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Problems of the legal status of private farms

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Abstract

The aim of the study is to determine the features of the legal status of personal subsidiary farms, the possibilities of participation of personal subsidiary farms in cooperative activities. Legal and statistical methods were used to achieve this goal. As a result, the necessity of relationship building between the owners of private farms with the state authorities on the participation of private farms in the

state target programs is revealed. In conclusion, when adopting new acts regulating the activities of private farms, the legislator must take into account the essential differences between commodity and consumer farms of citizens.

Keywords: Legal status, Agricultural organization, Entrepreneurship.

Problemas de la situación jurídica de las explotaciones agrícolas privadas

Resumen

El objetivo del estudio es determinar las características del estado legal de las granjas subsidiarias personales, las posibilidades de participación de las granjas subsidiarias personales en actividades cooperativas. Se utilizaron métodos legales y estadísticos para lograr este objetivo. Como resultado, se revela la necesidad de construir relaciones entre los propietarios de fincas privadas con las autoridades estatales sobre la participación de fincas privadas en los programas estatales objetivo. En conclusión, al adoptar nuevas leyes que regulan las actividades de las granjas privadas, el legislador debe tener en cuenta las diferencias esenciales entre las granjas de ciudadanos y las de consumo de los ciudadanos.

Palabras clave: Estado legal, Organización agraria, Emprendimiento.

1. INTRODUCTION

Personal subsidiary farms under the current Russian legislation only produce agricultural products for personal consumption. Thus, in the Russian legislation, there are theoretical problems of the legal status of subjects of agrarian entrepreneurship formed on the basis of

reorganized Soviet collective and state farms (BILYALOVA, AM, MUSILIMOVA, ILYASSOVA & NUKUSHEVA, 2019). The relevance of the research subject is confirmed by the fact that taking part in ensuring food security and independence of the state, personal subsidiary farms are not recognized as subjects of agricultural entrepreneurship and are less empowered with the ability to enjoy state support (SOHRABI, 2017).

Thus, in the sphere of the food supply in Russia, there is a paradoxical situation associated with an increase in the marketability of personal subsidiary farms of citizens to their dominant position in the food markets of the country. The problem is exacerbated by the fact that under civil law, private farms are not subjects of law, and even more so business entities. Currently, in the Russian Federation and the subjects of it, there is a tendency to adopt subordinate legislations in the field of state support for Russian farmers and the development of rural cooperation in Russia. And so, there is an urgent need for research in this area. The purpose of this study is to determine the features of the legal status of personal subsidiary farms, the possibility of participation of personal subsidiary farms in cooperative activities. The objectives of the study are:

- Study of the current legal status of a personal subsidiary farm;
- Study of foreign experience, legislation and scientific publications on the subject.

- Development of criteria for determining the legal status of private farms, taking into account the positive foreign experience for their further consideration in the law-making activities of the state.

The sphere of application of the study results is the law-making activity of the state authorities of the Russian Federation and its subjects in improving the legal status of personal subsidiary farms, the mechanism of state support of personal subsidiary farms. Modern Russian scientists are constantly searching for ways to improve the legislation regulating the legal status of private farms as subjects of agricultural activity. However, the Concept of development of the Russian civil legislation does not contain the effective mechanism of improvement of legal regulation of business activity in agriculture. Therefore, representatives of the science of agrarian law in their scientific works speak properly about the need to improve the institution of legal regulation of the subject status of agricultural entrepreneurship (CURTIS, LUGAUER & MARK, 2017).

2. METHODOLOGY

The information base of the study was the data of the Territorial Federal Service of State Statistics in the Republic of Bashkortostan, in the context of agricultural organizations, the results of our own research and other data (CHEN, INGENE & TAKAHASHI, 2018).

Methods of research:

1. Legal methods.

1) Comparative and legal law. It is used to compare, characterize and identify the features of the legal status of the personal subsidiary farm, as well as to compare the constitutional and legal regulations of foreign states legislation controlling entrepreneurial activity in agriculture. The works of foreign authors on the subject are studied.

2) Method of analysis of legal regulations. The analysis of provisions of the current legislation allows us to reveal the sense of a legal norm and to define the degree of its influence on the development of the public relations where a participant is a personal subsidiary farm.

3) Method of analysis of judicial and law enforcement practice. It is based on the analysis of decisions of the judicial bodies of constitutional and arbitration proceedings applied to relations, the participants of which are citizens and personal subsidiary households (FRENCH, & VIGNE, 2019).

2. Statistical methods. The system of techniques, methods and approaches aimed at the study of quantitative patterns

manifested in the structure, dynamics of development of personal farms of the Russian Federation.

3. RESULTS AND DISCUSSION

Experts note the increasing number of citizens who conduct personal subsidiary farming on a professional basis, where the activity of agricultural production is the main one (BYSTROV, 2012). According to the results of the agricultural census in 2016 BYSTROV & KOZYR (1999), the number of personal subsidiary and other individual households of citizens increased from 22.8 million in 2006 to 23.5 million in 2016. In the Republic of Bashkortostan, the dynamics of changes in the number of households can be seen in table 1.

Table 1: Number of households (at the beginning of the year; units)

Years	2011	2013	2014	2015	2016	2017	2018
Number in the Republic	626985	643748	617383	641648	660323	651481	656693

The activity of personal subsidiary farms is carried out for 3 main purposes of production:

- 1) Self-sufficiency in food;

- 2) An additional source of funds;
- 3) Basic income (source of funds).

According to sociological studies, rural residents, leading private farms, selling their products in urban and rural markets, do not see the point in state registration as a business entity. And the main reason for this behavior is the desire to avoid excessive state control, namely: The duties of state registration; payment of taxes; state control and supervision. Another reason hindering the development of personal subsidiary farming is the increasing outflow of young people from rural areas.

There is a need to create mechanisms for the effective legal regulation of the activities of personal subsidiary farms, the concretization of their legal status and improvement of the system of state support of personal subsidiary farms.

Nowadays Russian private farms have the possibility of using the mechanism of preferential lending in Russian banks for the purposes of construction, purchase of livestock. In foreign studies (BAGAUTDINOVA, HADIULLINA, NUGUMANOVA, AVERYANOV & NOVENKOVA, 2014), an example is given of legislation the influence of one of the foreign states (Chile), which gradually reduced the maximum legal interest rate on consumer loans from 54% to 36%. A comparison of a representative sample of personal households, which corresponds to survey data and bank credit

records, after taking into account both macroeconomic shocks and the unobserved heterogeneity of personal households, shows that exceeding the interest rate limit reduces the access possibility to credit by an average of 8.7%. A counterfactual check shows that the new legislation excluded 9.7% of borrowers from bank consumer loans. The impact of the legislation had the maximum effect on the youngest, least educated and poorest families. This shows that citizens who run private farms do not have the proper level of state support. This specific situation requires legislative approval.

The legal problems of the status of personal subsidiary farms include the fact that according to the logic of the legislator, personal subsidiary farms are not subjected to entrepreneurship and produce agricultural products for personal consumption. This unsolved theoretical problem sometimes turns into a tragedy in practice. The population daily gets the food products made in personal subsidiary farms. For example, in the Republic of Bashkortostan cases of infection of people with dangerous diseases after the purchase of meat or fish production in the markets of the Republic are periodically revealed. There have been cases of fatal poisoning (GOLUBEVA, 2012).

COEN-PIRANI & SIEG (2019) draws attention to the Russian problem of blurring the distinctions between personal subsidiary farms and peasant farms. The scientist connects this circumstance with a significant increase in the marketability of personal subsidiary farms of

citizens, unjustified removal of restrictions on the amount of livestock content, the right to use land shares in the private plot activities. MADEIRA (2019) in the process of implementing a comparative and legal analysis of the status of the farmer and personal subsidiary farms identified weaknesses and gaps in the legal regulation of the complex land, property, labor, tax and other relations on the organization and management of peasant and private farming.

The need to address these issues urgently becomes obvious in the context of the digital economy development, which is a powerful driver of the country's economy and agriculture in particular. In the practice of entrepreneurial activity in the field of agriculture in Russia, the introduction of digital technologies used everywhere by developed countries and businesses is expected. According to JAYASINGHE, CHAI, RATNASIRI & SMITH (2017), the entrepreneurial activity of personal subsidiary farms in the sphere of agriculture has certain specific nature: Agriculture is an area of interdisciplinary; the means of various legal entities are used here. The development of the digital economy will be followed by the improvement of the regulatory framework. Advanced information and digital technologies will allow the subjects of entrepreneurial activity in agriculture avoiding overspending raw materials, to increase the productivity of land plots.

In the modern Russian legal system, there is no concept of social representation. GRISHINA (2012), being engaged in comparative legal research of social entrepreneurship in the countries

of America and Europe, considers that there is a possibility of application of legal constructions of social entrepreneurship in the modern Russian legal system. According to the legislation of European countries, the status of a social cooperative in Europe was assigned to enterprises with the following characteristics: Low-profit rates in certain socially important spheres of economy; long-term unemployed or low-income citizens - members of the cooperative; public utility of the economy (health, education, environment, social tourism). The digitalization of the agricultural economy will have an impact on the legal status of business entities operating in the information and virtual space. In the absence of a regulatory framework governing changing public relations, an increase in the burden on the judicial authorities of the state is predicted. Thus, judges in the absence of statutory regulation of the entrepreneurial activity of the personal subsidiary economy by judicial practice and legal application may already form the future law principle. That is, the judicial practice has already developed criteria for attributing a number of private farms to business entities.

A lot of questions are raised by the statutory regulations on personal subsidiary households of citizens, since their agricultural activities, including the maintenance of farm animals and birds, are possible within the boundaries of the settlement if they meet the requirements of town-planning regulations, environmental, sanitary and hygienic, fire-prevention rules and regulations.

Thus, citizens Kosareva O. V. and Styazhkina A. A. appealed to the Constitutional Court of the Russian Federation, contesting the constitutionality of paragraphs 1 and 2 of article 4 and article 6 of the Federal law of 07.07.2003 No. 112-FZ About personal subsidiary farming, which provides an opportunity to carry out agricultural activities within the boundaries of settlements but not the right to carry out such activity. According to applicants, the specified law regulations on personal subsidiary economy allowing the production of agricultural produce in borders of settlements, do not correspond to articles 17 (part 2), 36 (part 2), 41, 42 and 55 (parts 2 and 3) of the Constitution of the Russian Federation.

The Constitutional Court of the Russian Federation in definition from 24.09.2012 № 1593-about refusal in acceptance to consideration of complaints on violation of constitutional rights, paragraphs 1 and 2 of article 4 and article 6 of the Federal law About personal subsidiary farming pointed to the need to comply with regulatory restrictions and environmental requirements, taking into account the special purpose of land settlements, is intended primarily for habitation of citizens in favorable conditions, meet environmental legislation, and not for agricultural production by citizens who keep personal subsidiary farms. Thus, the Constitutional Court of the Russian Federation gave explanations according to which within borders of settlements, priority is observance of regulations of the ecological legislation, town-planning regulations, sanitary and hygienic rules, instead of the Federal law about personal subsidiary farming which norms only allow

possibility of conducting personal subsidiary farms to citizens in borders of the settlement but do not guarantee the unconditional right to implementation of the specified activity on settlements lands.

Article 1 of the law on agricultural cooperation provides the basic concepts from which it follows that an agricultural cooperative is created by agricultural producers - citizens who conduct their subsidiary farms. An agricultural cooperative may be established either as a production cooperative or as a consumer cooperative. Although the agricultural consumer cooperative, according to the civil legislation, is not a subject of agricultural entrepreneurship, as well as personal subsidiary farms, however, according to the Federal law of July 24, 2007, No. 209-FZ About the development of small and medium-sized enterprises in the Russian Federation, consumer cooperatives are classified as subjects of small and medium-sized enterprises.

Article 1 of the law on agricultural cooperation sets out the concept of agricultural cooperation as a system of agricultural production and consumer cooperatives. Thus, members of collective agricultural commercial organizations called production cooperatives can be personal subsidiary farms of citizens. According to surveys of sociologists, the main reason for encouraging rural citizens to engage in personal subsidiary farming is not the desire to increase personal consumption, but the desire to increase personal income while working in an agricultural commercial organization. Rural residents can

simultaneously have the status of both the founder of a legal entity and its employee.

The legal regulation of the activity of the cooperative should be based on the principles of non-profit cooperative activity according to which the Federal law of July 24, 2007, No. 209-FZ About the development of small and medium-sized enterprises in the Russian Federation should provide the measures of state support distributed to agricultural consumer cooperatives and personal subsidiary farms of citizens, as the main cell in the structure of agricultural cooperatives.

In the prospects of the study, in the Russian legislative and law enforcement practice, it is necessary to adhere to the positive experience of industrialized countries in the formation and development of the agricultural economy sector, treating it as socially oriented, by improving agricultural cooperative legislation. Earlier, we put forward the idea of combining personal subsidiary farms of citizens on a territorial basis in social agricultural cooperatives with the provision of these cooperatives with the status of a subject of social entrepreneurship.

The work of Filipino researchers was devoted to the study of the influence of local and trans-local connections on the stability of households. Their research shows that local and trans-local linkages contribute to household sustainability through the provision of food and financial assistance along with psychosocial support.

Currently, the association of citizens who conduct personal subsidiary farms can be carried out on the basis of the principles of voluntariness and guarantees of state support at the federal and regional levels of small and medium-sized businesses. This idea is motivated, first of all, by the need to build the relations between the owners of personal subsidiary farms of citizens with the help of public authorities on the participation of personal subsidiary farms in state target programs, which apply to small and medium-sized businesses, as well as with credit institutions in order to access credit facilities.

4. CONCLUSIONS

We believe that the European approach to the organization of social cooperatives for the poor and unemployed citizens engaged in the socially significant and useful sphere of the economy is quite applicable in Russian conditions, and is one of the promising areas of improvement of the legal institution in the field of regulation of agricultural cooperatives in Russia. The legal systems of Hungary, the Czech Republic, Slovenia and Poland largely developed according to the Soviet scenario, so the achievements and positive experience of the development of the Institute of social entrepreneurship of Eastern European legislation in the field of agricultural entrepreneurship can be successfully used in the development of Russian law.

In order to improve the organizational and legal forms of agricultural business entities, it is proposed to adopt a special law on

the peculiarities of the legal status of agricultural commercial organizations, which takes into account the following: Do not limit the maximum number of participants of agricultural companies with limited liability and investors of agricultural partnerships on faith; taking into account the specific conditions of entrepreneurial activity and the main socio-economic importance of their development, to determine the legal capacity of agricultural commercial organizations as a special; legal regulation of the cooperative activities should be based on the principles of non-profit cooperative activities, according to which the Federal law of July 24, 2007, No. 209-FZ about the development of small and medium-sized enterprises in the Russian Federation it is necessary to provide that state support measures apply to agricultural consumer cooperatives and personal subsidiary farms of citizens, as the main cell in the structure of agricultural cooperatives.

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