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PROPERTY TRANSFORMATION IN UKRAINE: RESULTS OF INSTITUTIONAL CHANGE

The article is devoted to summarizing reform of property relations in Ukraine for twenty-five years of state independence. It analyzes the changes that occurred during this period in the relevant formal and informal public institutions. The author identifies a number of historically determined institutional risks of property transformation, which lead to a distortion of the nature of reforms and the depreciation of their results.

It is revealed that imperfection and inconsistency of the legislation regulating property relations brings about a permanent erosion of property rights and corruption; the crisis of legitimacy of private property leads to an outflow of capital, rising unemployment and falling living standards; disregard for the owners' rights is realized in their forced redistribution by re-privatization or raiding and impedes long-term investment; the threat of restitution casts doubt on real estate transactions and destabilizes the business environment.

It is concluded about the necessity of a comprehensive coherent compensation of the outlined institutional risks based on consideration of historically formed peculiarities of Ukrainian economic and legal mentality. Developed proposals on improving state policy in the sphere of property relations in order to enhance social legitimacy of private property and guarantees of owners' rights, fighting corruption, law enforcement, regulation of property legislation in accordance with universally recognized norms and standards of law, and rising the welfare and legal culture of society.

Key words: institutional changes, formal and informal institutions, institutional risks, property rights, transformation of ownership, property legitimacy, privatization, property redistribution, restitution.

JEL: K11, O17

Definition of the problem. As we know, economic growth becomes imbalanced at a time of sweeping social transformations, determined by cardinal change of political and economic paradigm. This imbalance complicates conceptual summarizing and evaluation of transformations in the economy of Ukraine. But twenty five years is rather long period of time. It makes possible to realistically summarize systemic transformations that have been going on in Ukraine from the beginning of its independence and enable us to analyze these transformations in their historical context.

Retrospective analysis is of utmost importance for full fledged investigation of transformations of social institutions of Ukraine, because their informal aspects, such as traditional economic ideas, parts of customary law, entrenched ideological and moral stereotypes, some behavioral patterns were in evolution for many years and even centuries. They were sometimes fixed in laws and regula-

tions. These informal institutions along with formal institutions play important role in creating institutional environment for Ukraine's economic reforms. Neglecting them might end up in distortion of these reforms and devaluation of their results.

It is most relevant for such a key institution for Ukraine as property. It determines legal benchmarks for economic activities of Ukrainian businesses, setting "rules of play" in redistribution of resources in the economy. Ukrainian practice of market transformation of property relations has convincingly proved that constitutional fixing of the right to private property as a cornerstone of market economy does not guarantee that it is perceived constructively by social consciousness. This perception is impeded by popular view of property that was historically formed by Ukrainian economic and legal practices and today create institutional risks that can turn or have even turned already into an imminent but mighty factor of slowing down our country's economic development.

Analysis of the status of the problem's investigation. At the beginning of a new millennium Ukrainian researchers attempted to summarize the experience of economic and institutional transformations, including those in the realm of property rights, and to analyze the results of these transformations. The cases in point were collective work "Reforming property relations in Ukraine" [1]; monographic work "Contradictions in reforms in the context of the process of civilization" by A.Galchynskiy, who critically reviewed real fruits and bottlenecks of Ukrainian privatization [2, pp. 114–139]; substantial research "The Economy Of Ukraine: The Strategy And Policy Of Its Long-Term Development" (edited by V.Heyets). The latter raised the issue of institutional transformations in post-Soviet Ukrainian society, formation of new balance of property rights in Ukraine's economy during its transition, protection of ownership as a necessary means of economic policy of Ukrainian state [3]. O.Denisiuc researched the prospects of further improvement of property relations' system [4]. Works of A.Hrytsenko, V.Dementiev, G.Zadorozhniy, E.Malyi, V.Mandeeburah, L.Melnik, V.Yacubenco and other scientists expounded market transformation of property and institutional support of such transformation. But these works paid little attention to the influence of informal civic institutions that shape out the attitude of the citizens of Ukraine to property and its reform. This issue requires more detailed analysis.

Scope of research. Today we have an occasion to summarize the results of the twenty five years of transformation of property relations in Ukraine, giving closer look to some aspects that were not covered previously. To do this we need to discover historically determined institutional risks of the property relations shaped out by peculiarities of Ukrainian mentality in economic and legal domains. We should establish what impact have they had on the development of reforms, their fruits and prospects and understand whether these should be minimized in the future.

Presentation of my main ideas. The first institutional risk that is common to all former republics of the Soviet Union can be termed "perpetual dissolution

of the owner's rights". This throws in doubt entrepreneurial activity and makes Ukrainian authorities more corrupt. Root of the problem is statutory collision that emerged in Soviet Ukraine's centralized planning economy, when terms "social" and "public" property were used inviting the whole lot of interpretations. All assets in fact belonged to Ukrainian Soviet Socialist Republic and the function of administering the assets was exercised by the then Ukrainian government's officials (this function was the most important as signal among property rights). In real life though those assets were perceived by the public at large as nobody's property. Thus distorted perceptions of individual ownership were formed among citizens of Ukraine. The assets that were vaguely called "common" were treated as "our" by some people, as "my" by the others, and as "other people's" by yet many other Ukrainians. In some Ukrainians it formed a habit of embezzling public resources, in the others it caused lack of initiative and indifference to the ways and means of consumption of those resources. Decay of the moral foundations of institution of private property, rooting of the phenomenon of "authorities – property owners", corporatization of the government agencies and development of corruption in bureaucratic apparatus of Ukrainian state became immediate results of the concentration of management of all "public" assets in the hands of this state.

These dangerous processes only intensified under the conditions of political and legislative ambiguity of 1990-s, determined by transformations in Ukraine's system of government and beginning of market transformation of its economy. Among main causes of these trends were inconsistencies between the effective and newly promulgated statutes regulating proprietary relations. The acts "On Renting and Leasing of the Assets of Public Enterprises and Organizations", "On the Collateral", "On the Privatization of Public Housing", "On the Privatization of Assets of Public Enterprises", "On Privatization of Small and Medium Public Enterprises" and many others, decrees of the Verkhovna Rada and Cabinet of Ministers of Ukraine promulgated in 1992-1993, were not harmonized with the Civil Code that had been effective from 1963 and was meant to regulate planning economy.

The most emblematic among these processes was the beginning of transformation of the institution of property itself. The law "On Property" [5] promulgated by the Verkhovna Rada of Ukraine in February 1991 established three types of property: individual (personal and private labour), collective and state. One year later the laws "On the Types of Ownership of Land" [6] and "On Privatization of Public Assets" [7] introduced the term "private property" instead of "individual property" embodying in law new for Ukraine type of property and legal institution of the right to private property. But the Verkhovna Rada promulgated a law amending the Civil Code of Ukraine and some other laws [8] in December 1993.

The other branches of Ukrainian law lagged behind too. The law "On Property" guaranteed equal rights to all owners and all three types of property, private, collective and public. They were acknowledged by law as identical and requiring

identical protection by law, including criminal law of Ukraine. Private property spread and its objects became the objects of contracts, the Criminal Code of Ukraine didn't punish for illicit actions against private property. Moreover, there wasn't even the term "private property" in the Code. It only dealt with the crimes against public and collective property and had no articles against felonies committed against private property [9].

New constitution of 28 June 1996 [10] not only made private property constitutional, but raised the issue of complete harmonization of property legislation with the constitution, as its article 41 fixed the right of a citizen to own and use his or her property, fruits of intellectual or creative work. Thus a draft of anew Civil Code was presented to the Verkhovna Rada in December 1996. It was reviewed for six years. A lot of new statutes were enacted during that period, among them the acts that put privatization on a legal footing: "On Privatization of Small and Medium Public Enterprises", "On Some Aspects of Privatization in Agricultural Industry" of 1996, "On Privatization of Public Assets" of 1997, "On the List of Public Assets Excluded from Privatization" of 1999, "On the National Programme of Privatization for 2000-2002" of 2000, etc.

The new Civil Code promulgated in January 2003 regulated many aspects of legal status of real estate and transactions involving it. It established among other provisions that right of ownership and other material rights regarding real estate (e.g. the right to use, rent), restrictions of these rights, their initiation, transfer and termination must be registered. An individual gains the right to own that kind of property and related material rights from that moment. New obligations were listed, like fiduciary management of assets, factoring, commercial concession. Institution of inheritance was changed significantly, specifically the clauses regulating inheritance by law and inheritance by will, the notions of a will with conditions appeared, of a will of a married couple, of an inclusion into a will of a right to rent, and of an instrument new to Ukraine, inheritance contract [11]. One can say that modern and progressive views were reflected in the new Civil Code on the modes of forming and regulating property relations in a developed civilized society. They made regulation of market economy more transparent and predictable.

Some discord was added to this process after the Economic Code of Ukraine [12] was promulgated that same year. Some of its clauses were not entirely harmonized with some laws that were effective at the time, and with the new Civil Code. Some ambiguity continued in the realm of property rights. Some of them were not regulated by the Economic Code, although that very Code was meant to establish the statutory framework of regulation of property relations (article 4). Provisions of Economic Code *vis-a-vis* provisions of Civil Code played special the role of special ones, and that virtually blocked the use of the latter in the regulation of property relations. Therefore the passing and practical application of Economic Code caused misunderstandings and gave opportunities for wrongdoings in the realm of public regulation of proprietary relations.

Land ownership remained even more knotty during all these years. For agrarian sector of Ukraine's economy to function effectively under market conditions

the structure of land ownership needed to be transformed. In particular, peasants in Ukraine needed the right to freely use land resources, make economic decisions on their own and establish agrarian businesses applying the principles of private property and market relations. Transformations of property relations regarding soil demand that all attributes of land market function (rent, mortgage, buying and selling, disposal, inheritance, etc.) all of these being necessary requisites of a legitimate redistribution and efficient use of land.

This task is not yet solved due to the prohibition of sale of agricultural lands. At the beginning of transition to the market this prohibitive norm was promulgated by the members of socialist, communist and agrarian parties in Ukrainian parliament, whose political and economic interests converged. There were many directors of collective farms among them. They wanted to retain their status of land managers, so they consciously impeded transformations that were socially progressive, but not beneficial for them.

This wasn't an obstacle though for the Verkhovna Rada's enacting already in 1992 of the bill "On the Types of Ownership of Land". This piece of legislation allowed both collective and private [6] ownership of land alongside public property of land and made effective the new version of the Land Code of Ukraine setting the main principles of legislation on land ownership. The renovated document established equality of individuals, businesses, local communities and state's right to own land. Principle of non-intrusion of the government into the other subjects' realization of their right to own, use and dispose of land [13] was enacted in this act. After the new constitution the Verkhovna Rada passed the bill "On Agricultural Co-operation" in 1997 [14] and "On the Renting of Land" (1998) [15] that laid down the legislative, organizational and socio-economic attributes of operations of co-operative and renting agricultural enterprises.

A new Land Code of Ukraine was passed in October 2001, contributing to the development of agrarian legislation. The rights of land property (to own, use and rent) were established together with the procedure, reasons and consequences of the restrictions on the right of land property for both individual citizens and legal entities. The modes of guaranteeing these rights and many other provisions were set by this piece of legislation. But according to the transitional provisions of the Code proprietors of the land and of shares of land of the former collective farms were not given the right until 1 January 2005 to sell or otherwise dispose of their plots of land except exchanging them and giving them as inheritance. These portions could also be retaken by the government for public purposes [16]. This provision hampered greatly the establishment of the land market in Ukraine and development of market relations in the agrarian sector of its economy.

Continuous prolongation of this moratorium on land sales is explained by incomplete legal mechanism of land market and by contradictory provisions of the legislation regarding the right of private property of land. According to art. 324 of the Civil Code of Ukraine that is based on the provisions of (art. 13) of the constitution, the land "is an object of *property* of Ukrainian people", on whose behalf "proprietary rights are exercised by the government and local authorities".

Individual citizen of Ukraine has only "the right to use the natural objects of the right of property of Ukrainian people". The right to use is, as is well known, only one of the three rights constituting a "package" of property rights. Article 374 establishes that "individuals, legal entities, the government and local communities are the subjects of proprietary rights for land". Foreign legal entities, foreign countries and international organizations (not making a part of Ukrainian people) can also be land owners [17].

Ukrainian reforms are negatively affected by suspension of land sales through two negative tendencies. One is that prohibition makes the landowners, who do not want or cannot cultivate land, abandon their proprietary rights. The experts of the IRC "Land Reform in Ukraine" exhibited this tendency in Poltava Oblast, whereas 22 000 of land plots were returned by their owners to the state in 2006. These mainly resulted from a land proprietor's refusal to continue using his land, or the land was repossessed as an asset without owner (e.g. whose proprietor had passed away without leaving heirs) [18]. This indicates the beginning of "creeping" nationalization of land in Ukraine that threatens to throw agrarian reform back to its starting point.

On the other hand, this perpetual suspension of land sales when in all other branches of economy market relations were thriving brought about shadow land market. Its scale can be evaluated using the data referred to by news agency Interfax Ukraine, according to which this sale ban was circumvented and in only four years (2004-2008) more than 5 mln hectares of plots of agricultural land were sold [19]. Lack of legitimacy of land property formed this way made difficult its repossession, first of all by Ukrainian state. It can destabilize property relations and delay for a long time development of agrarian sector of economy.

Reluctance of Ukrainian legislators to establish fully fledged right of private property for land has in reality been and continue reflecting the opinion of a significant part of the public. It also is a manifestation of a crisis of legitimacy of private property, especially of those types of it whose possession cannot be justified by one's own labour. Similarly to this tendency of dissolution of property rights, illicitness of property constitutes one of the largest institutional risks for market transformations in today's Ukraine. This risk is rooted in Ukraine's economic history, or rather in ethno-cultural specifically Ukrainian aspects of their economic and legal mentality.

In the opinions of Ukrainian historians and jurists, the attitudes of Ukrainians towards property have traditionally been dualistic. It was determined by such typical aspects of popular mindset as respect of a person and his/her rights, desire of independence and autonomy, developed feeling of one's dignity and dislike of any interference or regulation. Individual rural type of farming embodied this mindset and remained typical for Ukraine for a few centuries. Great respect to individual effort was also reflected in the approaches to property and law of inheritance. Not all the ways of gaining property embodied in formal law were acknowledged by the customary law of Ukrainians. Finding by chance and even long time ownership were not recognized by them. Only labour was considered

the only just and undisputable reason for proprietary rights. Therefore, only those who multiplied the property of a family personally could partake in its partition. That was why soldiers were often refused any property in their families and newly married members "admitted" in a family might claim any part of the family's property after a few years [20, p. 649-651].

This combination of labour and preference of purely individual type of land ownership in Ukrainian economic practice and customs was partially determined by the institution of squatting, when the title to the land was acquired by those who were the first to come and to take it. With this principle both the free and abandoned portions of land were taken by new owners who wanted to cultivate it. This was how the lands of the right bank of the Dnieper were inhabited and became property of the newly established farmers. Free lands of Slobozhanshchyna and Zaporizhya, the southern steppes on the left bank of the Dnieper, were similarly occupied.

But through all these times of Ukrainian history the principle of the "property through labour" was systematically violated. Laws, decrees, ordinances and other statutory documents, issued by Polish and Russian authorities, didn't grant the farmers their newly gained "labour" property, made it either informal, customary, or abolished it and replaced it with property rights of aristocracy – magnates, senior cossacks and landowners. This process resulted in persistent and long institutional conflict. Large estates were perceived by the peasants, who worked there and made larger proportion of the population of what is now Ukraine, as received unjustly. The laws that protected those property rights were seen as manifestation of despotic role of the state.

Traditional stereotype of the legitimacy of only the property "earned through exertion" that was deeply rooted in popular mentality in the Soviet period was gradually substituted by moral and legal denunciation of any "unearned income". There was no room for private initiative and private property in Stalin's economic model designed for quick industrial modernization. Private property came to be viewed as legitimizing "unearned income". Soviet propaganda together with dogmatic Marxist-Leninist theory were aggressively and methodically discrediting private property for decades. Inertia of these efforts continued even in the time of "developed socialism". Collectivist attitudes together with revulsion and loathing of private property and lifestyle based on it were imposed on Soviet citizens since their childhood. The very terms "ownership", "owner", "private" were associated with social inequality and "exploitation of people", hence with injustice. These words got derogatory connotations and were used offensively.

It is quite clear why under these circumstances privatization of public property, officially declared in Ukraine in 1992 but initiated in practice yet by Mr. Gorbachev's *perestroika*, was conducted by Communist party and government bureaucrats according to the rules set by themselves and in their interests only and was not endorsed by the public at large. As a result of this "privatization" that ran counter traditional "labour" principles (as it was done in an environment of institutional disorder on the basis of the right of the "first to grab") the most economi-

cally lucrative assets were privatized by those who had had the right to manage these assets – directors of public enterprises, officials and the narrow circle of the people close to them.

That was the reason why private property in Ukraine was from the start perceived as illicit, and not only by the public, but by its owners themselves, majority of whom widely used various shady schemes and acknowledged only too well semi-criminal origin of their riches. Entrepreneurs were not at all certain about their rights and were rightfully afraid of revengeful and egalitarian aspirations of tremendous number of citizens, whose part in privatization turned out to be purely nominal (albeit those who conducted the reforms tried hard to create an illusion of legitimate privatization using the so-called privatization certificates). All this gave impetus to massive flight of capital from Ukraine to foreign countries. This in turn intensified unemployment in Ukraine, dramatic fall of living standards of absolute majority of population and growth of social conflicts. Trust in private property in general was undermined, especially those types of it that were not derived from labour exertions – large enterprises and land properties.

Negative view of the methods and results of privatization by the majority of population, 67% according to the opinion poll held in 1997 by the Centre "Social Perspective", correlated perfectly with the data of other social research, because their view of privatization was that it was done by the ruling quarters of Ukraine and contributed to galloping corruption [21, p. 92-93]. Those researches demonstrated that the population of Ukraine was reluctant to endorse privatization of large enterprises since its very beginning, and from 1992 to 2008 it diminished almost by half – from 25,1% to 13,9%. Negative attitude towards privatization increased by more than twice from 31,6% to 64,1%. Privatization of land was perceived yet more negatively with the percentage of those supporting it shrinking from 63,5% to 25,7% and those who opposed it growing from 13,9% to 53,1% [22].

Continuation of these trends in recent years is corroborated by the data of the Institute of Sociology of the Academy of Sciences of Ukraine. According to the opinion poll conducted by the Institute in 2013, privatization of only small enterprises was perceived as more or less legitimate, similar to the situation of previous years. 48,2% supported it and 34,7% believed that these enterprises rather shouldn't have been transferred into private ownership. The attitude towards privatization of large public enterprises has changed but only a little with 16,9% in favour and 65,9% against it. At the same time the number of those supporting privatization of land dropped substantially to only 19,5% and the number of citizens opposing this measure reached 63,4% of respondents [23].

The main risk of institutional conflict was that through all Ukrainian history was full of periodical violent redistributions of the rights and objects of property, in olden days mainly due to numerous peasant uprisings and revolutions. Typically some drastic deterioration of life style was a catalyst of that. This "triggered" in the popular mentality biological programme of survival common to every community of the humans. According to this principle Ukrainians forcibly divid-

ed available economic resources (first of all land) on the principle of "uniform justice".

This pattern of socio-economic conduct was formed entirely in Ukraine because in some historical periods of pre-industrial age population here often found themselves on the brink of existence. Subsequent historical development didn't create conditions for overcoming these occurrences. The stereotype of "uniform justice" was made active again when formal abolition of peasantry's serfdom was not buttressed by transfer of all of the land into the private property of all peasants. This pattern of behavior later reappeared during the revolution of 1905 and induced broad social and political popularity of the idea of nationalization of lands [24]. This scenario repeated itself in 1917 because relations of land ownership remained unregulated as a consequence of the unfinished land reform initiated by the assassinated Prime Minister Stolypin of Russia. Ukrainian Tsentralna Rada's later declaration of its intention to "socialize" all the land it tried to control gave a go to arbitrary re-apportioning of all land by radicalized peasants [25, p. 442-443].

This forcible change of owners was headed in 1917-1920 by some of the governments of Ukraine. All of them promulgated the decrees aimed against private property. The III Universal of the UNR abolished the right of private property for land establishing that "land is the property of all working people" [26, p.74-80]. The government of Hetman (leader) of Ukrainian State P.Skoropadsky abolished the act of Tsentralna Rada on socialization of land, but allowed "measures on disposing of the lands on their real value for the allocation of lots of land to the farmers with small amounts of land" [27]. It enacted in the end a draft of land reform that stipulated mandatory purchase of the lands of all large land owners and their further apportioning to the peasants with the size of each lot of not more than 50 acres [25, p. 453]. The Directoriya promulgated in January 1919 the law "On Land in the UNR" abolishing private property of land and all the lots of large land owners in excess of approximately 40 acres (except those belonging to the foreigners) were handed out to the farmers for free [28].

The largest scale and persistence of execution of the idea of "equitable justice" was displayed by totalitarian Soviet state against the backdrop of abject neglect of individual rights and very low level of subsistence provision for the population even in their minimal needs. Decree "On Land" of the Soviet government abolishing private ownership of land [29] was enacted in Ukraine yet in December of 1917 in accordance with the First Circular of Central Executive Committee. In later years the government gradually monopolized proprietary rights to land, mineral resources, water and nationalized enterprises, buildings, railroads, all military hardware, communication networks [30]. Collectivization of lands ensued, whereas the farmers were not only dispossessed of their land lots (or the right to use them individually), but of their agricultural implements and tools. A total reallocation of property was done on the scale of the whole of the USSR, making the government supreme owner and manager of all economic resources.

Formal restoration of private property in the first years of Ukraine's independent existence regrettably could not deprive the authorities of the capacity to reallocate proprietary rights in the economy, doing so not in the interests of rank and file Ukrainians, but to the benefit of specific representatives of corrupt bureaucracy. That was the result of voucher privatization of overwhelming number of public assets. Hyperinflation also contributed mightily to those developments, forfeiting large parts of people's properties in the form of their savings. The state remained indifferent to numerous violations of individual rights of the citizens, Ukrainian governments were not protecting them against shady dealers, who with open or tacit permission of Ukrainian authorities (often with direct complicity of their representatives) robbed significant part of the population through trusts, insurance companies, financial holdings often created for that purpose, and Ponzi schemes. This open disrespect of individuals and their material rights resulted in strong and persistent cynicism of the population with regard to any "estranged" property in general and created a dangerous precedent of its forcible reallocation.

Taking all these circumstances into account along with the fact that in the extreme conditions of perpetual systemic crisis the majority of the citizens of Ukraine lived and worked on the verge of destitution, it was no wonder how widely popular became the government's campaign initiated in spring of 2005 under the slogan of "restoration of justice". According to the 2006 opinion poll taken by the Institute of Sociology of the NASU, 30,5% of the respondents would approve of the return of small enterprises into public ownership (43,1% wouldn't approve of it), 58,2% supported the idea of re-appropriation of large enterprises by the state (17,1% didn't support that idea) and 51,4% were supportive of the return of privatized land into the property of Ukrainian state (21% opposed such option) [31].

The menace of a revision of the results of privatization (despite governmental reassurances that there are no intentions of re-privatization or nationalization of properties, the idea is only to correct the violations of property rights of the state of Ukraine) at the national level damages a great deal an image of Ukraine worldwide. It can be perceived by many as an evidence of unstable conditions for private capital in this country that can naturally cause a downgrading of its investment ratings. Not only does it hamper an inflow of foreign capitals in Ukraine's economy, it also is a testimony of growing risks for investments into Ukraine in general and, as a consequence, falling market values of all Ukrainian assets.

Besides, under conditions of many agencies of the government merging with private businesses, of deeply rooted corruption among Ukrainian bureaucracy and weakness of the justice system of this country, there is an imminent danger that any of these steps could be done selectively and can be turned into an instrument of "extra-economic" reallocation of capital. Should anything similar happen, a notion of "property" as such could be revised. Similar approach would mean that assets privatized in the past are viewed as only provisionally owned by their

today's proprietors and could be forfeited if any of the arrangements existing between them and present day authorities are breached.

These measures at any rate cannot improve the attitude of the public at large towards either private property or towards large proprietors regardless of what these measures could be, from additional taxation of "unfairly" privatized assets to their partial nationalization and another privatization. *Defacto* acknowledgment by Ukrainian governments of "unfairness" of the results of privatization and then the lack of the measures for their revision has deepened critical perception by the public of the legitimacy of property rights and strengthened the attitudes favouring "redistribution". This was confirmed by the research of 2013 of the Institute of Sociology of the NASU, according to which almost a third of the respondents (32,6%) endorsed the idea of returning small private enterprises under the state ownership (against this were 49,2% of respondents). 66,2% of Ukrainian citizens backed nationalization of large enterprises that are now in private hands (16,2% did not) and 60,9% would support nationalization of privatized land (20,3% wouldn't do that) [23].

There is paradoxical dualism of governmental policy today in the realm of private property regulation in Ukraine. On one hand, the government increased disproportionately its authority to control directly all property rights in economic sphere thus dissolving these rights destroying the motivations of the businessmen to generate effective property. On the other hand, the statutes regulating property rights seem to us insufficient in their scope of protecting these rights. This concern is relevant not only for proprietary right for a business, a brand, a trademark or a technology, but for land property right that remains undeveloped. This concern is legitimate with regard to the property rights on natural resources. This realm requires particular attention of anti-monopoly authorities. The property rights *vis-a-vis* work force require attention, as under galloping inflation and habitual non-payments of wages it becomes almost fictitious.

So-called "raiding" has turned in the last decade into a potent destructive factor of economic and legal situation in modern Ukraine. It is also a clear result of illegitimacy of property and lack of protection of ownership rights. In Ukraine, unlike Western Europe, this phenomenon means more than unfriendly swallowing of one corporation by another done in accordance with existing legislation. In Ukraine in the majority of cases it is openly illegal re-apportioning of property at the level of enterprises done with complicity of corrupt public officials. Matters of concern with regard to the "raiding" also are indifference (if not gloating) of the majority of the population exhausted by day-to-day struggle for survival, but even more the inaction of the government, due to which this has become a massive occurrence and the number of similar cases is growing further.

This volume of illicit re-distribution of property has become possible because larger part of Ukrainian public consider the property of any of big or even medium businessman as acquired through a crime and thus illegitimate. This property has therefore no rightful legal or judiciary guarantees today. Both public opinion and political expediency make business people use the right moment to increase

their capital, and this process could only end, when all lucrative assets are redistributed. Any change of government will undoubtedly provoke a reverse process, and this would bring Ukrainian society to the brink of a real "war of all against all".

Similar attitudes toward property are an enormous threat to economic development of this country unthinkable without long-term investments, but they do not make any sense if property rights are not protected sufficiently. In these circumstances the rent becomes more lucrative alternative. But rents in Ukraine are not means of generating profits, but rather of obtaining income without replenishing riches of society. It is easier to take away one's property than to create something useful. In effect it leads us to a speculative economic model proclaiming as efficient owners those who got someone else's property, sold it and took the money swiftly abroad. This is the way to ruin not only the economy of Ukraine, but of the foundations of Ukrainian statehood.

The lack of good Ukrainian business environment viewed from the standpoint of protection of the rights of investors is confirmed by the results of the 2015 research done by the Property Rights Alliance. According to the research, Ukraine has one of the lowest ranks in the international index of protection of property rights (3,9 out of 10) and in 109 place out of 129 nations. Ukraine looks badly in all three categories of that composite index, but if it looks a little better in the level of protection of material and intellectual property rights, 4,9 and 4,1 respectively (104 and 93 places), the levels of its legal and political environments are positively the worst with 2,8 (115 place). Corruption control and independence of the judiciary (119 and 125 places) say particularly sad story [32].

Additional risks of institutional ambiguities in Ukraine's economy emerged in recent years in the context of active European integration policy. Solution of the problem of restitution should be one of the inalienable components of this policy. Restitution means compensation for material damages caused by an unlawful legal action, for instance nationalization of land, immovable property, etc., as a result of the changes of national borders or social and economic systems. We know that restitution of property through restoration of rights of previous owners or payment of financial compensation to them was pre-requisite to the accession to the European Union of all candidate countries. Poland, Slovakia, Bulgaria, Latvia, Lithuania made restitutions under the pressure of the demands of the EU.

Legal basis for restitutions in European countries were art. 1 of the Protocol 1 to the CoE Convention "On the protection of Human Rights and Basic Freedoms" (1950), with the need to observe it directly referred to in art. 2 and 14 of the Ukraine-EU Association Agreement, the "European Convention on Compensation to the Victims of Violent Crimes" (1983) signed by Ukraine in 2005 but not ratified, and some other documents of international law [34].

Ukraine has avoided the issue of restitution until recently and it was not debated during privatization of 1990s, as former owners could only become unneeded competitors in the fight for "re-appropriated" assets. Those at power did

not see it as their goal to establish a broad community of owners (although it could facilitate the formation of a strong middle class as a foundation of civil society and important guarantee of economic and political stability). They wanted to concentrate the property of national resources in the hands of their own representatives, but this time as private individuals. But the Association Agreement commits Ukraine to approximate its legislation with the laws of the European Union. A lot of emigrants and their descendants live now in European countries, the USA and Israel. Many of them can prove their rights to the assets inside current territory of Ukraine. But even more pressing the issue of restitution can be for some areas of Galichyna and Trans-Carpathian Region, where the citizens of Poland, Slovak Republic, Romania and Hungary can and already do lay claims to many assets. These areas were before the Second World war parts of those countries and were added to Ukraine at that time. It is known, for example, that historical central part of Lviv, as well as similar parts of other towns of Western Ukraine, was owned by the Poles before 1939, so territorial communities of these towns must be ready to suffer losses in millions because of restitution of their urban assets. The losses of rural communities after the rights of the Poles to own Ukrainian land are restituted will be even bigger.

Ukrainian "Eastern Catholic" church is interested in restitution too and its hierarchy support actively the idea of European integration and return under their ownership of all assets that were forfeited unlawfully. Among these assets there are not only the premises of the church, but administrative buildings, for instance the National Museum in Lviv, residential and commercial buildings and thousands upon thousands of acres of land, including the lands of agricultural use [35].

Understandably not all former owners would like to return their properties, especially because Ukraine has already conducted the procedure of their privatization (as compared to the Baltic republics and Poland, where restitution was done first, and then privatization). Majority of them will most probably demand compensations that will become a huge burden for the national budget. Besides, restitution of so big a number of assets is a lengthy process requiring the drafting and enactment of relevant statutory documents. A large number of real estate contracts will rest on a very shaky ground for as long as this process is over, and that would only reinforce legal ambiguities of Ukrainian business environment.

Conclusions

In order to make relevant conclusions one must admit that in the twenty five years of reforms there have not been formed in Ukraine sufficient legal, economic and mental pre-requisites for the creation of a regime of "open" society pertinent to the majority of developed countries of the world with the foundations of that society being respect of individual rights in general and of proprietary rights in particular. Property that was illegally obtained and that remains dependent on political interplay does not have any guarantees or protections from politically

motivated re-appropriations. It has no legal or social legitimacy; proprietary relations in Ukraine are in large part distorted and non-transparent; they are not regulated by market mechanisms or laws, but rather by informal arrangements and selective application of existing laws.

This situation requires from the authorities to work persistently to compensate for institutional risks mentioned above by improving social legitimacy of private property, protection of property rights, overcoming corruption and organized crime and re-arrangement of national laws of Ukraine in order to approximate them to international legal norms and standards. Historically formed peculiarities of Ukrainian economic and legislative mentality need to be duly considered and observance and respect of law by Ukrainian society must be made a priority.

Further reform of property interplays in Ukraine should be made number one priority resulting in guarantees of inviolability of property, renovation of investment processes and prevention of politisizing of privatization and property re-appropriation processes. The government should acknowledge by law its commitment to not make any attempts at appropriating privately owned assets without reasons that are acknowledged and timely forewarned by society. Given the negative implications of the abolition of the results of privatization the need to continue that process should be admitted but it should be accentuated differently and proceed with different priorities. Its main goal should be to create a mass of proprietors so that they make for a large portion of small and medium entrepreneurs contributing most effectively to the formation of middle class, culture of private property and civil society.

A title to any asset ought to be fixed not only legally, it should be viewed as legitimate and indisputable by society and state. For this to become real, all the laws regulating property rights must be very clear and unambiguous. All the contracts for property must be transparent and the names of their participants known to the public. This will contribute to their legitimization and to the acknowledgement of fairness of property rights. All the disputes between the subjects of economic activities concerning the distribution and re-distribution of property rights, corporate disagreements included, should be in the focus of attention of the government under perspective of protection of interests of legitimate owners only. To make this happen the members of the judiciary and law enforcement system should be protected against any unlawful pressure and sternly control the accomplishment of the decisions of the courts of law.

Social attitudes to property rights are among the main indicators of its civic maturity, a benchmark of its transition from a primordial dominance of the strong over the weak. Consistency of this transition demands that respect be brought up towards property and proprietors, also by mass media who need to focus their attention not only on economic stratification of society, but first and foremost on the fact that equal legal rights have been granted to all people so that they can work and earn their individual capital. Improvement of moral reputation of business can become significant part of the efforts to legitimize property rights. These efforts need to be exerted first of all by business community

through diligent payment of taxes, active charitable actions, contributing to social benefits and other measures promoting stable positive dynamics for prosperity of Ukrainian households. Ukrainians' perceptions of property and proprietors will change for the better only if each consumer can see it for himself that existence of institution of private property is beneficial to Ukraine and all its citizens.

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