

**SPECIAL PROTECTION OF THE UKRAINIAN LANDS AS THE MAIN
NATIONAL WEALTH: THEORETICAL AND LEGAL ASPECTS**

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Abstract. With a unique soil cover, Ukraine has been leading in the production and world export of grain crops and sunflower, providing grain needs for 400 million people in recent years. However, an unbalanced scarce farming system has caused increased soil degradation and a decrease in its fertility level.

In connection with this, the relevance of the protection and rational use of land has increased significantly, as the tendency to worsen the quality of land has intensified, and sometimes it became a crisis. Russian aggression has led to the seizure and destruction of part of the land resource, soil cover pollution, mining of significant territories, direct physical damage to Ukrainian black soil.

The article is aimed at studying the implementation in the country of the constitutional provision for the special protection of land as the main national wealth, as well as the main directions of ensuring the reproduction and increase of soil fertility. The relationship between land and civil law is analyzed, the peculiarities of the presentation of the provisions of Article 14 of the provisions of the Constitution of Ukraine, Civil Code, Law of Ukraine "On Land Protection" are disclosed.

The necessity of improving a number of provisions of the Law of Ukraine "On Land Protection", the legal regime of especially valuable lands is substantiated, preservation of independence of land law as a separate legal system.

Keywords: special protection of land, constitutional status, land legislation, categories of land, national wealth, especially valuable land, land resource potential

Relevance. Protection and rational use of land are recognized as one of the main tasks of society, since overcoming hunger and achieving food security are in second place among the 17 Sustainable Development Goals set by the United Nations.[1] The amount of food due to the use of land reaches 98%. At the end of 2021, Ukraine provided almost 10% of world wheat exports, 16% of corn and 55% of trade in sunflower oil.

Ukraine, having a land fund consisting of almost 2/3 of black soil and meadow-black soils, so far, occupies one of the leading places in the world in terms of the qualities of soil resources, and the concept of "Ukrainian black soil" remains our image brand. It is black soil that is an overwhelming part of the main national wealth, which characterizes the deep humus layer, also agronomically valuable structure, a significant supply of nutrients that determine their high potential fertility.[2]

In accordance with the concept of the national target program for the use and protection of land, which was approved by the Cabinet of Ministers of Ukraine the current state of the lands of the vast part of Ukraine is characterized as tense and sometimes crisis, with a tendency to worsen. The main reason for this situation is due to the irrational use of land, deterioration of their quality in the absence of a unified state system of land protection.[3]

In connection with the armed Russian aggression against Ukraine, a significant part of the territory needs demining, cleaning of fortifications, including restoration of the surface layer of the soil.

The Constitution of Ukraine [4] as a legal act of the highest legal force in the state established that "land is the main national wealth, that is protected by the State"

(Article 14). In this regard, there is a question about the legal content that the legislator has entered into this legal order, and how it should be reflected in the legislation, which is accepted and acts on its implementation.

Analysis of recent publications.The problem of legal support for the protection of land as the main national wealth of Ukraine was investigated by domestic soil scientists and economists S. Balyuk, L. Novakovs'kyi, O. Tarariko, as well as legal scholars V. Andreytsev, V. Yermolenko, T. Kovalenko, A. Miroshnychenko, V. Nosik, A. Ripenko, V. Sydor, M. Shul'ha. At the same time, their works are devoted to the analysis of only certain aspects of this problem.

The purpose of the article is to determine the content of the constitutional provision on land as the main national wealth, which is especially protected by the state, as well as the main directions of ensuring the implementation of this constitutional provision in the adopted The basic law of the country of legislative acts.

The results of the study

A characteristic feature of our Constitution, which distinguishes it from the constitutions of other states, is the granting of a special constitutional status to the country's land resources. It contains the social importance of the land for the Ukrainian people and the principle of its special protection, which are designed to ensure the rational use of land, reproduction and increase of soil fertility, proper regulation of land relations.

As an object of the law of the Ukrainian people, property obliges (Article 13). The use of property cannot harm the rights, freedoms and dignity of citizens, the interests of society, environmental situation and natural qualities of the land (Article 41).

In the system of laws as sources of land law of Ukraine, which determine the legal content of the concept of "land is the main national wealth", under special protection of the state", the leading place is occupied by the Land Code of Ukraine [5] and the Law of Ukraine "On Land Protection" [6]. The Land Code is an integrating and cementing basis for the formation and development of land legislation, details and develops the provisions of the Constitution of Ukraine on the

regulation of the regime of use and special protection of land as the national wealth of the country. The Law of Ukraine "On Land Protection" is a normative legal act in which legal norms regarding protection of the country's land fund are most developed and detailed. The duty of the state to ensure special protection of land, that is enshrined in article 14 of the Basic Law of the country, is actually a public law norm, which may be an integral part of the field of public or public-private law. That is why land law as a public-private right of our legal system is designed to ensure the implementation of the constitutional provision that the land is the main national wealth, which is under the special protection of the state.

As for the Civil Code of Ukraine [7], which contains a separate chapter 27 "Ownership of land (land)", it is not a source of land law by direct indication of Article 9 of the Civil Code of Ukraine. It states that the provisions of this Code apply to the regulation of land relations (relations of nature management) only in the case of, when such relations are not governed by special legislation. Land legislation and is special in relation to civil in terms of regulation of land relations. Since the relations of land ownership are quite fully regulated by the Land Code of Ukraine, the provisions of Chapter 27 of the Civil Code of Ukraine do not apply to the regulation of land relations.

However, some norms of the Civil Code of Ukraine, which are not in the Land Code of Ukraine and other acts of land legislation, may apply to the regulation of land relations. For example, such norms include civil law provisions on combating illegal development of land plots and the implementation of unauthorized construction on them.

The relationship between land and civil law as a special and general branches of law in terms of regulation of land relations is due to the need ensuring the implementation of the constitutional provision that land is the main national wealth, which is under special protection of the state. Since the legal mechanism for its implementation is public law, and not private law, it cannot be formed through the norms of the private law industry, what is the civil law of Ukraine.

The content of articles of the Constitution of Ukraine (Article 14), the Land

Code of Ukraine (Article 1), the Civil Code of Ukraine (Article 373) indicate that they have one and the same constitutional version, namely "The earth is the main national wealth under the special protection of the state". At the same time, in the Law of Ukraine "On Land Protection", the provisions on the protection of land as national wealth do not fully comply with the content of the Constitution of Ukraine (Part 2, Article 14). First of all, instead of national wealth as an object of special protection, all lands within the territory of Ukraine are considered to be the object of this protection. Secondly, in the title of Article 2 of the Law "On Land Protection", land is recognized as an object of non-special protection, and the object of simply protection (ordinary protection), although further in the text of this article the land is recognized as an object of special protection.

Land as the main national wealth is associated by individual authors, only with agricultural lands that have fertility and are used for the production of agricultural products. Both in the Land Code of Ukraine and in the Law of Ukraine "On Land Protection", the terms "land protection" have the same wording. The term "soil protection" is defined in the Law "On Land Protection", but it does not apply in the text of the Law itself. As for the concept of "special protection of land", then for the object "all lands within the territory of Ukraine" and for lands as the main national wealth. There is no official interpretation

At the same time, we believe that the term "under special protection" used in relation to land as the main national wealth in Article 14 of the Constitution of Ukraine is not a political provision, but a legal order, ignoring which in the land legislation of Ukraine seems unacceptable. In our opinion, under the special protection of land as the main national wealth of Ukraine should be understood the right and obligation of the state to establish such a legal land regime, which is most in the interests of the Ukrainian people. It is the state, as an expression of the interests of the Ukrainian people represented by the Verkhovna Rada of Ukraine, that should implement such a legal mechanism of use in the legislation and protection of land resources, which ensures the most efficient use of land under the dominant condition of their preservation as a means of production, operational

basis and natural resource of current and future generations of the Ukrainian people.

In the Land Code of Ukraine and the Law of Ukraine "On Land Protection" the constitutional provision on land as the main national wealth, under special protection of the state, is detailed in the legal norms that determine the basic requirements for the protection of land resources of Ukraine.

First of all, this constitutional provision is manifested in the principles of land legislation (Article 5 of the Land Code of Ukraine), as well as in Section II of the "Land of Ukraine" regarding the categories of land that have a special legal regime; Section III – Right to Land; Section VI – Land protection; Article 150 "Especially valuable land and the procedure for termination of rights to them".

Therefore, the land is the main national wealth, which is under special protection of the law, the "red line" passes through the entire Code. In our opinion, the content of this article should be understood in such a way that the land acts as the main national wealth, which is especially protected by the state, in any land legal relations, including as legal relations the use and protection of land dominated by public law norms, and legal relations regarding the acquisition and implementation of land rights, in which private law norms play an important role. So, this means that the peculiarity of land law as an area of the legal system of Ukraine is its public-private nature. As rightly stated in the literature, land as the basis of national wealth is primarily the sphere of public-legal relations[8]. Moreover, public-legal and private law norms of land law are not divided sectorally – in exclusively public-legal or private law institutions and sub-institutions – and are integrated present in the vast majority of them. That is why the implementation of Article 14 of the Constitution of Ukraine regarding the recognition of land as the main national wealth, which is under the protection of the state, might be carried out with the help of the entire set of norms of land law of Ukraine, since environmental law ensures the protection of land as a natural resource, and civil law recognizes land as immovable property and ensures the realization of only property rights to land.

In this regard, we believe that the new codification of land legislation should not lead to the division of land legal norms into civil law and environmental law, with their subsequent inclusion in accordance with the Civil Code of Ukraine or the environmental law. The experience of legal regulation of land relations proved the validity of the doctrinal provision about the expediency of preservation in the 21st century independence of land law as a separate branch of the legal system of Ukraine.

Thus, at present, the dynamics of land relations is determined by two factors: the change in the state and increase in types of land as objects of land relations, and the complication of social activities related to the use of land, in particular, the attachment of many land relations to one or more types of land. That is why the dynamics of land relations requires the specialization of legal norms that regulate land relations and the localization of legal regulation of these relations. This determines the expediency of maintaining the institution of land division into categories that have a special legal regime.

At the same time, in recent years, the process of deregulation of land relations has become widespread in land legislation, which is associated with the abolition of not only individual legal norms, but also certain groups and institutions of a public-law nature. Such concept gave some researchers reason to propose the abolition of the institution of land division into categories as a means of ensuring the targeted use of land. Yes, A. Rypenko, justifying the idea formulated by him that the entire territory of the country without exception is the spatial basis for urban planning and arguing for the principle of universality of urban planning, expresses a proposal to cancel the "division of Ukrainian lands into categories"[9]

We suppose that this opinion is based on an incorrect interpretation of the essence of the land legislation of Ukraine. After all, it does not provide for the physical division of the country's lands into land categories, although the corresponding terminology is used in Articles 19–20 of the Land Code of Ukraine. However, the analysis of these and other articles of this Code shows that it does not provide for the division of land into separate categories of land as part of the land

fund of the country, but the division of the general legal regime of lands of Ukraine into separate categories of legal regimes of land: the legal regime of agricultural lands, the legal regime of lands water fund, etc. The proposal of A. Ripenka is aimed at destroying the basic principles of land law as a branch of the legal system of Ukraine: after all, it is based on the localization and specialization of legal regulation of land relations, the objects of which are land of different quality and social purpose. As an argument in favor of this proposal, A. Ripenko calls the need to move away from a rather rigid system of establishing a target purpose for each land plot and replace this system with zoning. He believes that categorization is an outdated legal approach that promotes corruption in land relations, while zoning operates with a much larger number of permitted uses compared to the nine categories of land, which significantly increases the variability of planning.

Undoubtedly, zoning is a better way to ensure the intended use of land than assigning a specific purpose to each plot. But we believe that canceling the division of the legal regime of the lands of Ukraine into separate categories of their legal regimes will make it impossible or significantly reduce the potential of territory zoning as a way to ensure their targeted use. First, the system of assigning a target purpose to each land plot is not one that is determined by the division of land into categories. Secondly, the determination of the legal regime of land plots based only on planning documentation, as suggested by some authors, in the absence of legal norms that determine the specifics of the protection and use of different lands, will lead, in our opinion, to chaotic development, when the development of plots will be carried out at will government officials.

Finally, it should be taken into account that the division of Ukrainian lands into categories is a reflection in the legislation of two factors: the full development of the land territory of Ukraine and the absence of free land for new types of social activities and the need to maintain a ratio that is favorable for the environment, the development of the production base of society and infrastructure different types of land in the country. This function is provided by the categorization of lands, which is the division of the legal regime of the country's lands into separate categories of lands

and their varieties. Moreover, it is quite possible that new categories of the legal regime of lands will appear in the land legislation of Ukraine, which will differ from the already existing categories of the legal regime of lands of our state. At the same time, in order to bring the name of categorization in the land law of Ukraine to its essence, we propose to introduce the term "category of land legal regimes" instead of the term "category of land".

At the same time, a number of provisions of the Law "On Land Protection" require improvements. It is appropriate to emphasize that by Article 168 of the Land Code of Ukraine (Soil Protection), soils are also recognized as an object of special protection. But there is no such norm at all in the Law "On Land Protection". In our opinion, the existence of such differences in the constitutional provision on land as the main national wealth does not contribute to the formation of an effective legal mechanism for its implementation in the laws of Ukraine and should be eliminated.

As it turns out, it requires a clearer definition and consolidation in the legislation and legal regime of especially valuable land. As of November 1, 1989, their area as part of agricultural land amounted to 39.6 million hectares or 36.9% of their total area; and the size of arable land reached 14.2 million hectares (44,8 % total area of arable land). [10] These valuable arable land united mainly two types of soils – black soils are not eroded and dark gray ashed. In addition to these types of soils, peatlands with a peat depth of more than one meter belonged to especially valuable lands, as well as lands of the nature reserve fund and other nature conservation purposes, lands of historical and cultural purpose, lands of experimental fields of scientific and research institutions and educational institutions. According to the Law of Ukraine dated June 4, 2009 No. 1442 - VI, especially valuable are the lands granted for permanent use to the National Association "Masandra" and 8 enterprises that were part of it [11].

Particularly valuable soil types were divided into lands of national importance and lands of regional importance. By order of the Derzhkomzem of Ukraine dated October 6, 2003 № 245. The total area of valuable land was reduced

by 2.5 million hectares of agricultural land and by 3.2 million hectares arable. From the valuable of common values, in particular, removed certain areas on which it was later allowed to carry out the construction of non-agricultural objects. For example, in the province of the Southern coast of Crimea, the entire area (6019 hectares) is classified as regional valuable land, of which 1,508 hectares are arable, which are represented by brown gravel soils.

The measures taken to reduce the area of especially valuable land in the country are largely explained by the fact that the State Land Cadastre the boundaries of agricultural groups of each of the types of especially valuable soils were not introduced, and their contours were indicated only on soil maps, that is, they were not actualized, since large-scale soil surveys were not conducted in the country at intervals established by law.

The normative monetary assessment of agricultural lands began in 1995, and the classification of soils into especially valuable and ordinary, established based on the materials of soil evaluation and economic evaluation of lands in previous years, cannot be considered sufficiently substantiated. Indeed, against the background of other types of soils, unborn unsalted loam on loess rocks are valuable (the total area of arable land of this type is 11.5 million hectares). However, their true value can be confirmed only by a real monetary valuation of land and land. We have the materials of this assessment and should reflect it as part of the land cadastral documentation.

At the beginning of 2015, a draft law on exclusion from the Code of the category "especially valuable land" was submitted to the Verkhovna Rada of Ukraine. In 2019, this issue was again considered by the Parliament, but was not supported. Only the procedure for approval of the termination of the right to permanent use of valuable lands by the Verkhovna Rada of Ukraine and the specifics of the legal regime for the use of lands under peat bogs by the Cabinet of Ministers of Ukraine have been changed.

The largest is the area of especially valuable land in agricultural land. Protection of them without displaying information about them in the State Land

Cadastral is not possible. The law recognizes that lands designated for agricultural purposes must be provided primarily for agricultural production, and the determination of these lands must be carried out on the basis of data from the state land cadastre.

Conclusions and perspectives

Under the special protection of land as the main national wealth of Ukraine should be understood the right and obligation of the state to establish such a legal regime of lands, which is most in line with the interests of the Ukrainian people. It is the state, as an expression of the interests of the Ukrainian people represented by the Verkhovna Rada of Ukraine, that should implement such a legal mechanism of use in the legislation and protection of land resources, which ensures the most efficient use of land under the dominant condition of their preservation as a means of production, operational basis and natural resource of current and future generations of the Ukrainian people.

An important legal means of ensuring the legal regime of the lands of Ukraine as the main national wealth, under special protection of the state, is the division of the legal regime of land into its separate categories, which ensures the "addressability" of establishing legal requirements for their use, protection, definition of rights and obligations and responsibilities of all subjects of land relations - the state in the form of the system of state authorities, territorial communities, natural and legal entities.

According to Article 14 of the Constitution of Ukraine, land is the main national wealth and is under special protection of the state. That is why all land relations without exception are public-private, albeit with different ratios of signs of publicity and privacy. The implementation of a new codification of land legislation should not lead to the division of land legal norms into civil law and environmental and legal with their subsequent inclusion in accordance with the Civil Code of Ukraine or environmental law. The experience of legal regulation of land relations testified to the validity of the doctrinal provision on the expediency of preservation in the 21st century independence of land law as a separate branch of the legal

system of Ukraine –important legal precondition for ensuring the status of land as the main national wealth, which is under special protection of the state.

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ОСОБЛИВА ОХОРОНА ЗЕМЕЛЬ УКРАЇНИ ЯК ОСНОВНОГО НАЦІОНАЛЬНОГО БАГАТСТВА: ТЕОРЕТИКО-ПРАВОВІ АСПЕКТИ

Анотація. Маючи унікальний ґрунтовий покрив, Україна в останні роки займає провідні позиції у виробництві та світовому експорті зернових культур і соняшнику, забезпечуючи потреби у зерні для 400 млн людей. Однак, незбалансована дефіцитна система землеробства обумовила посилення деградації ґрунту та зниження рівня його родючості.

У зв'язку з вказаним актуальність охорони і раціонального використання земель значно зросли, оскільки тенденція до погіршення якісного стану земель посилилася, а подекуди він став кризовим. Російська агресія призвела до захоплення та знищення частини земельного ресурсу, забруднення ґрунтового покриву, мінування значних територій, прямого фізичного пошкодження українського чорнозему.

Метою статті є дослідження реалізації в країні конституційного положення щодо особливої охорони землі як основного національного багатства, а також основних напрямів забезпечення відтворення і підвищення родючості ґрунтів. Проаналізовано співвідношення між земельним і цивільним правом, розкрито особливості викладу положень статті 14 положень Конституції України у Земельному кодексі, Цивільному кодексі, Законі України «Про охорону земель».

Обґрунтовано необхідність удосконалення ряду положень Закону України «Про охорону земель», правового режиму особливо цінних земель, збереження самотійності земельного права як окремої правової системи.

Ключові слова: особлива охорона землі, конституційний статус, земельне законодавство, категорії земель, національне багатство, особливо цінні землі,

земельно-ресурсний потенціал.