

UDC 349.41

DOI <https://doi.org/10.24144/2788-6018.2024.04.44>

REALIZATION OF THE PROPERTY RIGHT TO LAND ON THE TERRITORY OF UKRAINE DURING THE STATE OF WAR

Popovych K.,

postgraduate,

department of civil law and procedure,

State Higher Educational Institution

"Uzhhorod National University"

ORCID: 0009-0008-3218-2925

Popovych K. Realization of the property right to land on the territory of Ukraine during the state of war.

The article is devoted to the study of the peculiarities of the implementation of the property right to land on the territory of Ukraine during the state of war. Emphasis is placed on the fact that, despite the guarantee of land ownership proclaimed by the Constitution of Ukraine, the full-scale invasion significantly affected almost all spheres of public life.

This influence is also observed in the implementation of the provisions of the Land Code of Ukraine, in particular regarding the implementation of the right to free privatization of land. It is determined that on November 19, 2022, amendments were made to Subclause 5, Clause 27 of Chapter X of the Land Code of Ukraine which has prohibited the free transfer of state and communal land into private ownership from now on.

It is indicated that, as an exception, free privatization is allowed for those owners on whose land plots are located real estate objects, as well as in the case of free privatization of plots transferred for use before the entry into force of the specified changes.

Particular attention is paid to the issues of ensuring the ownership of land of military personnel, whose free privatization is also guaranteed by the Laws of Ukraine "On social and legal protection of military personnel and members of their families" and "On the status of war veterans, guarantees of their social protection."

The relevant judicial practice, which is devoted to the issue of recognition of illegal negligence regarding the failure to consider within the time limits specified by law requests for a permit for the development of a land management project or for the approval of a land management project and appeals against the refusal of the subject of authority to grant a permit for the development of a land management project / approval of a land management project, has been analyzed.

It is proven that the provisions of Subclause 5, Clause 27 of Chapter X "Transitional Provisions" of the Land Code are an additional legal basis for refusing to grant permits for the development of land management projects or approving land management projects and granting ownership of land plots.

Key words: land ownership, free privatization, Land Code of Ukraine, martial law, military personnel.

Попович К.Г. Реалізація права власності на землю на території України в умовах воєнного стану.

Стаття присвячена дослідженню особливостей реалізації права власності на землю на території України під час дії правового режиму воєнного стану. Робиться акцент на тому, що, незважаючи на проголошену Конституцією України гарантію права власності на землю, повномасштабне вторгнення істотно вплинуло майже на всі сфери суспільного життя.

Такий вплив прослідковується і на реалізацію положень Земельного Кодексу України, зокрема в частині реалізації права на безоплатну приватизацію земельної ділянки. Визначається, що 19 листопада 2022 року було внесено зміни до пп. 5, п. 27 розділу X Земельного кодексу України щодо безоплатної передачі земель державної, комунальної власності у приватну власність, яка відтепер заборонялася.

Вказано, що, як виняток допускається безоплатна приватизація тим власникам, на земельних ділянках яких розташовані об'єкти нерухомого майна, а також у випадку безоплатної приватизації ділянок, переданих у користування до набрання чинності вказаними змінами.

Окрема увага приділяється питанням забезпечення права власності на землю військовослужбовців, безоплатна приватизація для яких гарантується також Законами України «Про соціальний і правовий захист військовослужбовців та членів їх сімей» та «Про статус ветеранів війни, гарантії їх соціального захисту».

Проаналізовано судову практику, що присвячена питанням визнання протиправною бездіяльності щодо нерозгляду у визначені законами строки клопотань про надання дозволу на розробку проєкту землеустрою або про затвердження проєкту землеустрою та оскарження відмов суб'єкта владних повноважень у наданні дозволу на розробку проєкту землеустрою / затвердженні проєкту землеустрою.

Доводиться, що положення п.п. 5 п. 27 розділу X «Перехідні положення» Земельного Кодексу є додатковою законодавчою підставою для відмови у наданні дозволів на розробку проєктів землеустрою або затвердження проєктів землеустрою та надання земельних ділянок у власність.

Ключові слова: право власності на землю, безоплатна приватизація, Земельний кодекс України, воєнний стан, військовослужбовці.

Introduction. According to the provisions of the Constitution of Ukraine, ownership of land, as the main national wealth, is guaranteed – it is acquired and realized by citizens, legal entities, and the state exclusively in accordance with the law [1]. Nevertheless, in connection with the introduction of state of war, many “regular” procedures were put on hold, in particular, the process of free privatization of land, the procedure for the implementation of which was provided for by the provisions of the Land Code of Ukraine. Accordingly, the issue of the impact of such a prohibition on the rights of Ukrainian citizens, in particular those who defend the sovereignty and independence, as well as the territorial integrity of our state, at the cost of their own lives, remains appropriate and relevant.

The current condition of the issue. The scientific interest in the issues of securing and implementing land ownership became the subject of scientific research by L. Belyo, O. Bryginets, A. Vovk, I. Grinberg, O. Zygrii, Yu. Korneeva, I. Kostyashkina, O. Litoshenko, S. Naumenko, V. Nosik, O. Plutalova, A. Pravdyuk, Yu. Shvets and many other scientists. However, the full-scale invasion significantly affected all spheres of public life, including the exercise of citizens' rights, among which is the right to own land, and the established procedures, as well as the free privatization of land plots.

The purpose of the article is to study the implementation of the right to own land on the territory of Ukraine under the state of war.

An overview of the main material. In accordance with the requirements of the Land Code of Ukraine, every citizen has the right to acquire land plots by transferring them free of charge from state and communal lands (Clause b, Part 1, Article 81 of the Land Code of Ukraine) [2].

The Land Code of Ukraine also provides for the maximum size of such plots (in particular, up to 2.0 hectares in the case, for example, of running a personal peasant farm), but it is specified that such acquisition is one-time in the case of each type of use. That is, every citizen has the right to obtain private ownership of up to six plots of land for different purposes (according to the list of Article 121 of the Land Code).

Nevertheless, the state of war in Ukraine affected all spheres of life, including the regulation of land relations. The first legislative acts adopted at the beginning of the war were aimed at protecting food security. At the same time, access to registers and the cadastre was closed, and free transfer of land plots into ownership was prohibited.

On November 19, 2022, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding the Restoration of the System for Registration of Agricultural Land Lease Rights and Improvement of Land Protection Legislation” entered into force, which, in particular, amended Subclause 5, Clause 27 of Chapter X of the Land Code of Ukraine regarding the free transfer of state and communal land into private ownership [3].

This norm of the law determined that the free transfer of state and communal land into private ownership, the granting of permits for the development of land management documentation for the purpose of such free transfer, and the development of such documentation are prohibited. The provisions of this subsection do not apply to the free transfer of land plots into private ownership to the owners of real estate objects (buildings, structures) located on such land plots, as well as to the free transfer into private ownership of land plots to citizens of Ukraine, transferred for use before the entry into force of this by the Code.

Therefore, the right to free ownership of a plot of land during the state of war is available only to citizens of Ukraine who own real estate objects, including individual residential buildings, garages, garden houses, and other buildings, as private property rights, which are issued in accordance with the current legislation.

In addition, citizens who were given land plots for use before January 1, 2002, have the right to receive land plots free of charge.

At the same time, documents that confirm that a citizen has the right of use can be, in particular, the state acts on the right to permanent use of land plots (Article 23 of the Land Code of Ukraine in the 1992 wording, the original version of Article 126 of the current Land Code), state acts on the right land ownership (Article 23 of the Land Code of the Ukrainian SSR of 1990), entries in the land-cord books of agricultural enterprises and organizations, entries in the farm books of village

councils, entries in the register books of the executive committees of city and village councils (Article 20 of the Land Code of the Ukrainian SSR of 1970), state acts on the right of lifelong inherited ownership of land, an agreement on the provision of a land plot for indefinite use for the construction of an individual residential building, a deed of taking a land plot in kind.

A particular attention is paid to the issue of the implementation of the right of ownership of the land of military personnel. Hence Art. 17 of the Constitution of Ukraine emphasizes that the state provides social protection for citizens of Ukraine who are in service in the Armed Forces of Ukraine and other military formations, as well as their family members.

At the same time, two special laws of Ukraine already clarify this provision, in particular, "On social and legal protection of military personnel and their family members" dated 20.12.91 No. 2011 and "On the status of war veterans, guarantees of their social protection" dated 22.12.93 No. 3551.

Thus, in accordance with Part 6 of Art. 12 of Law No. 2011, military personnel who have served in the military for at least 17 years and need to improve living conditions have the right to receive a plot of land for the construction and maintenance of a residential building, farm buildings and structures in the settlements chosen by them for residence, taking into account the established order [4].

Local self-government bodies are obliged to provide land plots and, within the limits of the powers defined by law, assistance in construction to military personnel, parents and family members of military personnel who died (died) or went missing during military service, as well as to persons released from military service who became persons with disabilities during military service, if they expressed a desire to build private residential buildings.

At the same time, Clause 14, Part 1, Art. 12 of Law No. 3551 stipulates that participants in hostilities (Articles 5, 6) are granted the following benefits, in particular, priority allocation of land plots for individual housing construction, horticulture, and gardening [5].

Also according to Paragraph 2 Clause 15 Part 1 Article 15 of Law No. 3551, the families of deceased war veterans (Article 10) and the families of deceased Defenders of Ukraine (Article 101) are granted the following benefits, in particular, land plots for individual housing construction, horticulture, and gardening are allocated to the specified persons in priority order.

At the same time, in order to ensure such "priority", the order of the Cabinet of Ministers of Ukraine of August 19, 2015 No. 898-r "Issue of providing land plots to the participants of

the anti-terrorist operation and the families of the deceased participants of the anti-terrorist operation" recommends posting information about the location, destination on one's official websites and the area of land plots that can be allocated to the participants of the anti-terrorist operation and the families of the dead participants of the anti-terrorist operation and to consider in priority order the appeals of the participants of the anti-terrorist operation and the families of the dead participants of the anti-terrorist operation regarding the allocation of land plots to them [6].

At the same time, priority rights do not exclude the possibility of exercising rights to other land plots for a specific purpose, the norms of free privatization of which are enshrined in Art. 121 of the Land Code, not in priority order, and having the status of a citizen of Ukraine.

Realizing that the land bank of free reserve land is extremely limited, and the number of military personnel, and even more so, participants in hostilities, is constantly growing, the lawmaker registered two draft laws of Ukraine in the Verkhovna Rada of Ukraine during 2017-2018, which should become an alternative for implementation of the priority right to land by receiving monetary compensation in exchange for the realized ownership right to the land plot:

- draft Law of Ukraine No. 6605 "On Amendments to the Law of Ukraine "On the Status of War Veterans, Guarantees of Their Social Protection" Regarding Guarantees of Providing War Veterans with Land Plots", which should regulate the amount of monetary compensation, which is determined by the average (base) value one sq. m of land in populated areas (according to indicators from the normative monetary valuation of land in populated areas) and the normative monetary valuation of 1 hectare of agricultural land per year on average in Ukraine;

- draft Law of Ukraine No. 7511 "On Amendments to the Land Code of Ukraine and some legislative acts of Ukraine on ensuring the implementation of guarantees by participants in hostilities and persons equated to them, including participants in the anti-terrorist operation, the Revolution of Dignity and their families for receiving benefits land plots, as well as the cessation of corruption abuses in the field of state and communal land management", which should regulate the mechanism for determining the amount of monetary compensation, which will prevent corruption risks, reducing or overestimating the amount of payment for a land plot and provide the opportunity to pay the same monetary compensation to every citizen regardless from his place of registration or residence.

However, the specified mechanisms of compensation for the unrealized primary right to

land remained only in the form of draft laws of Ukraine.

As already mentioned, during the state of war, land relations are regulated taking into account the following features, in particular, the prohibition of the free transfer of state and communal lands into private ownership, the granting of permits for the development of land management documentation for the purpose of such a free transfer, the development of such documentation. In the wake of the implementation of this legislative amendment, the question arose of ensuring a balance between this legislative norm and the need to provide military personnel with land plots that they could claim according to other laws.

Mostly, the specified rule was applied in the context of such claims:

1) on the recognition of illegal negligence regarding the failure to review within the time limits specified by the Land Code requests for granting a permit for the development of a land management project or for approving a land management project;

2) on the appeal of the refusal of the subject of authority to grant permission for the development of the land management project / approval of the land management project.

The ambivalence of the application of Subclause 5, Clause 27 of Chapter X "Transitional Provisions" of the Land Code by courts of first instance arose in the issue of effective protection of the violated right of a person, in relation to which the above-mentioned negligence of the subject of authority was admitted.

Thus, in the decision of the Volyn District Administrative Court dated 10.10.2022 in case No. 140/5459/22, the city council is obliged to re-examine the claimant's application for approval of the land management project [7].

At the same time, the court indicated that taking into account that the legislator established restrictions on the disposal of land plots and determined the specifics of the regulation of land relations during the martial law period, this deprives the possibility of making a decision on the approval of the land management project, this may be the basis for applying to the court in accordance with Article 378 of the Code on Administrative Proceedings regarding the postponement of the execution of a court decision in the event that it enters into force.

Instead, in case No. 400/3991/22, the Mykolaiv District Administrative Court recognized the illegal land use and obliged the subject of authority to consider the relevant petition and make a decision in accordance with Part 7 of Art. 118 of the Land Code [8].

Another version of his vision of the application of Subclause 5, Clause 27 of Chapter X "Transitional

Provisions" of the Land Code was demonstrated by the Lviv District Administrative Court, deciding case No. 380/9782/22 [9].

In the decision dated November 23, 2022, in the case in question, the court found the city council's negligence in not considering the request for approval of the land management project to be unlawful and ordered it to consider the relevant request within two weeks after the end of the state of war in Ukraine.

It is worth noting that in all the cases cited above, the courts took into account the date of the petition, namely, whether it was submitted before the introduction of the state of war or after its proclamation.

Regarding the decisions of the subject of power to refuse to grant permission / approve the land management project during the period of the state of war, judicial practice is more stable.

In case No. 440/6055/22, where the decision on the refusal to grant a permit for the development of a land management project was challenged, the Poltava District Administrative Court rejected the claim, referring to the fact that during the state of war, the granting of permits for the development of documentation projects for free privatization is expressly prohibited [10].

In the resolution of the Eighth Administrative Court of Appeal dated 26.12.2022 in case No. 260/2632/22, it is emphasized that the Law establishes an indisputable prohibition during the state of war to take actions related to the free transfer of state and communal land to private ownership, granting permits for development of land management documentation for the purpose of free transfer and formation of a land plot. The legislator did not establish in what form the specified prohibition should be expressed during the consideration of the disputed issue, therefore, the refusal to approve the project with land management regarding the transfer of the land plot to ownership in the form of a decision of the competent authority is a material expression of such a prohibition [11].

Therefore, the courts mostly took the position that the provisions of Subclause 5, Clause 27 of Chapter X "Transitional Provisions" of the Land Code serve as an additional legal basis for refusing to grant permits for the development of land management projects or approving land management projects and granting ownership of land plots.

Conclusions. It can be concluded that, despite the right of land ownership guaranteed by the Constitution of Ukraine, the deployment of a full-scale invasion significantly changed the implementation of the usual procedures, which included the free privatization of land plots by citizens.

Such changes had a significant impact on the rights of military personnel, whose privatization rights were also recognized by other laws, in particular "On social and legal protection of military personnel and members of their families" dated 20.12.91 No. 2011 and "On the status of war veterans, guarantees of their social protection" from 22.10.93 No. 3551.

This is also justified by the relevant judicial practice, which demonstrates that the prohibition of the free transfer of state and communal land into private ownership, which is provided for in Subclause 5, Clause 27 of Chapter X "Transitional Provisions" of the Land Code prevails over other provisions. This norm is recognized as an additional legal basis for refusing to grant permits for the development of land management projects or approving land management projects and providing land plots for ownership.

REFERENCES:

1. Constitution of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.
2. Land Code of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/2768-14#Text>.
3. On Amendments to Certain Legislative Acts of Ukraine Regarding the Restoration of the System of Registration of Lease Rights for Agricultural Land Plots and Improvement of Land Protection Legislation: the Law of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/2698-20#Text>.
4. On social and legal protection of military personnel and their family members: the Law of Ukraine. URL: <https://zakon.rada.gov.ua/go/2011-12>.
5. On the status of war veterans, guarantees of their social protection: the Law of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/3551-12>.
6. Issue of providing land plots to the participants of the anti-terrorist operation and the families of the deceased participants of the anti-terrorist operation: the Order of the Cabinet of Ministers of Ukraine dated August 19, 2015 No. 898-r. URL: <https://zakon.rada.gov.ua/go/898-2015-%D1%80>.
7. The Decision of the Volyn District Administrative Court dated 10.10.2022 in case No. 140/5459/22. URL: <https://reyestr.court.gov.ua/Review/106686673>.
8. The Decision of the Mykolaiv District Administrative Court dated 31.10.2022 in case No. 400/3991/22. URL: <https://reyestr.court.gov.ua/Review/106511437>.
9. The Decision of the Lviv District Administrative Court dated 23.11.2022 in case No. 380/9782/22. URL: <https://reyestr.court.gov.ua/Review/107486244>.
10. The Decision of the Poltava District Administrative Court dated 21.11.2022 in case No. 440/6055/22. URL: <https://reyestr.court.gov.ua/Review/107415330>.
11. The Resolution of the Eighth Administrative Court of Appeal dated 26.12.2022 in case No. 260/2632/22. URL: <https://reyestr.court.gov.ua/Review/108084374>.