net production for field, horticultural and fodder crops in terms of an acre (0.405 ha) of occupied area and the average net production of pastures in terms of a head of grazing cattle. In addition, the land cadastre in Great Britain represents the informational basis of land resource management, which consists in fixing the boundaries and changes of individual land plots [9, p. 66].

In the Great Britain, as in Spain, there is an original interpretation of the «single real estate object». The real estate object is the same as an object of taxation and as an object of law, but it is not a land plot, but a building with a plot or a plot with a building. Two components – a building and a land plot – form a certain aggregate, where priority is recognized either for the first or for the last, depending on the purpose of the structure: commercial or non-commercial.

Suppose that two identical plots are allocated for construction. On one of them, the house is already almost built, but not registered as a real estate object, and on the other, construction has not yet begun. The technology of state cadastral accounting has changed: objects of capital construction can be registered without reference to the land plot (before or after the cadastral accounting of the base on which they are located) and they are given a cadastral number that is not related to the number land plot. Under the circumstances, it seems to some researchers that double cadastral accounting is necessary - separately for land plots and land plots together with real estate objects. However, this is incorrect from the point of view of accounting systems. The object of accounting must be clearly defined. In addition, the approach will differ significantly depending on whether the owner of the plot is an individual or an organization. Perhaps, in order to resolve the issue, the original interpretation of the «single real estate object» used in Spain and Great Britain should be carefully studied.

Apparently, according to the principle of «a single real estate object», sooner or later Ukraine will also come to some certainty, for example, as in the Swedish legislation, where real estate is only land, or to the French model, where real estate is land and buildings.

In Great Britain, according to the Commercial (Non-Residential) Real Estate Act of 1954, if a plot of land is provided for the maintenance of a residential building or other non-commercial real estate object, then the only object of taxation is the building, and the land plot under the building is included in the assessment of home ownership as a component of it. It is not possible to use such a plot for commercial purposes (including for the production of agricultural products, even for one's own needs).

If the residential building on the plot is used for commercial purposes (for example, as a hotel), then the unity of the real estate object is preserved, and the object of taxation becomes a conditional unit of land, based on the

amount of national rent. It should be noted that the conventional unit of land is characteristic only for Great Britain, since there is no such concept in Europe.

If the residential building on the site is used for commercial purposes (for example, as a hotel), then the unity of the real estate object is preserved, and the subject of taxation becomes a conditional unit of land, oriented to the value of the national rent. It should be noted that the conditional unit of land is characteristic only for the UK as there is no such thing in Europe.

Analyzing foreign experience, one cannot fail to take into account the geographical location of the country, its climate and size, as well as the sufficient development of civil society institutions that have been formed over the centuries. Thus, in the USA, Canada, and Australia, due to decentralization, the complexity of cadastral systems and registration systems arose. Canada is distinguished by the lack of a unified system of registration on a national scale, which is related to the processes of colonization of lands by Europeans.

The formation of the cadastral system of Ukraine is accompanied by a number of problems, for the solution of which it is possible to use foreign experience.

In our opinion, water objects should not be excluded from the list of real estate objects subject to state registration, for which it is useful to study in detail the experience of Sweden, where the coastal strip, the 300-meter strip of the sea and the 5 largest lakes are included in the registration system.

Disagreement with the cadastral assessment by the competent authorities of the real estate object for the purpose of taxation will cause costs for taxpayers – natural persons and congestion of the courts of general jurisdiction. In our opinion, to calculate the cadastral value of such objects of cadastral accounting as a land plot together with real estate objects and a land plot separately, the original interpretation of the «single real estate object» used in Spain and Great Britain should be carefully studied.

The research proceeds from the obvious fact that the land plot and the buildings and structures located on it constitute the only object of the material world, the only useful unit of property. Even Roman lawyers developed a general rule: «*superficies solo sedit*» – «what is done above the surface follows the surface.» Therefore, Roman lawyers believed that the land together with the building should be considered as a single object of ownership [10, p. 48].

Professor T.E. Kharitonova draws attention to the fact that physically and geographically, the land and the houses, buildings or structures located on it are inextricably linked. However, in the legal sense, these are separate objects, each of which has its own legal regime. Since a land plot is a special object that can exist independently (without other real estate), it can also have its own legal regime. That is, if there is an undeveloped plot of land, the norms of Art. 120 of the Land Code of Ukraine. If the land plot is built up, then the norms of Art. 377 of the Civil Code of Ukraine, which put real estate in the first place. Therefore, depending on the existing object, it is suggested to apply the norms of legislation [11, p. 119].

In recent times, judicial practice has formed a unified approach to the application of the provisions of Art. 120 of the Land Code of Ukraine and Art. 377 of the Civil Code of Ukraine. The courts proceeded from the «principle

of the unity of the legal destiny» of the land plot and the immovable property located on it. That is, in the case of transfer of ownership of a real estate object, in particular, on the basis of a sales contract, the land plot always «followed» such real estate object.

**Conclusions.** Therefore, on the basis of foreign experience, it is necessary to create a single formal registration system for the provision of public services in Ukraine, which will provide grounds for effective protection of real estate rights of both private owners and the state. Such a system will guarantee the reliability and transparency of the provision of public services related to real estate turnover.

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