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ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ДІЯЛЬНОСТІ АГРАРНИХ ТРАНСНАЦІОНАЛЬНИХ КОРПОРАЦІЙ В УКРАЇНІ

Анотація. *Аграрні транснаціональні корпорації завжди виявляли інтерес до України, як до держави з потужним природним потенціалом та гарними і надійними перспективами для ведення агробізнесу. Під впливом таких чинників, як зміна клімату, безпрецедентне збільшення населення планети та, як наслідок, висока потреба в аграрній продукції, цей інтерес буде посилюватися, а роль аграрних транснаціональних корпорацій з кожним роком зростати. Тож однією з актуальних науково-практичних проблем, яку належить розв'язати правознавцям, є визначення ключового поняття «аграрні транснаціональні корпорації» та встановлення їх характеристик. Це дасть змогу українському законодавцеві якомога точніше унормувати складні й багатоаспектні відносини за їхньої участі в аграрній сфері і, зокрема, ті, що стосуються діяльності зазначених суб'єктів аграрного бізнесу, та усунути прогалини в їхньому правовому регулюванні, які нині існують. Зважаючи на це, метою статті є спроба на основі поглибленого аналізу з'ясувати сутність аграрних транснаціональних корпорацій як правового явища та надати визначення цьому поняттю, класифікувати їх за певними підставами та встановити особливості їхньої діяльності. Дослідження проведено з урахуванням наявного правового забезпечення цих учасників відносин у сфері агробізнесу. Методами дослідження є сукупність філософських, загальнонаукових та спеціально-правових методів, зокрема синергетичний метод дослідження виступає основоположним методом пізнання правового забезпечення діяльності аграрних транснаціональних корпорацій. Доведено, що аграрна транснаціональна корпорація є складним суб'єктом, який здійснює сільськогосподарську діяльність у двох чи більше країнах, управляється та контролюється з єдиного центру та складається з материнської компанії, дочірніх підприємств, філіалів та відділень. Проаналізовано позитивні та негативні аспекти діяльності аграрних транснаціональних корпорацій. З'ясовано, що в Україні діють такі аграрні транснаціональні корпорації: у сфері рослинництва, тваринництва, переробки, обслуговування сільськогосподарських товаровиробників та зі змішаною діяльністю (одночасно займається як рослинництвом, так і тваринництвом). Підкреслено, що аграрний ланцюг транснаціональної корпорації може охоплювати різні країни*

Ключові слова: *агробізнес, аграрний, сільськогосподарський, виробництво, ланцюг, правове регулювання*

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LEGAL SUPPORT FOR THE ACTIVITIES OF AGRICULTURAL TRANSNATIONAL CORPORATIONS IN UKRAINE

Abstract. *Agricultural transnational corporations have always expressed interest in Ukraine as a state with a strong natural potential and good and reliable prospects for agribusiness. Under the influence of factors such as climate change, an unprecedented increase in the world's population and, as a result, a high demand for agricultural products, this interest will increase, and the role of agricultural transnational corporations will grow every year. Therefore, one of the most urgent research and practical problems that lawyers will have to solve is the definition of the key term “agricultural transnational corporations” and the identification of their features. This will allow the Ukrainian legislator to regulate complex and multidimensional relations with their participation in the agricultural sector as accurately as possible and, in particular, govern relations concerning the activities of these subjects of agricultural business, and eliminate gaps in the current legal regulation. Considering this, the purpose of this study was to attempt establishing the essence of agricultural transnational corporations as a legal phenomenon based on an in-depth analysis and to define this term, classify these corporations on certain grounds and establish the specific features of their activities. The study was conducted considering the existing legal support of these participants in agribusiness relations. Research methods included a set of philosophical, general scientific, and special legal methods. The synergetic research method was the fundamental method of understanding the legal support of agricultural transnational corporations. It was proved that an agricultural transnational corporation is a complex entity that engages in agricultural activities in two or more countries, is managed and controlled from a single centre and comprises a parent company, subsidiaries, branches, and departments. The study analysed positive and negative aspects of the activities of agricultural transnational corporations. It was established out that the following agricultural transnational corporations act in Ukraine: in the field of crop production, animal husbandry, processing, servicing agricultural producers, and with mixed activities (simultaneously engaged in both crop production and animal husbandry). It was emphasised that the agricultural chain of a transnational corporation can cover different countries*

Keywords: *agribusiness, agrarian, agricultural, production, chain, legal regulation*

INTRODUCTION

Since 2017, Ukraine has introduced international standards for investment and operation of transnational corporations. This was made possible by the signing of an agreement with the Organisation for Economic Cooperation and Development (OECD) on Ukraine's accession to the Declaration on International Investment and Transnational Corporations [1]. The application of international standards for the activities of transnational corporations means the introduction of a national regime for these large business entities, which are

centres of influence on economic processes [2, p. 748]. This situation in the current conditions is important for the development of the modern agricultural sector of the Ukrainian economy, since it is agricultural transnational corporations that have a considerable influence on the development of national agribusiness. Among them, the most powerful are considered to be *Cargill* (crop and animal husbandry, food products), *McDonald's*, *Nestle*, *KraftFoods* (TM “Lux”), *Lactalis* (TM “President”),

Kernel (TM “Shchedry Dar”, “Stozhar”), *Pepsico*, *Danone* (“Danissimo”, ‘Actimel”) [3]. The products of these companies are familiar to the Ukrainian consumer because their products and services are of high quality, and they are also well-advertised. This position in the market was achieved not only by the availability of financial, labour, modern material and technical, innovative resources, but also by their rational use and a high level of management. Notably, Ukrainian farmers, mainly due to a lack of funds, an unfavourable lending system and lack of state support, etc., cannot create the necessary infrastructure at the proper level. For example, the state of material and technical support for agricultural producers is described by disappointing data: if 3,688 agricultural tractors were purchased in 2017, then in 2018 – 305 units, in 2019 – 209 units, that is, the trend of rapid decline in purchases of agricultural machinery is evident [4].

It is also important to pay address such a feature of the present as the predominance of private relations in agrarian relations, which considerably affect the completion of land and agrarian reforms. Thus, on March 31, 2020, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning the Turnover of Agricultural Lands” was adopted¹, which stipulates the introduction of the land market in Ukraine from July 1, 2021. The prospect of participation of transnational corporations in relations concerning the land market is explained by the fact that they can be registered as national subjects of Ukraine in the form of corresponding subsidiaries [5, p. 1]. This, admittedly, increases the interest of such corporations in investing in the agricultural market of Ukraine.

One cannot ignore an important fact – it is the agricultural market that is the most stable in the context of the COVID-19 pandemic, which considerably affected the state of global investment [6, p. 1]. Moreover, in the context of a general decline in investment and the spread of the pandemic, not only economic relations arise around transnational corporations, but also an opportunity to support and ensure human rights occurs, namely healthcare, access to essential products [7]. Considering the importance of agricultural transnational corporations for the development of Ukrainian agribusiness, the need for a separate study of the legal support of their activities is being updated.

At the level of scientific research, the features of transnational corporations were analysed in the works of J. Kapler (described the effect of intensity and accumulation of resources in the structure of transnational corporations) [8], M.I. Romanova (justified the position of multinationality of corporations) [9], O. Tahirli (indicated the implementation of corporate activities in individual states) [10], O. Cheku (identified the history of the development of transnational corporations) [11], etc. Despite their contribution to the development of this subject, many problematic issues remain (namely the lack of a definition

of the key term “agricultural transnational corporations” in the legislation) that have yet to be solved by modern lawyers and legislators. Understanding the essence of the phenomenon under study in the legal aspect, studying the features and significance of the activities of such agribusiness entities for society will not only offer the legislator its scientific definition, but also contribute to a more balanced and high-quality legal regulation of relations in the agricultural sector with the participation of agricultural transnational corporations. Given the above, one cannot ignore the fact that along with the positive manifestations of their activities, there are also negative manifestations that cause reasonable concern in Ukrainian society. Thus, large agricultural businesses around the world are associated with the use of genetic engineering, which allows getting a quick guaranteed profit. Furthermore, transnational corporations can influence the political processes of countries that are in a state of reform and economic development. Strengthening the role of these actors in the life of any society should be treated critically, giving preference to public and national interests. There is an absolute need for their separate research in order to develop and improve legislation governing relations involving transnational corporations. This area is particularly relevant for Ukrainian legislation, since it does not contain special provisions that would govern the activities of these entities, in particular, in agricultural relations. The issue of the impact (both positive and negative) of transnational corporations on the development of the agricultural sector of the economy was ignored by lawyers, which led to the existence of gaps in the legal regulation of the activities of agricultural transnational corporations. Therefore, the subject of legal support for the activities of agricultural transnational corporations appeared relevant and required scientific understanding and solution of pressing issues in law-making.

The purpose of this study was an identification of the specific features of legal support for agricultural transnational corporations in Ukraine.

1. MATERIALS AND METHODS

The methodological framework of this study included a set of philosophical, general scientific, and special legal methods of scientific cognition, the use of which is explained by the specific features of the subject matter. The dialectical method allowed identifying various trends that develop around the activities of transnational corporations in the field of agribusiness, namely consideration of the opposites in their activities, which are explained by the focus of corporations on making a profit. The hermeneutical methodological approach was fundamental in the process of understanding the activities of agricultural transnational corporations and provided an opportunity to interpret the law. The axiological method allowed conducting research considering the values that exist and arise around the subject

1. Law of Ukraine No. 552-IX “On Amendments to Certain Legislative Acts of Ukraine Concerning the Turnover of Agricultural Lands”. (2020, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/552-20#Text>.

under study. It was this method that allowed justifying the position that the activities of agricultural transnational corporations have positive (use of innovations, creation of new jobs in rural areas) and negative aspects (their activities can considerably affect the deterioration of the environment, in particular, soil degradation can occur).

The synergetic research method was the fundamental method of studying the legal support of agricultural transnational corporations. It allowed considering a transnational corporation as a complex system of mutual relations, in particular, to identify integration between the participants of the corporation, that is, to emphasise that they are described by self-organisation. Furthermore, this approach allowed identifying the specific features of the activities of agricultural transnational corporations that are constantly influenced by political, economic, and social systems. Concretisation of scientific cognition of the legal support of the activities of agricultural transnational corporations occurred through the use of general scientific methods, namely the method of analysis and synthesis, the historical method. The use of the analysis method allowed identifying the current scientific opinions regarding the definition of agricultural transnational corporations, at the applied level it provided an opportunity to establish the structural elements of this business entity (the existence of a parent company and subsidiaries, branches), the features of an agricultural transnational corporation, to identify their typical division.

The synthesis method allowed combining various types of activities that create a single agricultural chain, which can be covered by one agricultural transnational corporation. This method provided an opportunity to elaborate the definition of an agricultural transnational corporation. The historical method was used to prove a retrospective of the emergence of these complex agribusiness entities at the global level. The identification of a retrospective of the activities of transnational corporations allowed asserting the growing role of agricultural transnational corporations in the system of agribusiness relations. The formal legal method allowed investigating agricultural transnational corporations within the framework of the dogma of law, that is, considering the express regulation of their activities, both at the level of international and national legislation. The use of the system-structural method allowed establishing the features of an agricultural transnational corporation, determining their division depending on the type of agricultural production. The comparative legal method allowed searching for the provisions of international and national law towards the task set, identifying the levels of legal regulation of the activities of these subjects. The structural logical method made it possible to identify mandatory structural elements of a transnational corporation. In particular, the parent company manages subsidiaries, taking natural and climatic conditions that directly affect the cultivation of agricultural products in a specific country into account.

During the study of legal support for the activities of agricultural transnational corporations, a comprehensive

(interbranch) research method was applied. This method allowed conducting research considering the knowledge of various sciences, combining the achievements of economic and legal science. Furthermore, agricultural transnational corporations have an influence on the development of the economic system, so to investigate the subject of this study, economic opinions regarding the activities of transnational corporations were used. The statistical method was used, in particular, to identify quantitative indicators of the acquisition of material and technical resources by agricultural enterprises of Ukraine for the production needs of agricultural producers in 2017, 2018, and 2019.

The study materials included indicators of the number of purchased agricultural machinery for production needs from 2017-2019 and the number of agricultural transnational corporations among other transnational corporations. The study used materials in the form of scientific publications, background information, international and national legislation.

2. RESULTS AND DISCUSSION

2.1 Definition of an agricultural transnational corporation as a subject of agribusiness legal relations

Initially complex business entities, whose activities covered several countries, appeared in the 16th-17th centuries as a result of the colonial development of the New World [11, p. 171]. Gradually, such entities started being regarded as independent participants in legal relations and came to the attention of lawyers as the subject of research, thanks to which the modern term “transnational company” subsequently emerged. In 1974, this term was consolidated in the texts of documents of the Group of Seventy-Seven (G-77), which operates within the UN. It was this organisation that advocated the terminological separation of its international corporations, calling them “transnational corporations” (MNCs), from the corporations of the largest industrially developed countries, which were called “transnational corporations” (TNCs) [9, p. 168]. Despite progress in attempts to define the term “transnational corporation”, a special, as it were, branch term “agricultural transnational corporation” was not introduced. However, this did not prevent the successful operation of such companies as *Cargill*, *Nestle*, *Monsanto*, *ConAgra* and *Archer Daniels Midland* which successfully dominate the world food system. They control extremely large shares of international markets for grain, fertilisers, pesticides, and seeds. They are involved in the food system – from the farm to the supermarket [12]. And this is understandable because first the phenomenon itself arises, then “declares” itself and, subsequently, strengthens its position in society, which, for its part, noticing and recognising this phenomenon, gives it a name. Evidently, the role of agricultural transnational corporations will grow every year under the influence of objective factors, and the theoretical and practical need to determine agricultural TNCs based on the analysis of the features of a transnational corporation is also obvious, since the legislator has not provided a separate definition of this key concept.

The broadest definition of TNCs is proposed in the

Oxford Handbook as a company that is controlled from its own country (country of origin) and performs business operations in different countries [13]. At the level of Ukrainian legislation, the concept of TNCs is not identified, but the authors of this study recall that the definition of TNCs is stipulated in the Convention on Transnational Corporations¹ of the CIS dated 06.03.1998. Thus, Article 2 of the Convention establishes that TNCs should be interpreted as a legal entity (a set of legal entities), which owns, controls, or manages separate property in the territories of two or more countries; is created by legal entities of two or more countries; registered as a corporation in accordance with the legislation, in particular in the form of a financial and industrial group, company, concern, holding, joint venture, joint stock company with foreign participation, etc². The above definition is quite narrow in legal sources, a broader approach to understanding this subject is proposed.

O. Tahirli, along with international, multinational, and global companies, identifies transnational companies and defines them as complex structures with a developed internal system that are managed from one central or regional office [11, p. 80]. That is, the scientist based the concept of TNCs on the presence of a central office and an extensive system of enterprises.

According to J. Kapler, TNCs form the dominant group of firms that apply a qualitatively different, more intensive competitive regime, indicators of profitability of TNCs are explained by (a) a higher level of new capital investments and the evident ability to focus these investments on particularly profitable sectors, (b) the degree of internationalisation of production assets and (c) the presence of intensive search for new production technologies, advertising [9, p. 54]. O. Cheku proved that TNCs are a hierarchical entity, the unity of which lies in the binding decisions of the control centre of this entity for all its structural divisions [12, p. 174]. E.M. Limonova pointed out that they constitute an association of enterprises that engage in commercial activities in two or more countries, which allows, due to cross-border mobility, to acquire economic and political power that exceeds the limits of power of any subject of the national economy, which is regulated at the state, interstate, supranational and public levels, and ensures its trans-level [14, p. 28]. Analysing the different opinions of researchers on TNCs, it is advisable to highlight their features and emphasise that TNCs appear as associations of enterprises that centralise and consolidate capital, extend their activities to two or more countries, should act considering their own and public interests, while the latter are determined by the needs of the country where the activity is carried out.

Thus, the features of TNCs are as follows: 1) these are vertically integrated structures in the form of an association of enterprises; 2) an association of enterprises of different national origin; 3) the management structure

makes provision for the existence of a parent company and subsidiaries, branches; 4) they are a subject of capital concentration; 5) the activities of TNCs are spread to several states; 6) can influence the economy and policy of an individual state; 7) structural parts of TNCs operate under different national jurisdictions; 8) they have a single strategic plan of action and development.

Based on these features, considering the particulars of agribusiness, the authors can offer the following definition: an agricultural transnational corporation is a complex entity that engages in agricultural activities in two or more countries, is managed and controlled from a single centre and comprises a parent company, subsidiaries, branches, and departments. Attributes of an agricultural TNC are as follows: 1) it is an integrated structure in the form of a vertical or horizontal association of enterprises; 2) its activities cover the entire chain of agribusiness (agricultural innovation activities; activities for the production, storage and processing of agricultural products; agrologistics; provision of material and technical equipment (supply of agricultural machinery, agroservice maintenance, etc.); sales (marketing) of agricultural products), which is realised in different countries; 3) the management structure assumes the existence of the parent company and controlled entities; 4) it is a subject of concentration and integration of capital; 5) activities of a TNC are extended to several states; 6) it can influence the economy, politics, and ecology of an individual state; 7) planning of TNCs' activities factors in the natural and climatic conditions of production in different states.

2.2 Classification of agricultural transnational corporations

TNCs can be classified according to various criteria. According to its legal form, TNCs in Ukraine can be created in the form of a concern, a consortium, a holding company, or a joint-stock company. Depending on the organisation of business activities, TNCs can have the following types: cartel (associations of institutions whose members agree among themselves on the volume of goods produced, the division of sales markets, requirements for the sale and hiring of labour, prices, and other payment terms); syndicate (participants of the organisation have a certain production independence, but, according to joint contracts, lose commercial independence); pools (monopoly organisations, for which revenue goes to the general reserves, that is, there is a corresponding division according to the results of the operation of a separate part of the market in a pre-determined proportion); trust (structure of the organisation, within which members lose business independence); concern (statutory association of enterprises); consortia (temporary contractual association of enterprises); transnational strategic alliances (TSA) (a specific form of inter-corporate relations between two or more organisations) [15, p. 57].

Depending on the structure of the management

1. Convention on Transnational Corporations. (1998, March). Retrieved from https://zakon.rada.gov.ua/laws/show/997_193#Text.

2. *Ibidem*, 1998.

organisation, TNCs can be divided into: “1) horizontally integrated TNCs – manage divisions located in different countries that produce the same or similar goods; 2) vertically integrated TNCs – manage divisions in a certain country that produce goods delivered to their divisions in other countries; 3) separate TNCs – manage divisions located in different countries that are not combined vertically or horizontally” [16, p. 77].

According to structural features, there are international (a national dominant company with foreign assets), multinational (an international corporation that unites national companies of several states on a production and scientific and technical basis) and global corporations (a corporation that integrates economic activities carried out in different countries). To determine the legal forms, it is important to divide TNCs into holding (based on the shareholder form of control) and non-holding (relations in the association are based on the principles of special agreements) [17, p. 115-116]. It is advisable to add that TNCs can be divided according to the industry activities: machine-building companies, agribusiness, light industry, medicine, etc.

Notably, the capital of TNCs can combine state and private property because the growth of the economic power of TNCs contributes to the development of a cooperative option for interaction with states, international government organisations and subjects of public associations. As a result, a new structure for managing global economic processes will arise, which will be based on both mixed (with the participation of governmental and non-governmental actors in world politics) and private mechanisms that are created by TNCs independently or with the support of the international community [18, p. 42].

Proceeding from the above, it is possible to divide agricultural TNCs into types depending on the type of production of agricultural products: 1) TNCs that are mainly engaged in the production of agricultural products, their processing, sale; 2) TNCs with mixed activities (can be engaged, for example, in the production of agricultural products, and means of material and technical support for such activities).

2.3 Features of the activities of agricultural TNCs

The specific features of the activities of agricultural TNCs are conditioned by the fact that their production is located in developing countries, while the source of capital origin is concentrated in developed countries. The availability of financial support opens the way for TNCs to innovate, which makes it possible to be constantly competitive and have super-large profits. As a result, international corporations, as experts emphasise, continue their large-scale expansion not only in industry-specific commodity markets, but also in the innovative sector of the economy, which produces high-tech products with a fairly high added value [9, p. 179]. They are subjects of capital concentration. At the same time, the concentration of capital occurs in the country of the parent company, while the effect from applying investment occurs in the country of production. Along with

the positive aspects of implementing activities in TNCs, there are also some negative aspects – environmental pollution, intervention into political processes, etc. Thus, intensive TNC production directly affects the environment. Irrational and short-sighted farming substantially worsens the state of the environment, in particular, contributing to soil degradation, pollution of air and water bodies, violations in the use of agrochemicals lead to the extinction of bees and birds, and the transformation of forests into new agricultural land increases the area of deforestation and negatively affects biodiversity. Intensive farming, at the same time, depletes water resources (thereby increasing water scarcity) and causes soil erosion, leading to climate change. These environmental issues should also be considered upon determining the level of state support. Thus, farm production has less negative impact on the environment, and therefore the farming movement requires additional support and attention from both the state and society, while the activities of TNCs raise reasonable doubts and criticism. TNCs and international strategic alliances form global (cross-border and interstate) chains, which does not cause the dissolution of national states in them, which, as a rule, retain their integrity, although in a modified form [19].

The specific feature of TNCs' activities in the agricultural segment of the economy is also manifested in the fact that they currently give preference to crop production. Out of 25 TNCs in agriculture, only 4 companies fully or partially specialise in the production of livestock products. Thus, the American company “Tyson Foods Inc.” produces and sells chicken, beef, and pork in Brazil, India, China, England, Ireland, Japan, Mexico, Panama, Puerto Rico, Singapore, South Korea, Taiwan, and the United Arab Emirates. Another feature of agricultural TNCs is that all world-leading TNCs in the agricultural production actively use GMOs in their activities and develop ecological agricultural production (focusing on consumers) at the same time; herbicides, fungicides, insecticides, a system of protection of seed material (seeds), plant growth regulators, and various agrochemicals are widely used. TNC's innovative research also includes areas related to agribusiness, including medical research. For example, BASF conducted a study of the innovative area called Nutrigenomics in 2016, which investigates the effect of nutrition and nutrients on human genes [20, p. 18].

Notably, during the development of an agribusiness chain at the TNC level, the parent company can plan and implement its activities factoring in natural and climatic conditions that directly affect the cultivation of agricultural products in a particular country. It is known that agriculture depends on natural resources (availability of arable land, fertile soil), climatic conditions and availability of water resources. These conditions vary significantly around the world, which is why TNCs can take this into account and produce agricultural products in countries that are favourable for cultivation, and organise processing of these products elsewhere. Thus, TNCs have certain advantages among other agribusiness entities in terms of reducing

risks from agricultural activities. Recently, researchers of agricultural TNCs have noticed that in economically underdeveloped countries, transnational corporations often change the scheme of land use for a long period, due to the cultivation of mainly industrial crops and expensive environmentally friendly food products for export to rich countries, thereby worsening the land. This was the case, for example, in Ethiopia, where in the Awash Valley cotton and coffee plantations were extended to traditional pasture zones of nomadic tribes, or in the Sahel region of West Africa, where transnational corporations profitably used thousands of hectares for agriculture, cotton cultivation, and cattle breeding at the expense of their grain production [21, p. 93]. Furthermore, agricultural TNCs are changing the food culture, in particular in TNCs, whose headquarters are always located in the United States and Europe, they are steadily replacing conventional food systems in the world [22]. It is also necessary to consider that agricultural TNCs can increase the shortage of agricultural products, which eventually leads to an increase in prices for these products on the internal market.

Thus, the specific features of the activity of agricultural TNCs lie in the presence of certain positive and negative aspects. The first aspects include the fact that TNCs allow the country to solve a number of problems: improving the efficiency of national exports; intensifying mutually beneficial cooperation with countries receiving investments; ensuring uninterrupted supply of raw materials, skilled labour and innovative technologies; effective use of competitive advantages by national corporations to achieve competitiveness at the international level; overcoming (by concluding special agreements with the government of the recipient country) barriers to entry of national TNCs into the host country market; establishing regional cooperation within the home country and stimulating further development of investment abroad [23, p. 118]. The negative aspects of TNCs' activities include the fact that these entities are associated with the tendency to create their individual autonomous economic system, which threatens to replace the interstate economic order or substantially modify it. TNCs may challenge the principles on which the international economic order is currently based [24, p. 6].

2.4 Current issues of legal regulation of the activities of agricultural TNCs in Ukraine

Despite the global economic crisis associated with the pandemic, TNCs continue to express interest in the agricultural sector of the Ukrainian economy, which has recently significantly increased, which is obviously explained by the possibility of opening the agricultural land market. Despite the fact that foreign companies are deprived of the right to

be participants in the land market, they can create national enterprises that will have the right and opportunity to purchase land that will actually become the capital of TNCs. This gives grounds to state the activation of the presence of TNCs in Ukrainian agribusiness. Therewith, national legislation does not systematically regulate the activities of TNCs. In this regard, the government of Ukraine does not have the opportunity to set certain restrictions and social obligations of TNCs. This constitutes a considerable gap in relations between TNCs, the government, and society. The specific features of legal regulation of agricultural TNCs are also not considered. This situation may negatively affect the development of the national agricultural sector of the country, as TNCs influence the pricing of agricultural products, the distribution of domestic agricultural markets, and food security of the state. Considering the above, it is necessary to clearly set out legal provisions to optimally regulate complex and multidimensional legal relations involving agricultural TNCs.

In the Charter of Economic Rights and Duties of States¹ approved by the UN General Assembly resolution of 1974, it is established that every state has the right to regulate and control the activities of transnational corporations within its national jurisdiction and to take measures to ensure that such activities do not contradict its laws, provisions, and regulations and comply with its economic and social policies. Transnational corporations should not interfere in the internal affairs of the host state (Paragraph 2, Article 2 of the Charter)². In its activities, TNCs should be guided by the provisions of the Declaration on International Investment and transnational Companies of June 21, 1976, which was supported by Ukraine, but has not yet been ratified. According to this declaration, TNCs are obliged to comply with the provisions of national legislation; promote economic, social, and environmental progress to achieve sustainable development; refrain from seeking and receiving benefits that are not provided for in laws or other regulatory provisions related to human rights; encourage local capacity-building through close cooperation with the local community³. In accordance with the positions of the United Nations Conference on Trade and Development (UNCTAD), TNC (transnational corporation, transnational corporation, transnational company, transnational enterprise) is an enterprise that unites legal entities of any legal forms and types of activity in two or more countries and pursues a single policy and common strategy thanks to one or more decision-making centres [25, p. 36]. According to the UN Code of Conduct of TNCs, a transnational corporation is an enterprise described by the location of subsidiaries in two or more countries of the world, regardless of the field of activity and legal form of

1. United Nations General Assembly Resolution 3281 (XXIX). Charter of Economic Rights and Duties of States. (1974, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_077?#Text.

2. *Ibidem*, 1974.

3. Declaration on International Investment and transnational Companies C(76)99/FINAL. (1976, June). Retrieved from https://investment.zoda.gov.ua/frontend/web/userfiles/view/files/deklaratsia_oesr.doc.

the institution; it uses such a decision-making system that ensures the implementation of effective management strategies from several centres and contributes to a coordinated policy within the company's divisions [26, p. 95].

Analysis of the provisions of legal regulation of TNCs' activities reveals three levels of legal regulation of the activities of these agribusiness entities: domestic legislation, agreements between the two states, and international acts. For the legal regulation of TNCs, the most promising is the international legal unification of the provisions governing the creation and operation of TNCs. This means that the unified provisions included in the relevant universal international treaties are implemented in the national legal systems of the participating countries [27, p. 430].

In Ukraine, the concept of TNCs is still not defined at the level of national legislation. Part 3, Article 120 of the Economic Code of Ukraine is applied to their activities, according to which a corporation is recognised as a contractual association created based on a combination of production, scientific, and commercial interests of the combined enterprises, with their delegation of separate powers of centralised regulation of the activities of each of the participants to the corporation's management bodies¹.

CONCLUSIONS

In the overall structure of Ukrainian agribusiness, TNC activities form an important component that actively influences the development of the state's agro-industrial sector. TNCs as complex integrated subjects of agricultural activity in Ukraine are mainly created due to foreign direct investment, which, in turn, opens up access to new technologies of agricultural production. One of the important features and at the same time features that determine the essence of the activities of agricultural TNCs is that the production chain that unites the production of agricultural products with the participation of TNCs covers several states. That is what accounts for the specific features of

their activities in agribusiness. In particular, agricultural products grown in Ukraine can be processed, packaged in another country, and offered for sale in several countries. Agricultural value chains can be long, and different actors – both national and foreign – are involved at each stage of the chain. Each participant performs certain functions (supply, transportation, processing, sales, and retail trade).

The conducted research allowed formulating the concept of a transnational corporation, its varieties. The activities of any transnational agricultural corporation can have both positive and negative effects. After all, due to globalisation processes, climate change, and the constant threat of food shortages in individual states, the activities of these corporations constitute a necessary element of the global economy. The study of the practice of TNC functioning indicated that there are three levels of legal regulation of TNC activities: internal legislation, treaties between two states, and international acts. The lack of legal regulation of the activities of agricultural TNCs at the level of Ukrainian legislation indicates obstacles to the development of Ukrainian agricultural producers, the presence of threats to environmental and food security for the country's population in general. Notably, this is a negative phenomenon that needs to be eliminated as soon as possible. When improving the legal regulation of TNCs' activities, it is necessary to consider the following details: 1) the public and private interests of both the state and TNCs; 2) the ability to have guarantees to reduce the negative impact of TNCs' activities on the environment; 3) the ability to oblige TNCs to bear social responsibility to the local population.

RECOMMENDATIONS

This study may be of interest to researchers of problems of economic and agricultural law, practising lawyers in the field of agribusiness. The materials of this study can be used to prepare methodological recommendations, textbooks on agricultural law, and agribusiness law.

REFERENCES

- [1] Stepan Kubiv signed an Agreement with the OECD on Ukraine's accession to the Declaration on International Investment and Transnational Corporations. (2017). Retrieved from <https://www.kmu.gov.ua/news/249818361>.
- [2] Charney, J.I. (1983). Transnational corporations and developing public international law. *Duke Law Journal*, 1983(4), 748-788.
- [3] Dukhnytskyi, B. (2020). *Agrarian multinational corporations in Ukraine and the world*. Retrieved from [https://a7d.com.ua/4125-agrarn-transnaconaln-korporacyi-v-ukrayin-ta-svt.html#:~:text=3%20усього%20числа%20аграрних%20транснаціональних,%20"Акціонер"](https://a7d.com.ua/4125-agrarn-transnaconaln-korporacyi-v-ukrayin-ta-svt.html#:~:text=3%20усього%20числа%20аграрних%20транснаціональних,%20).
- [4] Acquisition of material and technical resources by enterprises for production needs 2017, 2018, 2019. (2019). Retrieved from http://www.ukrstat.gov.ua/operativ/operativ2018/sg/pr_mt_res/arh_pr_mt_res_u.htm.
- [5] Ahmed, A., Jones, Ch., & Temouri, Y. (2020). The relationship between MNE tax haven use and FDI intodeveloping economies characterized by capital flight. *Transnational Corporations*, 27(2), 1-30.
- [6] Zhan, J. (2020). Covid-19 and investment – an UNCTAD research round-up of the international pandemic's effect on FDI flows and policy. *Transnational Corporations*, 27(1), 1-3.
- [7] Arnold, D.G. (2016). Corporations and human rights obligations. *Business and Human Rights Journal*, 1(2), 255-275.
- [8] Kapler, J.K. (1999). The role of transnational corporations: Theory and evidence. *Competition & Change*, 4(1), 31-60.
- [9] Romanov, M.I (2018). Genesis and evolution of transnational corporations. *Economy: Yesterday, Today, Tomorrow*, 8(5A), 167-181.

1. Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/main/436-15#n124>.

- [10] Tahirli, O. (2017). Transnational companies: Definition, specification and advantages. *Istanbul Aydın Üniversitesi Dergisi*, 33, 79-92.
- [11] Cheku, O. (2012). Definition of “transnational corporations”. *IAPM Scientific Works*, 4(35), 171-175.
- [12] Agribusiness companies. (n.d.). Retrieved from <https://archive.globalpolicy.org/social-and-economic-policy/world-hunger/agribusiness-companies.html>.
- [13] Transnational corporation: Oxford Reference. (n.d.). Retrieved from <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803105436546>.
- [14] Lymonova, E.V. (2015). Category “transnational corporation”: Criteria for definition and main features. *Academy Review*, 2(43), 24-31.
- [15] Kachur, A.V., & Mogilko, D.M. (2018). TNCs and their role in modern international economic relations. *Economy and Society*, 2(19), 55-62.
- [16] Pogribnyy, D.I. (2015). Features of legal maintenance of transnational corporations. *Law and Innovation*, 1(9), 75-79.
- [17] Haivoronskyi, V.M., & Zhushman, V.P. (Eds.). (2007). *International private law*. Kyiv: Yurinkom Inter.
- [18] Mazur, V.S. (2018). Transnational corporations are an effective factor in international economic relations. In *Economic, legal, humanitarian, social, environmental problems of development in the XXI century: Domestic and world realities: Materials of the scientific and practical conference* (pp. 31-45). Novovolynsk: NNNIEM TNEU.
- [19] World investment report 2014. (2014). Retrieved from http://unctad.org/en/PublicationsLibrary/wir2014_en.pdf.
- [20] Bila, S.O. (2020). Agricultural production strategies: World experience. *University Economic Bulletin*, 45, 7-21.
- [21] Jacoby, E.H. (1975). Transnational corporations and third world agriculture. *Development and Change*, 6(3), 90-97.
- [22] Monteiro, C.A., & Cannon, G. (2012). The impact of transnational “BigFood” companies on the South: A view from Brazil. *PLoS Medicine*, 9(7), article number e1001252.
- [23] Zadoia, A.O., & Lymonova, E.M. (2014). Regulation of TNCs: State level. *Academy Review*, 2, 117-125.
- [24] Aliksieienko, I. (2010). Transnationalization of production and the role of TNCs in ensuring sustainable development. *Scientific Bulletin of Uzhhorod University. Series “Politology, Sociology, Philosophy”*, 14, 5-8.
- [25] Kokhan, I.I. (2009). The concept and legal features of transnational corporations. *Scientific and Information Bulletin*, 1, 45-48.
- [26] Bezrukova, N.V., & Onipko, T.A. (2011). Current trends in the development of TNCs as a driving force in the process of economic globalization. *Scientific Bulletin of Poltava University of Economics and Trade. A Series of “Economic Sciences”*, 4(49), 93-99.
- [27] Matrosova, I.Yu. (2016). Identifying the features of the legal regulation of multinational companies (TNCs). *Young Scientist*, 5(32), 428-432.

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