

**IMPLEMENTATION OF LAND MANAGEMENT UNDER THE CONDITIONS
OF MARITAL LAW**

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Abstract. *On the basis of the analysis of the adopted changes to the land legislation and legal acts regulating land relations during the martial law, it was proved that their adoption was not done in a systematic way. It was found that the established special rules related to the implementation of land management and disposal of land plots for the period of martial law have different goals. It is about simplifying the procedure for disposal of agricultural lands – on the one hand, and on the other hand – activities in the field of land management, land cadastre and land valuation are complicated. It is substantiated that the changes that were made urgently highlighted the problem of imperfect land legislation in general, since the land legislation in force before the start of the war was designed exclusively for peacetime, because the issues of public access to sensitive information, such as: cartographic information, information on the purpose of land plots, names of land uses, names of subjects of land relations, etc.*

It has been established that the problem related to the provision of business entities and citizens under martial law for the provision of services for the preparation of land management documentation, topographical, geodetic and cartographic works has been resolved. For this purpose, the provision of special permits by the Security Service of Ukraine has been introduced.

The urgent need for systematic adjustment of land legislation, both in the context of

land management during the period of martial law and after its end (recovery period), as well as the need for harmonization of legislation in connection with European integration, which will become the basis for further research, is substantiated.

Key words: *land management, martial law, regulatory and legal support, management, special rules, land relations.*

Problem statement. The public interests related to the ownership, use and disposal of land plots under martial law have significantly changed and become more complex and require the establishment of special rules by which it would be possible to solve urgent problems in society. Difficulties have arisen for the following reasons: first, enterprises have relocated from the combat zone to safer areas; second, there is a need to provide housing for internally displaced persons; third, broken logistics links need to be restored; and fourth, the destruction caused by the hostilities has generated a lot of waste that needs to be disposed of.

These problems require urgent managerial decisions related to the formation of land plots for the appropriate purpose, their allocation, land management, registration of land rights, etc. Accordingly, the current legislation was designed exclusively for peacetime after the outbreak of hostilities in Ukraine, and the issues of public access to sensitive information such as cartographic information, information on the designated purpose of land plots, names of land uses, and names of land law entities were not regulated. Therefore, there is a need to revise it, analyse it and provide proposals for the prompt settlement of land issues.

Analysis of recent scientific research and publications. The study of the tasks of modern land management in the conditions of hostilities is devoted to the works of a small number of scientists. In particular, Y. Dorosh, A. Barvinskyi, O. Dorosh, L. Svyrydova formulated the tasks of land management caused by military aggression in the agricultural sector and substantiated the ways of their solution in the modern context when preparing land management documentation. They also emphasized the timely response to challenges related to the use and protection of land at the local level, for which they presented an algorithm for withdrawing land damaged by hostilities from agricultural circulation. In their opinion, "...the current Procedure for Land Conservation should be supplemented with criteria and indicators for determining the degree of mechanical

destruction and/or chemical contamination...”, which will allow determining the direction and scope of necessary restoration work and the amount of their funding [1, p. 6-7].

O. Dorosh, Y. Dorosh, A. Tarnopolskyi and A. Dorosh substantiate the need to find a balance in the issue of restricting access under martial law “...to open data (sensitive information) in the system of the State Land Cadastre...” in order to ensure both public interests and national security interests. The proposal of scientists is that “...access to data should be regulated and authorized...” and it is proposed to classify them by levels of sensitivity, by access regulations, by methods of use and display [2, p. 45].

Tretiak A., Tretiak V., Kapinos N., Hetmanchyk I., Tretiak R. have papers related to the calculation of the damage caused to land resources destroyed or disturbed by hostilities in territorial communities, land use of the nature reserve fund and other environmental protection purposes destroyed or disturbed by hostilities (it is substantiated that the standards given in current regulations can be used for calculations). The authors propose to develop and approve a number of regulatory and methodological documents for assessing the damage caused. They also provide the composition and content of comprehensive plans for territorial and spatial restoration and development of land use in the territories affected by hostilities, terrorist acts and emergencies [3].

At the same time, the adopted amendments to the land legislation and regulations governing land relations during martial law require in-depth study.

The purpose of the research is to study and analyse the amendments to land legislation and regulations in the field of land management adopted during the period of martial law and to provide proposals for their systematic adjustment.

Materials and methods of scientific research. To achieve the goal in the chosen area of research, the author's team used the following methods of scientific cognition: monographic, systematic analysis and generalization. Familiarization with the scientific works of scientists related to the implementation of land management under martial law was based on the monographic method of scientific cognition. When analysing the adopted amendments to the land legislation and legal acts regulating land relations under martial law, the method of systematic analysis was used. The method of generalization was used to summarize the information and provide relevant proposals.

Research results and their discussion. With the introduction of martial law in Ukraine, the resolution of issues related to the ownership, use and disposal of land plots was suspended for well-known reasons. In order to regulate these processes, it became necessary to adopt regulations that would establish special rules by which these problems would be resolved. In this regard, a number of legal acts have been adopted, such as: Law of Ukraine of 24.03.2022 No. 2145-IX “On Amendments to Certain Legislative Acts of Ukraine on Creating Conditions for Ensuring Food Security under Martial Law”; Law of Ukraine of 19 October 2022 No. 2698-IX “On Amendments to Certain Legislative Acts of Ukraine on Restoring the System of Lease Rights for Agricultural Land and Improving Legislation on Land Protection”; Law of Ukraine of 12.05.2022 No. 2254-IX “On Amendments to Certain Laws of Ukraine on Priority Measures for Reforming Urban Development”.

As a result of the adoption of the Law of Ukraine No. 2145-IX dated 24.03.2022 “On Amendments to Certain Legislative Acts of Ukraine on Creating Conditions for Ensuring Food Security under Martial Law”, the procedure for transferring land for use in wartime for the sowing campaign was simplified. According to the Law, the use of agricultural land must be subject to certain rules. In particular, agreements for the use of agricultural land plots under all forms of ownership are extended for one year in case of expiration of the agreement during martial law, without the will of the parties. Landowners and land users will not be liable in case of use of land plots for other purposes than their intended purpose. It is envisaged that agricultural land plots owned by the state or municipalities will be provided for use for commercial agricultural production. During martial law, there is a ban on: privatization of land plots on a free-of-charge basis; holding land auctions related to agricultural land plots of state or municipal ownership (it is about the rights of lease, emphyteusis, superficies) [4].

At the same time, for agricultural land plots of state or municipal ownership on the right of permanent use, it is possible to provide them for commercial agricultural production for a period of up to one year. Subject to this period, tenants and subtenants of agricultural land plots of all forms of ownership are entitled to transfer these rights to other persons by entering into an agreement in electronic form. Agricultural land of state or municipal ownership, land shares, unclaimed and unallocated land plots, as well as

those remaining in collective ownership, may be transferred for commercial agricultural production for a period of up to one year, subject to certain conditions. In particular, the rent cannot exceed 8% of the normative monetary value of the land plot, the person leasing the land plot is deprived of the right to compensate “...their own expenses for improving the land plot..., planting perennial plantations on the land plot... , changes in the land plot's facilities..., changes in the land plot's designated purpose..., use of common minerals, peat, forest, water bodies for own needs...”, “...construction of real estate on the land plot” [4]. The lease agreement is concluded exclusively in electronic form and is certified by qualified electronic signatures of both parties. The lease of a land plot is carried out without a land auction. As for the formation of a land plot during the lease, this process does not require entering information about it in the State Land Cadastre and assigning a cadastral number to it (the reason is the development of technical documentation on land management on land inventory, the content of which is simplified). The right to lease a land plot is not subject to state registration, while registration of a land lease agreement is the responsibility of the district military administration. According to Law 2145-IX, “a land lease agreement is not subject to renewal and conclusion for a new term and is terminated upon its expiration, at the same time, the lease agreement provides for the possibility of transferring several land plots under lease by one lessor” [4].

In order to ensure the restoration of the territories of settlements that have been damaged as a result of hostilities, terrorist acts, and diversions caused by emergencies, **the Law of Ukraine No. 2254-IX “On Amendments to Certain Laws of Ukraine on Priority Measures for Reforming the Sphere of Urban Development”** dated 12.05.2022, which defines a set of priority measures to eliminate existing problems within these administrative-territorial entities, was adopted. In particular, it is allowed to establish or change the designated purpose of a land plot without complying with the established rules regarding the relationship between the concepts of “type of designated purpose of a land plot” (in the case of changing its designated purpose to a new type) and “type of functional purpose of the territory” as defined by the relevant urban planning documentation. It also provides that in the event of establishing or changing the designated purpose of land plots, the provision of land plots owned by the state or

municipality for the purpose of locating production facilities of enterprises displaced from the military action zone, construction of river ports (terminals), production and transshipment complexes on the lease basis will be subject to a reasoned opinion of the authorized urban planning and architecture body of the relevant village, town or city council. At the same time, the use of lands (land plots) of the nature reserve fund, other environmental protection purposes, historical and cultural purposes, and the water fund (as an exception - for the location of river ports (terminals)) is not allowed for the above purposes. The placement of such facilities on land plots may not lead to a violation of restrictions on the use of land, taking into account two areas - development and protection of cultural heritage [5].

The problem of providing business entities and citizens under martial law with services for the preparation of land management documentation, topographic and geodetic and cartographic works has also been resolved. For this purpose, the Security Service of Ukraine has introduced special permits [6].

There have been changes related to the regulation of land relations as a result of the adoption of **the Law of Ukraine of October 19, 2022 No. 2698-IX “On Amendments to Certain Legislative Acts of Ukraine on Restoring the System of Registration of Lease Rights to Agricultural Land Plots and Improving Land Protection Legislation”**.

With regard to the amendments to the Land Code of Ukraine (in particular, clause “e” of Article 16; clause “f” of Article 17; part 8 of Article 20; part 12 of Article 123; part 3 of Article 161; part 3 of Article 201; Articles 207-209), as well as the amendments to the Law of Ukraine “On Land Management” (in particular, Article 38; clause “c” of part 3 of Article 50) indicate that losses of agricultural production arising from the withdrawal of agricultural land for other purposes not related to agriculture, restrictions on the rights of land owners and land users, including tenants, or deterioration of land quality caused by the activities of enterprises, institutions and organizations since the entry into force of Law 2698-IX (of 19.11.2022) are not subject to measurement [7]. These amendments to the legislation indicate that the determination of agricultural production losses is not taken into account in land valuation, and this important

economic component is also excluded from land management documentation (land management project for land allocation) [7].

Currently, information on restrictions on the use of land, in addition to the previously mentioned land management and urban planning documentation, should also be reflected in working land management projects and should be included in the State Land Cadastre (clause 5 of Article 111 of the LCU) [8]. According to Part 4 of Article 54 of the Law of Ukraine “On Land Management”, the content of the working draft is supplemented by paragraphs “e-1” and “g-1” of the following content: “f-1) information on the qualitative characteristics of the land, measures to protect land and soil”; “g-1) a list of restrictions on the use of the land plot” [9].

With the enactment of **Resolution of the Cabinet of Ministers of Ukraine No. 480 “On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine on the Activities of Notaries and the Functioning of Unified and State Registers Kept by the Ministry of Justice under Martial Law”** dated April 19, 2022, it became possible to carry out transactions involving land. In particular, notarization of agreements related to the alienation of real estate, mortgage agreements, and powers of attorney for the disposal of real estate may be performed only by notaries included in the “List of Notaries” by the Ministry of Justice of Ukraine. Registration of real rights to real estate is entrusted to notaries (according to the established list) and state registrars also determined by the Ministry of Justice of Ukraine. The Resolution stipulates that notarization of agreements related to the alienation of real estate and the corresponding state registration of rights is not allowed until the expiration of a one-month period from the date of state registration of the alienator's ownership of real estate (except for inheritance). This bylaw prohibits the notarization of agreements related to the alienation of real estate, mortgages, and the establishment of trust ownership of real estate (including amendments to such agreements or their termination) and the corresponding state registration of rights upon presentation of a power of attorney of the alienator/mortgagor. Issues related to the notarization of agreements are to be resolved only at the location of the real estate (certain peculiarities are provided for the Kyiv region and the city of Kyiv). As for the state registration of ownership of real estate when it is transferred to a legal entity as a contribution to the authorized (share) capital

or authorized capital, there is a ban on registration actions. The prohibition also applies in the case of the transfer of real estate to individuals and legal entities that have withdrawn from the founders (participants) of the legal entity [10].

There were also some changes at the legislative level related to user access to the State Land Cadastre, which was regulated by the **Resolution of the Cabinet of Ministers of Ukraine No. 564 “Some Issues of Maintaining and Functioning of the State Land Cadastre under Martial Law”** dated May 7, 2022. The access to the data of the State Land Cadastre, the list of which is approved by the central executive body implementing the policy in the field of land relations (the StateGeoCadastre) in agreement with the Ministry of Agrarian Policy, within the administrative-territorial units located in the area of hostilities or under temporary occupation, has been terminated. For other administrative-territorial units, certain peculiarities are provided for conducting operations in the State Land Cadastre system. The point is that entering information or changes to it into the State Land Cadastre is entrusted to state cadastral registrars of the StateGeoCadastre and its territorial bodies. The list of cadastral registrars is approved by the StateGeoCadastre in agreement with the Ministry of Agrarian Policy). For those users who had access before the outbreak of hostilities (until February 24, 2022), they can get it by decision of the StateGeoCadastre (based on their application). Initial access is granted to users in accordance with the procedure established by law [11].

The provision of information from the State Land Cadastre (hereinafter referred to as the SLC) may also be provided by administrators of administrative service centres (ASCs) or authorized officials of executive bodies of local government. Such information includes: extracts from the SLC on the object of the SLC; certificates with the specified generalized information on lands (territories), the format of which is established by the Procedure for maintaining the SLC; copies from the cartographic basis of the SLC, cadastral map (plan) [11].

Only persons specified in the List of cadastral registrars and certain certified land surveyors and geodesic engineers can obtain information related to the coordinates of turning points of the boundaries of the SLC objects. There are also certain restrictions:

the said information cannot be indicated either in extracts from the SLC, or in copies of the SLC cartographic base, or in copies of SLC documents [11].

The Resolution also prohibits the functioning of the Public Cadastral Map and the publication of information from the SLC through the Public Cadastral Map [11].

The legislation also provides for the possibility of compensation for damage and losses to landowners and land users caused by military actions. In this regard, the Cabinet of Ministers of Ukraine adopted **Resolution No. 326 of March 20, 2022 “On Approval of the Procedure for Determining Damage and Losses Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation”**. The Procedure provides for the determination of damage and losses in many areas, including damage to land resources. This area includes damage caused by pollution and contamination of land resources, as well as damage and destruction of the fertile soil layer [12]. The following indicators were selected for the assessment:

- 1) costs of land rehabilitation (this refers to land disturbed as a result of hostilities, construction, arrangement and maintenance of structures (engineering and fortification), communications for the arrangement of the state border, border signs and clearings, fences));
- 2) losses to owners and land users of agricultural land plots;
- 3) costs associated with the restoration of reclamation systems;
- 4) damage caused to land plots and soils as a result of pollution by substances that reduce soil fertility and other properties;
- 5) damage caused to land plots and soils as a result of contamination of land plots with waste, extraneous objects and materials, or other substances [12].

Regional and Kyiv city state administrations (military) are responsible for determining damage and losses according to the indicators (clauses 1-3) for the period of martial law. The calculations will be made on the basis of the methodology approved by the order of the Ministry of Agrarian Policy in coordination with the Ministry of Reintegration within six months from the date of entry into force of the Procedure. Accordingly, the responsibility for the indicators of subparagraphs 4-5 lies with the State Environmental Inspectorate, and the calculations will be made according to the methodology approved by the order of the Ministry of Environmental Protection and

Natural Resources upon submission of the State Environmental Inspectorate of Ukraine in agreement with the Ministry for Reintegration of the Temporarily Occupied Territories [12].

Despite the positive changes in the legislative field related to the public interest in the ownership, use, and disposal of land plots in the context of military challenges, there are still issues that need to be addressed. In particular, we are talking about the sphere of land management, which is limited in its activities, which negatively affects the implementation of land relations in the country.

Conclusions and future developments. The analysis of the legal acts regulating land relations adopted during martial law shows that they were not adopted in a systematic manner.

The special rules established for activities in the field of land management and disposal of land plots during martial law have different purposes. On the one hand, they simplify the procedures for the disposal of agricultural land, and on the other hand, they complicate activities in the field of land management, land cadastre and land valuation.

However, the changes that were made in an urgent manner highlighted the issue of imperfect land legislation in general. The land legislation in force before the war was designed exclusively for peacetime, and the issues of public access to sensitive information such as cartographic information, information on the designated purpose of land plots, names of land uses, and names of land legal entities were not regulated.

Taking into account the current situation, there is an urgent need for systematic adjustment of land legislation, both in the context of land management during martial law and after its termination (the period of recovery), and the need to harmonize legislation in connection with European integration, which will form the basis for further research.

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ЗДІЙСНЕННЯ ЗЕМЛЕУСТРОЮ В УМОВАХ ВІЙСЬКОВОГО СТАНУ

***Анотація.** На підставі проведеного аналізу прийнятих змін до земельного законодавства та нормативно-правових актів, які регулюють земельно-правові відносини під час дії військового стану, доведено, що їх прийняття відбувалось не в системний спосіб. Виявлено, що встановлені спеціальні правила пов'язані зі здійсненням землеустрою та розпорядження земельними ділянками на період військового стану мають різні цілі. Йдеться про спрощення процедури розпорядження землями сільськогосподарського призначення – з одного боку, а з іншого – ускладнено діяльність в сфері землеустрою, земельного кадастру та оцінки земель. Обґрунтовано, що зміни, які вносились в терміновому режимі висвітлили проблему недосконалого земельного законодавства в цілому, позаяк чинне до початку війни земельне законодавство розраховане виключно на мирний час, адже не були належним чином урегульовані питання публічного доступу до чутливої інформації, як: картографічна інформація, відомості про цільове призначення земельних ділянок, найменування землекористувань, назви суб'єктів земельно-правових відносин тощо.*

Встановлено, що врегульовано проблему пов'язану із забезпечення суб'єктів підприємницької діяльності, громадян в умовах військового стану з надання послуг для складання документації із землеустрою, здійснення топографо-геодезичних і картографічних робіт. Із цією метою запроваджено надання спеціальних дозволів Службою безпеки України.

Обґрунтовано гостру потребу системного корегування земельного законодавства, як в контексті здійснення землеустрою в період військового стану та після його завершення (період відновлення), так і потреби гармонізації законодавства у зв'язку з європейською інтеграцією, що стане основою для здійснення подальших досліджень.

***Ключові слова:** землеустрій, військовий стан, нормативно-правове забезпечення, управління, спеціальні правила, земельно-правові відносини.*