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THE CONCEPT OF THE PRINCIPLE OF PAYMENT OF LAND–USE

The article is dedicated to studying the essence of the principle of payment of land-use. The concepts of the principle, the principle of law, the principle of payment of land-use are analyzed, and also the main features of the principle of law such as normativity, universality, objectivity, and regulativity are described.

A comparative analysis of the system of principles of law and the system of principles of legislation is made; the principle of payment of land-use is a part of the latter.

In order to clarify the essence of this principle, the article focuses on the definition of "payment" and the structural elements of "payment" are marked. They are: the object (tangible or intangible goods for which the payment is made), the subject (the person who receives the necessary object for an accomplishment of a certain purpose), the payment (a monetary equivalent as a certain cost characteristics of the object), the purpose of such a payment (the subject takes possession of a particular object, gets into use of it or has it at his/her disposal).

The value of land payment concerns not only replenishing the relevant local budgets and realization of the economic interests of the owner, but also the economic incentives for effective and rational land-use. Such conclusions can be drawn from the fact that the article about land payment is located in the chapter "Economic Incentives for Rational Use and Protection of Land" (the Land Code), which defines economic incentives for use and protection of land. This means that the local authorities, having a financial base, will be able to develop programs, whose objective will be to stimulate the owners and users of land to the proper use of land and its protection and also to finance fulfillment of such programs. Therefore, to a certain extent, payment for land can be considered as a kind of economic incentives, through which reproduction and increase of fertility and productivity of soils of the land plots will be implemented.

Keywords: principle; principle of law; features of the principle of law; principle of payment of land-use; payment; payment structure.

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Понятие принципа платности землепользования

Статья посвящена исследованию сущности принципа платности землепользования. Рассмотрены такие понятия как «принцип», «принцип права», «принцип платности землепользования», а так же охарактеризованы основные признаки принципа права, а именно: нормативность, общеобязательность, объективность, регулятивный характер.

Проведен сравнительный анализ системы принципов права и системы принципов законодательства, к которой и относится принцип платности землепользования.

Для установления сути этого принципа определяется платность, выделяются структурные элементы последней. К ним относятся: объект (материальные, нематериальные блага, за которые осуществляется оплата), субъект (лицо, которое получает необходимый объект для реализации определенных целей), оплата (денежный эквивалент, определенная стоимостная характеристика объекта), цель такой оплаты (получение субъектом во владение, пользование или распоряжение определенного объекта).

Значение оплаты за землю связано не только с пополнением соответствующих местных бюджетов и реализацией экономических интересов собственника, а и с экономическим стимулированием эффективного и рационального использования земли. К таким выводам возможно прийти исходя из того, что статья про оплату за землю в Земельном кодексе размещена в главе «Экономическое стимулирование рационального использования и охраны земель», где раскрывается содержание экономического стимулирования использования и охраны земель. Это означает, что местные органы власти, имея финансовую базу, могут разрабатывать программы, целью которых является стимулирование собственников и пользователей земельных участков к надлежащему использованию и их охране, а также финансирование исполнения таких программ. Поэтому в определенной степени оплату за землю можно рассматривать как вид экономического стимулирования, благодаря которому будет осуществляться восстановление, повышение плодородия и продуктивности почв на земельных участках.

Ключевые слова: принцип; принцип права; признаки принципа права; принцип платности землепользования; платность; структура платности.

Introduction. For many years scientists have investigated various aspects of realization of the principle of payment of land-use in the field of land law, others have considered this principle in the system of principles of land law, but there were no attempts to formulate the definition of this principle in modern land law science.

The analysis of the literature data and the formulation of the research problem. Among the researchers who paid attention to this issue we should emphasize V. I. Andreitsev, T. O. Kovalenko, V. V. Nosik, D. V. Sannikov, M. V. Shulha. The purpose of this study is to define and reveal the essence of such concepts as the principles of land law, payment of land-use, the principles of payment of land-use.

The purpose and objectives of the study. The purpose of the work is to develop approaches to understanding the concept and features of the principle of payment of land-use.

The objectives of this study are to reveal the concept of the principle of payment of land-use, to find out the main features of this principle, to characterize such a concept as payment of land-use and to formulate the concept of the principle of payment of land-use.

Main part. Such a notion as a principle is inherent not only in legal science. Dictionary sources determine its essence in general. For example, the Dictionary of the Ukrainian language characterizes a principle as the basic starting provision

of any scientific system, theory, ideological movement, etc. [14, p. 15]. Being fundamental should be considered the main feature of a principle. It should be noted that 'being fundamental' is defined as the main provision of anything. With this definition, it becomes clear that a principle in a broad sense serves as the basis, beginning, being the base of a study, regulation. It seems that the principles of law should be considered through the aspect of 'being fundamental'; what is more, such 'being fundamental' is inherent as a system-generating category in all the principles of law without any exception.

As for legal science, 'being fundamental' should be also considered as a mark that concerns all approaches to understanding the concept of "principle" in the law. For instance, the Encyclopedic Legal Dictionary defines the "principles of law" (from Latin – the base, beginning) as leading bases (ideas), initial provisions that characterize the content and direction of legal regulation of social relations [2, p. 254]. In other words, while characterizing the principles of law, attention is drawn to fundamental, initial ideas, provisions, bases and requirements.

For example we should refer to land protection and its legislative consolidation in the Constitution of Ukraine and other regulatory acts. The Constitution states that the land is the main national wealth, being under special protection of the state [9]. Thus, the Basic Law establishes that land protection is an important aspect of the policy of the state. So, this regulatory act defines the initial aspect of adherence to principles of this issue and the main provisions of so named principle – the principle of land protection. A number of regulatory acts were adopted for further implementation of the provisions of the Constitution on its basis and for its implementation: the Law of Ukraine "On the Protection of Land" [6], the Law of Ukraine "On State Control over the Use and Protection of Land" [5]. So, the principle of land protection was underlying for these regulatory acts, i. e. it is fundamental for them. Thuswise, 'being fundamental' is really a feature of the principles of law, but it should not be considered the only feature of the principles of law.

We should refer to such well-known components of the principle of law as an idea, basis, requirement and provision. Very often they are used as synonyms. However, for a proper understanding of the essence of such a concept as a principle, one should consider the components of its definition in more detail. Thus, "an idea" (from Greek – an appearance, image, beginning) is a form of a spiritual and cognitive reflection of certain regular connections and relations of the outside world, it is aimed at the latter's transformation. Judging by its logical structure, an idea is a form of thinking, a kind of a concept, the content of which combines both objective knowledge of the existing reality, and the subjective goal, aimed at a transformation of the reality. The peculiarity of an idea is an ability to identify the most essential, overriding features and laws of objective processes and to create a holistic, exemplary image of an object, a phenomenon in cognition [10, p. 35]. Understanding of an idea as a form of thinking, the result of a person's cognitive, intellectual activity, characterized by a generalization and indirect reflection of such thinking, should be considered the main features of the idea. Another feature

of the idea is a combination of objective knowledge of reality and the subjective goal of its transformation.

The basis is the base of something; it is the main thing, on which something is based; it is the initial, main provision, the base of the worldview, the rule of conduct [3, p. 238]. The requirement is a wish, a request expressed in a way that does not allow objections, it is canons, rules, someone or something should be subjected to them, it is binding rules, conditions [3, p. 215]. The provision is an underlying statement, thought; it is a thesis [3, p. 421].

Judging by the explanations of the given above definitions of the concepts concerning a principle, we can conclude that although an idea, requirement, basis, provision are used as homogeneous concepts to characterize the term 'principle of law', nevertheless they have terminological differences. These differences are important because they give an opportunity to emphasize the complexity and multidimensionality of the "principle of law" category. The identification of the principle of law only with an idea is inadmissible, as a legal idea - is a common component of the subjective side of law, the content of the principle is characterized by objective social laws. When differentiating the legal principles and ideas, one should not ignore the ideological conditionality of the principles, abstracting the activity of the consciousness of a person, a creative activity of his / her mind [10, p. 74]. So, such identification leads to narrowing of understanding of the essence of the principle. In its turn, the requirement is considered as a canon, rule that is binding on everyone who is concerned. This gives the imperative and categorical character to the principle, which let us allocate such a feature of the principle of law, as bindingness, serving as an objective criterion of the principle of law. The provision should be considered as the main thesis, thought expressing the most significant features of the content of any phenomenon, while providing the opportunity to distinguish such features as objective certainty and being framed.

Considering these components of the principle of law, one can conclude that there is an actual combination of objective and subjective characteristics. The importance of the principles of law is that they briefly express the most important laws and bases of the state and law type, and that they express the main features and essence of law, fit an objective need for building and perfection of a certain social system. They connect the content of law with its social bases (the laws of social life, on which this legal system is based).

By assessing the encyclopedic definitions and detaching their certain features, we can understand that such a definition of the principle of law is rather incomplete and does not contain a number of characteristics, namely: normativity, universality, social conditionality, etc.

We should refer to the theory of state and law, because this science is fundamental in the legal sciences, it is aimed at identifying and characterizing the essence, features, forms, principles, institutions of state-legal phenomena. Despite the prevalence, significance and widespread use of the term "principles of law", such representatives of theoretical legal science as A. M. Kolodiy, S. P. Pogrebnyak, O. O. Uvarov paid most attention to studying its essence. Both mutual and completely different items

concerning the features of the principles of law have been reflected in their studies.

Theorists consider normativity as the main feature of the principle of law; it means an obligatory character of their requirements, which allows them to perform the function of regulating social processes, and not only derivatively through canons, but also independently [6, 10, 17]. The special character of normativity of the principles of law manifests, among other things, in the fact that resolving conflicts among the principles of law takes place the other way round if to compare with overcoming conflicts among the canons of law, which testifies to their greater importance and validity in relation to the standards.

The regulatory character of the principles of law is one of the most significant features of this legal phenomenon, since regulation of social relations is considered to be the main function of law. Thus, the main purpose is the central principle of a land relations regulation. There are many canons that concern the main purpose and that regulate various aspects of using land plots and theirs protection.

The overall character is another feature of this legal concept. If to compare with the canons of law, the principles of law appear to be normative generalizations of the highest level, a kind of cluster of legal matter [17, p. 112]. Considering, for instance, the principle of payment of land-use, we should pay attention to the general character in comparison with the canons of the Tax Code of Ukraine, introducing implementation of this principle.

Summarizing the said, and taking into account the features of the principles of law, it may be argued that the principle of land law is fundamental ideas, bases, requirements, provisions (all of them are protocolary defined in the relevant articles of the regulatory acts) that objectively reflect the directions of the state policy during regulation of land relations and are as the basis for development, adoption and implementation of land law canons.

Speaking more specifically about the principles of land law, it is worth reminding that they are reflected in art. 5 of the Land Code of Ukraine, in art. 206 of the Land Code of Ukraine [5] and other regulatory acts. Very often sectoral principles of law are identified with the relevant principles of legislation. However, such an approach is very restricted. In the science of land law of Ukraine they distinguish the main bases of land use: a guarantee of the right to private property, a cost characteristic of the land, increase of soil fertility and a progressive growth of output. However, from the methodological bases of land use said above not all are reflected today in the canons of land legislation and not all are defined as the principles of legal regulation of land relations. Land legislation is based on such principles as a combination of the specifics of land-use as a territorial basis, natural resource and the main means of production; ensuring equal rights to land property for citizens, legal entities, territorial communities and the state; non-interference of the state with the citizens', legal entities' and territorial communities' implementation of their rights concerning possession, use and disposal of land, except in cases provided for by law; ensuring rational use and protection of land; guaranteeing rights to land, priority of environmental safety requirements, payment of land-use.

V. S. Nerssesyanc notes that "the sectoral principle of the law system construction, the concept of dividing various fields of law by the criterion of the subject and method of legal regulation, the construction of the internal building of the system of law and its constituent parts (canon of law, institution, field) is a provision of the legally doctrinal study of law as a means of regulating social relations about its forms, mechanisms, means. The legal system as a doctrinal construction reflects the scientific understanding of the content, means and rules of the relevant regulatory regulation of social relations and the relevant forms of systemization of its results (right-conferring acts). Thus, the system of law is a doctrinal legal and logical model for the actual practice of law-creating activity, a publication of the relevant legislative acts, their rationally organized "calculation and systematization" [9, p. 176]. Indeed, representing a certain doctrine, the model of the system of principles of law defines (for a law-making body) practical guidelines, which are entrenched in legislative canons and become obligatory and are implemented in practice.

Thus, V. K. Babayev considers "cannons-principles are statutes, which define and entrench the principles of law. The regulatory role of the principles of law is closely linked to their legislative consolidation. The more complete and consistent the principles of law are expressed in legislation, the more significant the role is. The principles of law, entrenched in a statute, become a cannon-principle" [4, p. 41]. V. I. Hoyman remarked, "the system of law and the system of legislation are in a mutual dependence of each other, although the degree of such a dependence is different. The system of law is formed under the influence of a legislator's activity, and along with that it is objective and autonomous. The system of legislation is a fruit of a legislator's activity, although, of course, it also has social conditionality. The system of law and the system of legislation do not coincide in the circle of sources in which they express themselves: the system of legislation does it in the legislation, the system of law does it not only in positive law and axioms, but also in international legal acts that have a recommendatory nature, normative content agreements, judicial precedents, and even in legal consciousness" [4, p. 43]. Thus, the system of law is much broader than the legislative system. As an element of legal regulation of land relations the principles of law are formed from the content and essence of law, or, as some scholars point out, from the spirit of law. The political canons, the judicial precedent, and achievements of the legal science, expressed in the legal doctrine also exert influence on the essence of the principles of law. On the one hand, when consolidating the principles of land law in the legal canons of land legislation, they turn into cannons-principles, and on the other hand, land cannons-principles, being statutes, express and consolidate the essence of the principles of land law.

Considering the existence of the principles of land legislation, which at the present time are entrenched in the canons of the Land Code of Ukraine, it should be noted that its provisions are disputed in a way. There is a problem of identifying those principles of law, which actually regulate land relations, and distinguishing them from the legally prescribed declarative provisions, called by the law as principles. Solving this problem would improve the quality of legal regulation of

land relations [19, p. 399]. Moreover, the Land Code of Ukraine, as the only codified source of land law, should summarize in its content all the really existing principles of land law and the means of their implementation. But, unfortunately, it does not provide a full picture of the principles of land law, and the principle of payment is anyhow consolidated in another article if to compare with the principles of land law. It is not represented in the Land Code how it is realized, what is its essence, value. So, I agree with M. V. Shulga, who, characterizing the Land Code of Ukraine, states that this law must first of all consolidate the principles of land law and such legal provisions that ensure the stability of land relations and are forward-looking [20, p. 112]. Thus, the Land Code of Ukraine, as the only codified regulatory act, should consolidate the main bases of regulation of social relations, their peculiarities and methods of realization. The principle of payment of land-use is considered to be an independent principle of land law. Quite often it is called a principle of economic and legal mechanism of regulation of land relations [16, p. 25]. Generally, we should agree with it, however, as it is known, one of the main elements of the economic and legal mechanism of state regulation of land relations is payment for land. Legislatively, the principle of payment of land-use is entrenched in art. 206 of the Land Code of Ukraine. The introduction of land payment has something to do with a need to encourage land owners and land users to use land effectively and efficiently. Free using of land plots, which had prevailed before Ukraine gained independence, led to deterioration of the quality and fertility of land, thriftless use. Therefore, the implementation of the principle of payment is a guarantee of satisfaction of state-public interest, which is to preserve and improve the condition of land. But for a proper understanding of the essence of the principle of payment of land-use, it is necessary to define certain concepts, including a notion of payment of land-use.

The analysis of general literature shows a low exploration degree of this concept. So, according to the Great Dictionary of Modern Ukrainian, the term "payment" is defined as a reimbursement of value; something that is given, provided for a payable fee [3, p. 764].

The Dictionary of Economic Terms identifies a payment, pay with a tax (collecting, obligatory payment), which is a mandatory contribution to the budget of the relevant level or the state trust fund, made by payers in accordance with the procedure and under the terms determined by Ukrainian laws on taxation [15, p. 178]. However, we can't consider that the definitions given above are consistent with the understanding of the concept of payment, because these definitions leave aside important aspects of payment. Also, we can't identify payment with payment for land.

Although defining the concept "payment for land", most contemporary lawyers understand it as a fee for land-use, charged as a land tax and land rent [1, p. 54]. This characteristic is due to the existence of the definition of "payment for land" in the Tax Code of Ukraine. Thus, payment for land is a nationwide tax, collected as a land tax and a rent for land plots of state and communal property (art.14 of the TC) [11].

Payment should be considered as a broader notion than a land fee. It is necessary to refer to art.206 of the Land Code. According to part 1 art. 206 of the Land Code,

land-use in Ukraine is payable. The object of payment for land is a land plot [5]. So, payment should be considered as one of the characteristics of land-use. Using a formally legal approach and applying it to the provisions of the aforementioned canons, it is possible to draw the following conclusions: if land-use is paid, and the payment, in its turn, is a reimbursement of costs, a need for certain funds, then land-use should be considered as a process of extracting useful properties from a land plot.

Thus, payment will be a necessary condition for a reimbursement of the costs or a certain part of the cost of useful properties. The very principle of payment of land-use is realized through a significant number of land legislation canons. At the same time, the obligation to pay for land-use is inherent in implementing both the right of property and the right of use. Item "c" part 1 art. 91 of the Land Code establishes for the landlord an obligation to pay the land tax timely [5]. Thus, if the owner of the land plot has useful properties extracted from the land plot, a statutory need to pay cash flows for the benefit of the state appears.

That means, the state that considers the land as the main national wealth and property of the people, gets a compensation for the extracted useful properties of such a wealth and property. In its turn, item "c" part 1 art. 96 of the Land Code obliges a user of the land plot to pay rent and land tax timely [5]. So, the subject of land-use, extracting useful properties from the land, actually compensates for their value directly to the owner. A reimbursement of the value of the received benefit, which is the extraction of useful properties from the land, is carried out by redistribution of cash flows between the landlord and the state or the land user and the owner, and it should be considered a payment for land. Thereby, an objective need to reimburse the value of the received benefit can be perfectly possible considered payment of land-use.

Payment implies transferring the possession or using of the object to the relevant subject for a price (in monetary terms). With this definition it is possible to allocate the following structure of the category "payment":

– the object (tangible or intangible goods for which the payment is made),

– the subject (the person who receives the necessary object for realization of a certain purpose),

– the payment (monetary equivalent, as a certain cost characteristics of the object)

– the purpose of such a payment (the subject takes possession of a particular object, gets into use of it or has it at his/her disposal).

Let us turn to arts. 269–290 of the Tax Code of Ukraine, which entrench the procedure of implementation of the principle of payment of land-use. In accordance with the canons of the Tax Code of Ukraine, not only lands being used but also lands being in ownership are considered as objects of taxation, namely: land plots that are in ownership or used and farmland allotments (land shares) that are in ownership [11].

Let's consider payment for land within the framework of the structure of payment, where the object is land plots, being in ownership or used, and farmland

allotments (land shares) that are in ownership. The subject of such land-use is a person who legally owns, uses the object or intends to obtain rights to this land plot. Payment for land, thereby, is made as a land tax, rent or land value when it is transferred into ownership.

The purpose of such a payment is the subject's obtaining a particular object into possession, use or having it at his/her disposal. M. Shulga expressed himself very exact about this issue; he argued that the value of payment for land concerns not only replenishing the relevant local budgets and realization of the economic interests of the owner, but also the economic incentives for effective and rational land-use [20, p. 167].

Such conclusions are grounded. Thus, art. 206 of the Land Code is located in the chapter "Economic Incentives for Rational Use and Protection of Land", which defines the substance of economic incentives for use and protection of land. This means that the local authorities, having a financial base, will be able to develop programs, whose objective will be to stimulate the owners and users of land to the proper use of land and its protection and also to finance fulfillment of such programs. Therefore, to a certain extent, payment for land can be considered as a kind of economic incentives.

Discussion of the results. The definition of the concept "the principle of payment of land-use" was defined during the study, the main features of this principle were identified, the notion "payment of land-use" was formulated and the structure of this concept was defined.

Conclusions. So, the principle of payment of land-use is essential ideas, and leading bases that characterize the substance and direction of legal regulation of land relations in the field of the subject's legal paying for land-use, having it into possession and having it at his/her disposal; it is an effective financial incentive that will promote proper, rational land-use, increase of land fertility.

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Поняття принципу платності землекористування

Досліджено сутність принципу платності землекористування. Розглянуто поняття «принцип», «принцип права», «принцип платності землекористування», а також охарактеризовані основні ознаки принципу права, зокрема нормативність, загальність, об'єктивність, регулятивність.

Зроблено порівняльний аналіз системи принципів права та системи принципів законодавства, до якої і належить принцип платності землекористування.

Для з'ясування суті цього принципу визначено значення «платність» і виокремлено структурні елементи останньої. До них віднесено: об'єкт (матеріальні чи нематеріальні блага, за які здійснюється плата), суб'єкт (особа, яка отримує необхідний об'єкт для реалізації певної мети), плата (грошовий еквівалент як певна вартісна характеристика об'єкта), мета такої плати (отримання суб'єктом у володіння, користування чи розпорядження певного об'єкта).

Значення плати за землю пов'язано не тільки з наповненням відповідних місцевих бюджетів і реалізацією економічних інтересів власника, а й з економічним стимулюванням ефективного та раціонального використання землі. Такі висновки можна зробити виходячи з того, що стаття про плату за землю в Земельному кодексі розташована у главі «Економічне стимулювання раціонального використання та охорони земель», де розкривається зміст економічного стимулювання використання та охорони земель. Це означає, що місцеві органи влади, маючи фінансову базу, зможуть розробляти програми, метою яких виступатиме стимулювання власників і користувачів земельних ділянок до належного використання земель та їх охорона, а також фінансування виконання таких програм. Тому, в певній мірі, плату за землю можливо розглядати як вид економічного стимулювання, завдяки якому буде здійснюватися відтворення, підвищення родючості та продуктивності ґрунтів на земельних ділянках.

Ключові слова: принцип; принцип права; ознаки принципа права; принцип платності землекористування; платність; структура платності.

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