

UDC 332.72

DOI: 10.54477/legalhorizons.2021.14(3-4).35-41

Legal Regulation of Land Relations in the Context of Canadian Legislation

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Article's History:

Submitted: 24.07.2021

Revised: 23.09.2021

Accepted: 25.10.2021

Abstract

The relevance of the study is conditioned by the need to analyse international practices of legal regulation of land matters, in particular on the example of the Canadian experience, to update and further implement Ukrainian legislation. The purpose of the study is to identify the features of the legislative regulation of land relations in Canada, Ukraine, and other countries. The methods used to investigate the selected topic include: dialectical, formalisation, legal, formal and legal, hermeneutic, logical-legal, systemic, structural and functional, axiomatic, induction and deduction, analysis and synthesis. The study identified the basic concepts, terms and phenomena used in the field of land regulation in Canada and other countries; the concept of "land relations" is characterised, the objects and subjects of land relations are defined; an analysis of the legal framework governing land relations in Canada and the peculiarities of such regulation; features of regulation and implementation of land relations in Ukraine and such countries as Great Britain, Germany, France, Australia, and New Zealand are described; the list of regulations is compiled based on which regulation of land relations is carried out. The provisions highlighted in the paper are of practical value primarily for entities whose activities are aimed at regulating and controlling land relations, persons whose rights are directly or indirectly covered by the land sphere and fall under the regulation in this area

Keywords: ownership, land use, foreign experience, inventory checking; land plot

Suggested Citation:

Kovach, B.L. (2021). Legal regulation of land relations in the context of Canadian legislation. *Legal Horizons*, 14(3-4), 35-41.



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Introduction

The evolutionary development of society was characterised by the establishment of land as the main means of production. The establishment of land as the main means of production in the world has made it one of the main wealth in society, possession and use of which determined the social and property status of various segments of the population. Therefore, during the long development of society there were various socio-economic relations regarding the use, distribution, lease, and utilisation of land, which became the basis for the establishment of modern land relations in different countries [1]. The land is the greatest wealth of mankind, due to which there is life on the planet and the needs of people are met. The term “land” should be understood as a system that includes land plots, environment, land resources, conditions under which the rational use of land in the world and agro-climatic conditions of production [2].

William Petty, one of the leading experts in political economy, noted: “Labour is the father of wealth, and the land is the mother” [3]. The establishment of land relations and their proper regulation is considered one of the powers of public authorities in each country. Land is a special and important resource that ensures the normal economic and social functioning of the population. At the same time, land is the basis, the factor that determines certain features of the development of each country. The land policy of each country, and, consequently, the legal framework governing this area, is aimed at increasing production and social potential, creating conditions for investment, which in turn leads to the transformation of land policy into a powerful, efficient and high-quality growth factor for the world economy. In recent years, land relations in Ukraine, and the land sphere and land law in general are characterised by active development, but still there are a number of shortcomings in the regulation of this area, primarily due to legislation aimed at resolving land issues [4]. The analysis of foreign experience of regulation of land relations in different countries, in particular within the framework of scientific research, the most part of attention is given to experience of regulation of land relations in Canada, allows defining advantages and the lacks arising at regulation of land relations and development of the basic areas of improvement of the land sphere.

Land and the regulation of land relations in different countries differ. This is conditioned by the fact that the object of regulation of land relations, namely land, there are different regulations and a separate procedure for regulating its use. In Ukraine, the state of regulation of land relations, compared with developed countries, is at an early stage of development. Regulation of land relations and implementation of land policy in particular are aimed primarily at improving the efficiency of land use, creating appropriate conditions for

increasing production and investment potential of land in each country and turning land into a powerful factor in economic growth [5].

The purpose of the study is to determine the features of the legislative regulation of land relations on the example of the Canadian experience and other countries. *The main objectives of the study* are:

- definition of the concept of “land relations”, characterisation of its essence and content, and analysis of views on the interpretation of the concepts of “object of land relations” and “subject of land relations”;
- analysis of the legal regulation of land relations in Canada and investigation of the peculiarities that arise during land use, the study and separation of powers of public authorities in the land sphere;
- characterisation implementation of the characteristics of the legal framework and the main features of land regulation in other countries of the world, and in Ukraine in particular;
- study and development of recommendations for improving the sphere of land relations in Ukraine.

Materials and Methods

Methodological support of the study is conditioned upon its purpose and objectives and is based on the use of a set of general and special methods of cognition. In accordance with the defined goals and objectives, the study used a set of research methods of modern epistemology. Using the methods of synthesis and theoretical analysis, research was conducted in the field of land regulation in Canada, Ukraine, and the world, features of land regulation in Canada and the world were identified, and the development of regulatory regulation of land was analysed. The dialectical method is the basis of the study, because it is used to learn all the processes of research on the chosen topic. The use of this method in the study of legal issues leads to theoretical and practical investigation of the improvement of land relations. Using the formal and legal method of research, the analysis of features that occur during the regulation of land relations in the world and in Canada, in particular, highlights the features that arise during the regulation of this area and identified the legal framework for land regulation; using the system method, the range of researched problems was determined and proposals for their solution were made. Comparative method and synthesis – during the analysis of foreign experience in the functioning of land relations and the possibility of its use in Ukraine.

For a more complete and effective investigation of the chosen topic, the study used: hermeneutic method, which helped to reveal the essence of the concept of “land relations” and its key characteristics; analysis allowed dividing the object of study into its component parts for the purpose of their independent consideration, and also helped connecting the individual legal phenomena

that were the subject of analysis, in a logically structured legal reality; analogies through the establishment of similarities in some features of legal phenomena and in legal relations, and through this method, knowledge of objects and phenomena is achieved on the basis that they are similar to others.

Axiomatic method should also be considered one of effective methods of research in the field of land relations in Canada, the world, and in Ukraine in particular. Axiomatic method aims to build a scientific theory in which some statements (axioms) are accepted without evidence and then used to obtain other knowledge according to certain logical rules; with the help of the system and structural method – the general legislative base of regulation of the legal sphere is formed and the peculiarities that arise during the regulation of land relations in the countries of the world are established, and the procedure of improving the land sphere in Ukraine is considered; method of formalisation, which reflects the meaningful knowledge in the known sign-symbolic content. The methods of system analysis, theoretical generalisation, induction and deduction were used to generalise research related to land relations in Canada, Ukraine, and other countries. Philosophical approaches were also used, in particular the methodological and complex one, which led to the involvement in the methodological arsenal of various worldviews, philosophical theories, methodological principles, and methods.

Results and Discussion

Land relations should be understood as public relations of land ownership, disposal, and use. Land and land relations during the long development of mankind have been the main causes of controversy between people and there is still a debate among researchers regarding their legal regulation [6]. Land relations have always occupied a special place in the history of mankind, as they contain unique features of land resources and ensure the proper activity of people and the satisfaction of their interests. A. Honore gave an interpretation of “land relations”, which is based on eleven elements, including: the right to use land; the right to manage land resources; land ownership; the right to income derived from the use of land resources; the right to inherit land and related rights; the right to “capital value” of property; indefiniteness; the right to safe use of land resources;

ban on the use of land, in case of misuse; responsibility for the use of land resources; residual nature [6].

The objects of land relations are lands and the rights to land, which are in the possession, use and disposal of the subjects of land relations. The subjects of land relations include citizens, legal entities, and public authorities. The state policy of each country and the legal framework governing land relations are important factors and elements in improving and developing the land sector, because in most countries the successful regulation of land relations depends on the effective application of regulations governing land relations and the exercise by public authorities of their powers in accordance with the laws of each country and considering the interests of the population.

Thus, referring to international examples of practices of legal regulation of land relations, the study will focus on Canada, which is a constitutional monarchy and is considered one of the developed countries in the world. First of all, notably, land in Canada is classified into the following types: agricultural land use, recreational land use, forestry land use, land used to reproduce wild ungulate animals and waterfowl [7]. The planning and use of land resources are close and have common features with English law. The drafting of legislation, i.e., the implementation of legislative activity in Canada, is mostly done by the provincial government, which in turn establishes the peculiarities of the regulation of land relations. Canada's legal system consists of seventeen branches of law. The area of law that governs land relations in Canada is property rights. Thus, property rights in Canada are an industry whose laws govern the rights of people to land and other property. This area covers the issue of ownership of movable and immovable property, and intellectual property rights. The regulations governing land relations in Canada include: the Constitution of Canada¹, Agricultural and Rural Development Act², Canadian Environmental Protection Act³, First Nations Land Management Act⁴, international acts to which Canada is a party and which regulate that or to some extent land relations, as well as other acts in the field of regulation of land relations. One of the international acts that indirectly regulates land relations, namely the right to property, is the Universal Declaration of Human Rights of 1948⁵. The Universal Declaration of Human Rights of 1948⁶ is a fundamental

¹Constitution of Canada. (1982, April). Retrieved from <https://laws-lois.justice.gc.ca/eng/const/index.html>.

²Law of Canada No.RSC 1985 A-3 “Agricultural and Rural Development Act”. (1985, January). Retrieved from <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-a-3/latest/rsc-1985-c-a-3.html>.

³Law of Canada No.SC 1999 33 “Canadian Environmental Protection Act”. (1999, September). Retrieved from <https://www.canlii.org/en/ca/laws/stat/sc-1999-c-33/latest/sc-1999-c-33.html>.

⁴Law of Canada No. SC 1999 24 “First Nations Land Management Act”. (1999, June). Retrieved from <https://laws.justice.gc.ca/eng/acts/F-11.8/FullText.html>.

⁵Universal Declaration of Human Rights. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_015#Text.

⁶*Ibidem*, 1948.

international act that establishes, consolidates, and regulates fundamental human rights in the world. The Declaration¹ does not directly regulate land relations, however, Article 17 establishes a provision according to which every person has the right to own property and no one may unreasonably deprive such person of property belonging to them. Thus, the right to property is recognised and protected at the international level, and land as property and property is also recognised and protected, but the protection of land ownership is carried out in accordance with the national law of each country.

The current state of research and regulation of land relations in Canada is characterised by the existence of the Agricultural and Rural Development Act², adopted in 1985, which is one of the most important documents in the land sector. This Act³ facilitated and provided the basis for a land inventory service, the main purpose of which is to survey land in accordance with a defined programme in the country to provide federal and provincial authorities with accurate and reliable information about the state of land and potential productivity of Canada [8]. For its part, the federal government is committed to coordinating research and the development of common land classification criteria in Canada and funding these surveys and surveys of national interest. One type of land relationship in Canada is land ownership. However, in Canada, private land ownership accounts for about 10% of all available land, and the rest is state-owned. An example is the provision that 90% of all forests in Canada are state-owned [9].

At the same time, Canada has undergone a reform that has consolidated in the Constitution of Canada⁴ the right of provinces to own their lands and the right to address issues arising from land use. In Canada, the purchase and sale of public land takes place through open auctions, primarily to prevent abuse during such operations. The state is obliged to supervise the legality of land use and ownership, regardless of the purpose of these lands [10]. The law also establishes liability for violation of the conditions for the use of land resources and the use of agricultural land for purposes other than its intended use.

In some provinces of Canada, namely Alberta and Manitoba, restrictions on the ownership and use of land by foreigners are consolidated in law, as exemplified by the provision that they may purchase land that

corresponds to a small farm and no more. Another area of land relations is land cadastre. The land cadastre in Canada is maintained by the Canada Land Inventory service under the Agricultural and Rural Development Act⁵. The Canada Land Inventory involves not only the Land Inventory service, but also agencies and ministries whose activities are aimed at regulating land use. The peculiarities of land cadastre planning and implementation in Canada were influenced by the following factors:

- result of the presence of the French order in some provinces of Canada and the organisation of land relations in accordance with the Western European type;
- observance of English traditions in the organisation of land use;
- social, political, and economic ties with the United States of America, which in turn has led to convergence in land planning and use;
- Canada's administrative and territorial organisation, various economic and natural conditions that to some extent affect the implementation of the land cadastre and the regulation of land relations [11].

In Canada, at the federal level, there is a Department of the Environment, which under the Canadian Environmental Protection Act⁶, has been empowered to control the level of land pollution in the country, formulate regulations on land use, and conduct scientific research on land use [12]. Many Canadian provinces have been mandated by the Department of the Environment to establish responsibility for land pollution. An example is the province of Saskatchewan, where the Environmental Protection Act⁷ allows the Ministry of the Environment to impose a fine of CAD 1 million or imprisonment for three years on a violator who pollutes the land. There is no special legislation in Canada that establishes liability for improper use of land, land degradation due to over-use, or other violations. Instead, liability is established by related regulations, and special programmes adopted by the government, which, in turn, allows creating incentives for efficient management. One such programme is the provincial Agreement on the Protection of Soil Resources, which provides subsidies to farmers who cultivate degraded land for agricultural turnover, and funds are allocated to responsible organisations for research and mapping of soil cover [13].

Another point in the regulation of land relations in Canada is the payment of land tax, which is one of the sources of state and local budgets. In Canada, there

¹Universal Declaration of Human Rights. (1948, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_015#Text.

²Law of Canada No.RSC 1985 A-3 "Agricultural and Rural Development Act". (1985, January). Retrieved from <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-a-3/latest/rsc-1985-c-a-3.html>.

³*Ibidem*, 1985.

⁴Law of Canada. (1982, April). Retrieved from <https://laws-lois.justice.gc.ca/eng/const/index.html>.

⁵Law of Canada No. RSC 1985 A-3 "Agricultural and Rural Development Act", 1985.

⁶Law of Canada No.SC 1999 33 "Canadian Environmental Protection Act". (1999, September). Retrieved from <https://www.canlii.org/en/ca/laws/stat/sc-1999-c-33/latest/sc-1999-c-33.html>.

⁷*Ibidem*, 1999.

is a practice of tax incentives that apply to farmers, in particular in tax breaks and certain features when estimating the land value. Canadian tax law excludes equipment and machinery used in agricultural production from the tax base and discounts for low-income farmers. The Constitution of Ukraine¹ stipulates that land in Ukraine is recognised as a national treasure, which in turn is separate from other immovable property and is under special protection by the state, as land resources located in Ukraine are one of the most important areas of the economic development.

In general, researchers interpret the concept of “land relations” differently. Thus, I.A. Kolesnyk construes land relations as social relations that arise during the possession and management of land resources, relations that arise as a result of the distribution of income from land use [9]. O.S. Miroshnychenko, for his part, interprets “land relations” as relations based on land ownership, relations that arise during the possession, disposal, and use of land [10]. Thus, in Ukraine the main regulations concerning land relations are the Constitution of Ukraine², the Land Code of Ukraine³, the Law of Ukraine “On Environmental Protection”⁴, the Law of Ukraine “On Land Management”⁵, international acts ratified by the Verkhovna Rada of Ukraine, and other regulations. The definition of “land relations” is consolidated in the Land Code of Ukraine⁶. According to the Land Code of Ukraine⁷, land relations should be understood as public relations that arise in connection with the possession, disposal, and use of land. However, despite the normative consolidation of the concept of land relations in the legislation of Ukraine, the content of land relations is not fully disclosed at the legislative level. A separate classification of land relations is proposed in the scientific and legal literature:

- relations that arise during land management;
- relations that arise during land use, land ownership relations;
- relations on rational use and protection of land [11; 12].

To better understand land relations in Ukraine, it is necessary to outline the types of land relations that exist in Ukraine. Land ownership is a set of norms that regulate the right of persons to land in the possession, use, and disposal, and determine the ways of exercising the rights of subjects of land relations. All lands located on the territory of Ukraine are in the land fund

of Ukraine, hence another type of land relations – land management. Activities aimed at land management include: implementation of land use planning in Ukraine; control over the legality of land use in Ukraine and their monitoring; transfer of land into possession and use; settlement of disputes arising during land use; maintenance of land cadastre, etc. The Law of Ukraine “On Land Management”⁸ consolidates the organisation and planning of rational use of land and their protection, which includes the following provisions: the implementation of natural and agricultural zoning of land; development of regulations on rational land use; identification of lands that can be included in the special land fund, and within which citizens and legal entities are provided with land plots.

The study also included an analysis of regulations of land relations in different countries. Thus, in the UK, the regulation of land relations is characterised by a fairly long historical period. The historical development of land relations in the UK includes restrictions on land use, a description of land to identify the owners of such land and planning for the rational use of land in the country. Land in the UK is formally owned by the royal family, but the right to own land is freely sold, which in turn allows it to be effectively disposed of. Buying land does not mean that the person who bought it will use it forever. In addition, in the UK, it is very difficult to change the purpose of the land. It is forbidden for owners to sell land to foreigners [14]. In modern England, the legislation distinguishes three categories of land use regulation: regulation of the impact of land use on the environment; regulation, which is carried out to achieve planning goals; regulation of issues that arise during land use [15].

In different countries there are government agencies whose powers include land management and protection. In Germany, for example, there is the Land Management Society, which is responsible for managing land resources as state property and gradually privatising land. In France, such a body is the Department of Land Management, which, in accordance with all the powers provided for in the French Agricultural Code, also issues an opinion on the privatisation of uncultivated land. In Australia, there is a so-called “free choice of land”, which was adopted in the 19th century. According to this statutory principle, every citizen had the right to receive a land plot in the range of 200 to 800 hectares, the size of such a plot depended on soil fertility. In addition, in Australia

¹Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/ed19960628#Text>.

²*Ibidem*, 1996.

³Land Code of Ukraine. (2001, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2768-14/ed20011025#Text>.

⁴Law of Ukraine No. 1264-XII “On Environmental Protection”. (1991, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1264-12/ed19910625#Text>.

⁵Law of Ukraine No. 858-IV “On Land Management”. (2003, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/858-15/ed20030522#Text>.

⁶Land Code of Ukraine, 2001.

⁷*Ibidem*, 2001.

⁸Law of Ukraine No. 858-IV “On Land Management”, 2003.

in 1892 a law was passed that allowed the lease of land for a period of 99 years with the payment of rent, which is 4% of the value of the leased land. With the adoption of such a law, Australia has ensured an increase in revenues to the country's economy without losing state land. In 1894, a law was passed aimed at limiting the concentration of large amounts of land among individuals and allowing public authorities, in the public interest, to expropriate too large holdings [16]. The largest amount of land in Australia belongs to the state, it owns the land on which highways and railways are built and lands on which factories and ports are located.

In some parts of the world there is coercion to use land. In France, there is a practice whereby if someone discovers a plot of land that has not been cultivated for more than three years, they can apply to the prefect, who in turn will apply to the French Department of Land Management for the status of a disused plot. After granting such a plot of land the status of unused, any person may apply for the use of such land. After such a request, the prefect informs the owner of the unused land plot of two actions to be taken by them within two months: 1) to prepare the relevant land plot for use or 2) to lease it. In case of non-fulfilment of the above requirements by the owner of the land plot, the prefect has the right to transfer such land plot for use to the person who has applied for the use of such land plot. Italian law stipulates that if the land is not cultivated for two years or the yield on such land is less than 40%, then special committee records information that such land is inefficiently used or not used at all. If the specified land plot is suitable for cultivation, in particular for use in agriculture, then the special committee informs the owner of the land plot who is willing to receive such land plot for use [17].

There are countries in which the acquisition of land by law requires a special permit. For example, in Germany and New Zealand, land can only be purchased with a permit. However, obtaining such a permit is, in some cases, quite difficult. Thus, if it is established that

the agrarian structure is deteriorating, the issuance of such a permit to a person wishing to purchase land will be denied. The experience of land regulation in Canada and other countries allows comparing it with the experience of land regulation in Ukraine to identify common features and characteristics that arise during the regulation of land use in each country.

Conclusions

Thus, the study analysed the legislative regulation of land relations in Canada, Ukraine, and also Great Britain, Germany, Australia, France, and New Zealand, based on which the peculiarities of land regulation were established. The main approaches to the definition of "land relations" are considered, according to which a single interpretation of land relations is established: public relations of land ownership, disposal, and use. It has been confirmed that land relations have always been a specific phenomenon and sphere of human relations, as they arose in connection with the possession, disposal, and use of land, from ancient times to the present day. At the same time, the study singles out the main legal acts regulating land relations in Canada, which establish the specifics of land use in Canada, determine the state bodies authorised to regulate land use activities and control the legality of use by entities in their possession, disposal, and use land plots. The powers of the Ministry of Environment and the Canada Land Inventory service have been determined. The reform carried out in Canada was described, according to which the provinces were given the right to own their lands and the right to solve all problems and issues that arise during the use of land resources. A list of the main characteristics of the legal regulation of land relations in the above countries, such as Ukraine, Great Britain, Germany, Australia, France, and New Zealand.

Therefore, the study of the chosen topic showed the features arising in the regulation of land relations in the world, particularly in Canada, which in turn, serves as a guide and a certain example for Ukraine in the development and improvement of land relations regulation.

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Правове регулювання земельних відносин у контексті канадського законодавства

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Анотація

Актуальність наукової статті визначається потребою в аналізі міжнародних практик правового регулювання земельних відносин, зокрема на прикладі досвіду Канади, задля оновлення та подальшої імплементації в українське законодавство. Метою статті є виявлення особливостей законодавчого регулювання земельних відносин в Канаді, Україні, а також в інших країнах світу. Серед методів, за допомогою яких здійснювалось дослідження обраної теми, можна виділити: діалектичний метод, метод формалізації, правопізнавальний метод, формально-юридичний метод, герменевтичний метод, логіко-юридичний метод, системний, структурно-функціональний метод, аксіоматичний метод, метод індукції та дедукції, метод аналізу та синтезу. У процесі дослідження було визначено основні поняття, терміни та явища, які застосовуються у сфері регулювання земельних відносин в Канаді та в інших країнах світу; охарактеризовано поняття «земельні відносини», визначено об'єктів і суб'єктів земельних відносин; проведено аналіз законодавчої бази, яка регулює земельні відносини в Канаді, а також досліджено особливості такого регулювання; охарактеризовано особливості регулювання та здійснення земельних відносин в Україні та таких країнах, як Великобританія, Німеччина, Франція, Австралія та Нова Зеландія; закріплено перелік нормативно-правових актів, на основі яких здійснюється регулювання земельних відносин. Положення, які висвітлені в науковій статті, становлять практичну цінність насамперед для суб'єктів, діяльність яких спрямована на регулювання та контролювання земельних відносин, а також осіб, чиї права прямо чи опосередковано охоплюються земельною сферою та підпадають під регулювання правових актів у цій сфері

Ключові слова: право власності, землекористування, зарубіжний досвід, інвентаризація, земельна ділянка