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Administrative and legal mechanism of land relations protection in Ukraine and Russia: comparative legal analysis

OLEKSANDR SVIDERSKYI¹, OLEKSANDR HAVRYLENKO²,
KOSTIANTYN KOVALENKO³ and TETIANA SHLAPKO^{4*}

The article is devoted to the comparative analysis of the administrative and legal mechanism for the protection of land relations in Ukraine and Russia. The purpose is to carry out a comparative legal analysis of the domestic mechanism of administrative and legal protection of land relations with the corresponding mechanism existing in the Russian Federation. The study identified the key differences in national approaches of the two countries to the legislative regulation of land relations of protection, determined by the system and the function of organs which has the responsibility for the protection of land relations. were also found shortcomings in the existing administrative and legal mechanisms for protection of land relations, both in Ukraine and in Russia, the ways of their elimination.

Keywords: comparative legal analysis, land protection, land relations, Ukrainian legislation, legislation of the Russian Federation

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INTRODUCTION

Land is the most valuable natural wealth and the main source of human resources for living. Not surprisingly, the land issue was one of the most painful at virtually every stage of the historical development of the Ukrainian state. For centuries, a fierce struggle, political strife and heated debate on this question took place. And at all times it demanded increased attention from the state.

Nowadays, land relations continue to develop rapidly, which in turn leads to an objective need to update the existing mechanism for their legal protection. Thus, outdated forms, methods and measures of state management of the land fund are no longer able to effectively protect land relations. As practice shows, land management bodies are often technically and organizationally unprepared for preventing and ending land offenses. Modern land law, which is still in a state of development and in many cases is illogical and inconsistent with the norms of other areas of law governing the use and protection of land, not only does not create the proper conditions for the implementation by the state apparatus of functions to ensure comprehensive and full protection of land relations, but vice versa creates a “favorable climate” for the commission of violations.

In this aspect, the problem of improving the existing administrative and legal mechanism for the protection of land relations, the strengthening of measures to strengthen the rule of law and the law in the field of land use and protection is becoming increasingly relevant. We believe that research of these issues must be carried out using the international experience of the European Union and the CIS countries.

In the conditions of formation of the land market in Ukraine considerable interest for research is the problem of transformation of public relations, which arise in relation to ownership, use and disposal of land resources on the basis of market methods of management and in accordance with the concept of sustainable development, harmonization of private and public interests in decision-making. Considering the imperfection of environmental and land regulations and instability of the political situation in the country, the problem of preservation, rational use and protection of land of different purpose becomes especially urgent in Ukraine. The problems of the development of land relations and their protection are the subject of research of a wide range of domestic scientists, such as A. Hryniak (2018), Y.V. Kornieiev (2011), D.M. Lukianets (2006), B.M. Danylyshyna (2006), O.Y. Drozd (2009) and others. Given the wide range of studies, in particular, on land ownership, protection and management of land relations in the process of becoming a market economy in Ukraine, special attention is needed to research the mechanisms of land relations management and their development, which is an important prerequisite for the implementation of balanced land management.

The purpose is to carry out a comparative legal analysis of the domestic mechanism of administrative and legal protection of land relations with the corresponding mechanism existing in the Russian Federation.

We believe this study has limitations on subjects. In particular, the information provided in this article and the findings of the study are of scientific and practical importance to theorists and practitioners of Ukraine and Russia.

METHODOLOGY

Methods. Research methods are chosen based on the object, subject and purpose of the study. The study used general scientific and special methods of legal science. General methods of generalization, synthesis, comparison, analysis, induction, deduction, analogy were applied during the elucidation and clarification of the peculiarities of the functioning of the administrative and legal mechanism of land relations protection in Ukraine and Russia. Also methodological foundations of the study are the following scientific methods: formal-dogmatic, system-structural, historical-comparative and logical methods.

Material. Protection of public relations is carried out through a mechanism defined by the legislature. According to the current concepts existing in the legal literature, the mechanism of protection is understood as a set of preventive measures taken by administrative bodies and their officials, public organizations and other subjects of the process to prevent violations of rights and

Administrative and legal mechanism of land relations protection in Ukraine and Russia...

freedoms of citizens, as well as to eliminate various obstacles that impede their implementation (Borodin 2003). It should be noted that at the doctrinal level, the concepts of the mechanism of administrative and legal protection of land relations in both Russia and Ukraine are treated equally.

Grounds for the implementation of administrative and legal protection of land relations in the studied countries are laid by their Basic Laws. At the same time, we immediately notice some differences in the legislative approaches to establishing priority directions for the implementation of such protection. Thus, according to Art. 13 of the Constitution of Ukraine (1996), land is the object of property rights of the Ukrainian people (Constitution of Ukraine 1996). On behalf of the Ukrainian people, the rights of the owner are exercised by state authorities and local self-government bodies within the limits set by the Constitution, and in accordance with Art. 14, land is recognized as a major national asset under special state protection. From the provisions of the Constitution we can conclude that the domestic legislator pays more attention to the issue of land ownership, while the Russian legislator, which in Art. 9 of the Constitution of the Russian Federation (1993) has determined that land and other natural resources are used and protected in the Russian Federation as the basis of life and activity of peoples living in the respective territory, gave more priority to the environmental aspect of the regulation of land relations than civil law (Constitution of the Russian... 1993). It should also be noted that the Constitution of Ukraine (1996) regards the land as one of the most important protected objects of public relations, calling it the main national wealth. In Russia, however, it follows from an analysis of the Basic Law that land protection is considered at the same level with other natural resources, although it occupies a special place among other categories of natural resources. According to the above mentioned aspects, it can be argued that in Ukraine, at least at the level of the Basic Law, the protection of land relations is given more attention than in the Russian Federation.

Administrative and legal protection of land is regulated in more detail at the level of laws. In Art. 162 of the Land Code of Ukraine (2005) "land protection" has been defined as a system of legal, organizational, economic and other measures aimed at the rational use of land, prevention of unjustified seizure of agricultural and forestry land, protection against harmful anthropogenic impact, reproduction and increase in fertility of land for forestry purposes, provision of a special regime for the use of lands of nature protection, health, recreational and historical and cultural purpose (The Land Code... 2005). And Art. 163 and 164 of the Land Code of Ukraine (2005) set out the goals and content of land protection. Analyzing the Russian legislation, we see that the concept of "land protection" is not elaborated, which, to our opinion, is a gap of legal technique, but in Part 1 of Art. 13 (Contents of land protection) of the Land Code of the Russian Federation (2001) there is noted that land protection is an activity of state authorities, local governments, legal entities and individuals, aimed at preserving land as an essential component of the environment and natural resource. The relevant provision somehow reveals the concept of "land protection".

Important for regulating the protection of land relations is Part 5 of Art. 13 of the Land Code of the Russian Federation (Land Code of the Russian... 2001). In accordance with the provisions of the mentioned norm, land protection measures are carried out in accordance with the Land Code, Federal Law of July 16, 1998 No. 101-FZ "On State Regulation of Fertility Provision of Agricultural Land", Federal Law of January 10, 2002 No. 7-FZ "About environmental protection" (2002). The above mentioned facts indicate that the Russian legislature is trying to establish a comprehensive list of legal acts of the law level that establish specific measures related to the protection of land. Such an approach on the part of the Russian legislature, in our view, is rather doubtful, as certain issues of land protection are also defined in many other acts (for example, Federal Law "On Land Reclamation" (1996), Federal Law "On agricultural land turnover" (2002) etc.).

Federal Law of July 16, 1998 No. 101-FZ "On State Regulation of Fertilization of Agricultural Lands" (1998) in Art. 11 identifies the main directions for the implementation of agricultural land fertility: development and implementation of federal targeted programs for the reproduction of agricultural land, as well as relevant regional target programs, accounting for indicators of agricultural land fertility and agricultural land fertility monitoring, state agricultural

monitoring regulation of fertility of agricultural lands and the like. The provisions of the Federal Law of the Russian Federation “On Environmental Protection” (2002) establishes requirements for environmental protection in the implementation of economic and other activities, environmental impact assessment and conducting environmental expertise, setting standards in the field of environmental protection, economic regulation of this industry.

In Ukraine, apart from the Land Code, issues related to land protection are systematized in a special Law of Ukraine “On Land Protection” (2003). Art. 22 of the mentioned legal act defines the system of measures taken in the field of land protection. In particular, they include: the state comprehensive system of observations; development of national and regional (republican) programs of land use and protection, documentation of land management in the field of land protection; creation of ecological network; implementation of natural-agricultural, ecological-economic, anti-erosion and other types of land zoning; economic stimulation of the implementation of measures on the protection and use of land and increase of soil fertility; standardization and normalization (Humenyuk 2019).

Another important regulatory act whose task is to regulate the relations of the research area is the Law of Ukraine “On State Control of Land Use and Protection” (2003), which sufficiently specifies measures for the organization and implementation of state control over the use and protection of land, compliance with the requirements of the legislation of Ukraine on land protection and soil monitoring.

RESULTS AND DISCUSSION

Analyzing the provisions of the legislative acts of Russia and Ukraine, we can conclude that land protection measures in both countries are aimed primarily at protecting land from pollution, degradation and negative impact of agricultural, industrial and other, especially economic, human activities. We also consider it necessary to note that the regulatory acts governing public relations in the field of land relations protection both in Ukraine and in the Russian Federation pay sufficient attention to detailing specific measures taken to ensure the proper status of the land fund of the countries. In our view, this is due to a common historical past within the existence of a single legal system of the USSR. However, it should be emphasized that Ukrainian legislation nevertheless regulates this specific industry in more detail, which is confirmed, in particular, by the existence of a special Law “On Land Protection” (2003) with more emphasis on “land” as a special object of protection at the level of the Basic Law.

In the context of the comparative legal analysis of the administrative and legal protection of land in Ukraine and the Russian Federation, we consider it necessary to pay attention to the existence of some peculiarities in the approaches to defining the system and division of functions between the bodies that exercise specialized state control over the use and protection of land. Thus, in Ukraine, the Ministry of Agrarian Policy and Food of Ukraine is responsible for carrying out measures to formulate and ensure the implementation of state policy in the field of land relations, topographic-geodetic and cartographic activity, supervision (control) in the agro-industrial complex. Almost similar functions in the Russian Federation are performed by the Ministry of Economic Development of the Russian Federation, except for the state monitoring of agricultural land.

In the Russian Federation the Ministry of Agriculture of the Russian Federation is responsible for the activities of the state protection of agricultural land (for the state monitoring of such land), as well as the function of exercising control over land reclamation. The Ministry of Natural Resources and Ecology of the RF regulates in the field of study, use, reproduction and protection of natural resources, including subsoil, water bodies, forests, as well as regulation in the field of environmental protection. In Ukraine, such responsibilities are concentrated in the hands of one ministry – the Ministry of Ecology and Natural Resources of Ukraine.

Another link in the system of central executive bodies entrusted with the functions of exercising state control over the use and protection of land is agencies, inspections and services. In Ukraine, the central position in the system of these bodies is currently occupied by the State Service of Ukraine for Geodesy, Cartography and Cadaster, whose activity is directed and coordinated by

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the Cabinet of Ministers of Ukraine through the Minister of Agrarian Policy and Food. The State Environmental Inspection of Ukraine acts as the central executive authority and ensures the implementation of the state policy on the implementation of state supervision (control) in the field of environmental protection, rational use, reproduction and protection of natural resources, carries out state supervision (control) on observance of the legislation on land use and protection. Also control in the field of land use and protection is exercised by the State Water Resources Agency of Ukraine, State Forest Resources Agency of Ukraine, State Service of Geology and Mines of Ukraine, State Sanitary and Epidemiological Service of Ukraine, Ministry of Infrastructure of Ukraine, State Property Fund, Ministry of Regional Development and Construction of municipal services of Ukraine and others.

In the Russian Federation, the list of central executive authorities that exercise state supervision in the field of land protection is enshrined in the RF Government's Decree of 02.01.2015 No. "On Approval of the Regulation on State Land Supervision" (2015). In accordance with this Regulation, state land supervision is carried out by the Federal Service for State Registration, Cadaster and Cartography (carries out state land supervision on observance of requirements for re-registration by legal entities of the right of permanent (indefinite) use of land plots for the right to lease land plots or to purchase land plots; legislation on the use of land for the intended purpose in accordance with their belonging to a particular category of land and (or) purposeful use, etc. (Article 3 of the Regulations); by the Federal Service for Veterinary and Phytosanitary Supervision (carrying out state land supervision over the observance of the requirements for the prohibition of the unauthorized removal, movement and destruction of the fertile soil layer, as well as damage to land as a result of violation of the rules for handling pesticide, agrochemicals or other substances hazardous to the health and the environment of production and consumption; requirements and mandatory measures to improve land and protect soil from wind, water erosion and prevent others processes that impair the quality of land, etc. (Article 4 of the Regulations) and by the Federal Service for Supervision in the Field of Environmental Management (oversees compliance of: requirements and mandatory measures to improve land and protect soil from wind, water erosion and prevent others processes that impair the quality of land; the regime of use of land and forests in water protection zones and coastal strips of water bodies (Article 5 of the Regulation) and their territorial bodies.

It should be separately noted that, given the federal structure of the Russian Federation, the subjects of the Federation may be granted the power of the Russian Federation in the sphere of exercising state control over the use and protection of land, since land relations are subject to joint management of the Russian Federation and the subjects of the Russian Federation. To realize their powers, the latter form the respective executive bodies of the subjects of the Federation, taking into account the specificity of the respective regions. For example, the Decree of the Government of the Arkhangelsk Region of March 4, 2014 No. 92-pp established the Ministry of Natural Resources and Forestry Complex of the Arkhangelsk Oblast, taking into account the natural and climatic features of the region. Land management is centralized in Ukraine (Decree of the Government... 2014).

CONCLUSIONS

From the conducted analysis we can conclude that today in Ukraine there is a more extensive system of state bodies, which are entrusted with the duties of exercising state control in the field of land protection, which, in our opinion, does not contribute to improving the effectiveness of land relations, but on the contrary, complicates the exercise of powers, gives rise to their duplication, which significantly complicates the practical implementation of the powers vested in the authorities in the area under study.

One of the main directions of formation and development of a system of balanced land use is the improvement of mechanisms of land relations development, which consists in the definition of administrative-legal, organizational and economic mechanisms with a specific set of tools for enhancing the ecological, economic and social effect in the land resource sphere. Land development mechanisms are an integrated set, a system, they are closely interconnected, however, they retain

their individual meaning and have an ultimate environmental and social purpose, and therefore are environmentally and socially oriented in accordance with the concept of sustainable development. These mechanisms help to solve important problems in the economic, environmental and social aspects of public relations regarding land ownership, use, protection and reproduction in Ukraine, namely: improving the legal framework for regulating land relations, including the adoption and revision of the laws of Ukraine; general inventory of the territory of the state; increasing the level of land management support for land reform; full separation of powers of state and local self-government bodies to manage land relations; consolidation and prevention of further subdivision of agricultural land allocated for agricultural commodity production; improvement of the mechanism of economic stimulation of rational use, protection and reproduction of land irrespective of ownership and purpose. Improvement of property relations on the basis of an improved mechanism will inevitably lead to positive changes in the system of protection and reproduction of land resources. From an economic point of view, the investment attractiveness of agricultural land use should increase, and thanks to more rational use of the natural resource potential of land, production efficiency will increase.

RECOMMENDATIONS

This study is a thorough analysis of the construction of an administrative and legal mechanism for the protection of land relations in Ukraine and Russia. In the course of the work, a comparative-legal characterization of the administrative-legal mechanism of protection of land relations in two countries was carried out, legislative peculiarities were analyzed. In our opinion, it would be appropriate to carry out an analysis on the optimization and improvement of the activities of state bodies in the field of land relations protection in the future.

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