

LEGAL PRINCIPLES AND EXPERIENCE OF DEVELOPING REGIONAL LAND USE AND PROTECTION PROGRAMS

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Abstract. According to the Constitution of Ukraine (Article 14), land is recognized as the main national wealth, which is under the special protection of the state. In order to meet the needs of the population and the economy for land, as well as to ensure its rational use and conservation, nationwide, regional, and local programs are developed, land management and urban planning documentation are created, and relevant land surveys and explorations are carried out.

Due to the fact that the procedure for developing the aforementioned programs has not yet been approved, the article analyzes the legal framework for the development of regional programs for the use and protection of land in Ukraine. It also examines the practice of organizing forecasting for urban land use in the capital city of Ukraine, where programs for the years 2006-2025 were developed with the participation of the authors of the article. In addition, the article considers the content, results of approval, and implementation of the provisions of programs using a number of regions as examples.

During the research of the legal framework for the distribution of powers regarding the regulation of land relations in the field of land use forecasting, it was found that in a number of regulatory acts, the principle of the rule of law is not adhered to, and there are collisions regarding the integration of certain types of land management and urban planning documentation. Additionally, there are issues with

the inclusion of necessary information in the State Land Cadastre for the regulation of land protection and restrictions on the use of land plots.

It has been proposed to expand the structure of regional programs for the use and protection of land by refining the natural-agricultural zoning of the territory, forming hydrographic basins, agrolandscape systems, as well as simplifying the composition of land management schemes and comprehensive plans for spatial development of the territories of local communities.

Keywords: *national program, regional programs, land management scheme, urban planning documentation, spatial development, land protection.*

Formulation of the problem

By Order No. 70 of January 19, 2022, the Cabinet of Ministers of Ukraine approved the Concept of the National Targeted Program for Land Use and Protection for the period until 2032 and instructed the Government to submit a draft of this Program for approval by the Verkhovna Rada of Ukraine within a nine-month period. The program is designed to be implemented over ten years and consists of two stages: Stage I - until 2028; The II stage - 2028-2032. To implement the activities of the Program, its Concept provides for the development of regional land use and protection programs by drawing up and implementing:

"land management schemes and technical and economic justifications for the use and protection of lands of administrative-territorial units, territories of territorial communities;

comprehensive plan of spatial development of the territory of the territorial community;

digital processes during land management and land monitoring;

automated information and analytical systems and remote sensing of the Earth".

[1]

As you know, regional land use and protection programs are, by law, drawn up by the ARC Council of Ministers, regional, Kyiv and Sevastopol city state

administrations and approved by the ARC Verkhovna Rada, the corresponding regional council, Kyiv and Sevastopol city councils. [2]

Land management schemes and technical and economic justifications for land use and protection of administrative-territorial units are not part of land use and protection programs, but are a type of land management documentation at the national and regional level. [3] For a village, town, city, the specified documentation can be attributed to the local level. As for comprehensive plans for the spatial development of the territories of territorial communities, these territories are not units of the administrative-territorial division of the country, but, in accordance with the urban planning legislation, belong to local, not regional documentation. [4] Approval of the specified land management schemes and comprehensive spatial development plans should be carried out by district, village, settlement, and city councils.

According to the laws of Ukraine «Pro zemleustriy» «Pro rehulyuvannya mistobudivnoyi diyal'nosti», these types of land management documentation are at the same time town planning documentation. It should be noted that according to the urban planning documentation, the comprehensive spatial development plan refers to the local level of documentation, while as part of the land management documentation, the same territory (territorial community) refers to the land management documentation at the national and regional levels. At the same time, the specified documentation includes a comprehensive plan of spatial development, a general plan of the settlement and a detailed plan of the territory.

Digital processes with land management and monitoring, automated information and analytical systems, algorithms and technological land-spatial information are not components of regional programs.

Therefore, according to the approved Concept of the National Target Program, the preparation and implementation of regional programs for the use and protection of the lands of the oblasts, the cities of Kyiv and Sevastopol are excluded from its composition.

Starting from February 24, 2022, Russian aggression alone caused damage to the environment of Ukraine in the amount of more than 2 trillion hryvnias. According to the World Bank, humanitarian demining of territories will cost \$37.4 billion. As a result of the war, more than 80 million people from all over the world could be fed with the harvest, which was lost due to the unfitness for cultivation of a large area of arable land. The restoration of the settlement network, infrastructure and soil fertility require huge labor and money costs, the development of appropriate forecasting and technical documentation.[5]

Analysis of recent research and publications.

In 2004, the Main Research and Design Institute of Land Management completed the development of the project of the National Program for the Use and Protection of Land, which was considered by the session of the Verkhovna Rada of Ukraine in the first reading in November 2004, but was returned for a second first reading. It was not submitted to the Parliament later.

In 2005, the municipal enterprise "Kyiv Institute of Land Relations" of the Kyiv City Council drew up the Program for the use and protection of lands of the city of Kyiv for 2006-2010. [6] In 2005, the municipal enterprise "Kyiv Institute of Land Relations" of the Kyiv City Council drew up the Program for the use and protection of lands of the city of Kyiv for 2006-2010. [7,8]

In most oblasts, during 2006-2020, regional programs for the use and protection of land, development of land relations, reproduction of soil fertility, etc., were developed. Their developers were teams of regional research and design institutes of land management of the State Land Management Agency and the State Geocadastre.

Also of scientific and practical interest are a number of pilot projects of a comprehensive plan for the spatial development of the territories of territorial communities of the Kharkiv region, drawn up by joint teams of developers of land management and urban planning documentation. [9] If we do not take into account the lack of approved methodical documents for the development of the specified

programs, over the last twenty years, experience has been accumulated that allows us to develop appropriate methodical recommendations and implement programs.

Many scientists directly managed the development of programs, took part in author teams, published scientific works, articles, recommendations. In particular, these scientists are: I.K. Bystriakov, G.D. Hutsulyak, D.S. Dobryak, Y.M. Dorosh, A.G. Martyn, A.M. Mukhovykov, L.Ya. Novakovsky, I. Novakovsky. O., Palekha Yu. M., Tretyak A.M. [6,7,8,10,11,12]

The purpose of the article is to study the state of legal regulation of drawing up national and regional programs and to justify proposals for the codification of norms, simplification and cheapening of forecast documentation.

Materials and methods of scientific research

An array of legislative documents was analyzed. Monographic, system-analytical and other methods are applied depending on the tasks of the research.

Research results and their discussion.

During the formation of land protection legislation of independent Ukraine, starting with the Zemel'noho kodeksu v redaktsiyi Zakonu 2196-XII dated 13.03.1992, considerable attention was paid to the development of scientific forecasts of land use and protection. [13] According to Art. 14 "Competence of Ukraine in the field of regulation of land relations" the development and implementation together with the Republic of Crimea, local councils of people's deputies of state programs regarding the rational "use of land, increasing the fertility of grants, protection of land resources in combination with other environmental protection measures" was assigned to the state. [13] Land management provided for the development of forecasts of state and regional land use and protection programs. The powers of the legislative body - the Verkhovna Rada - were improved and expanded. Local self-government bodies and bodies of executive power organized at the regional level the drawing up of land use and protection programs in most oblasts, and a significant

amount of funds were drawn from local budgets for the drawing up of relevant land protection documentation.

As the analysis shows, since 2004, the development of the National Land Use and Protection Program has not been completed. The mandate to the Cabinet of Ministers regarding the development of the procedure for drawing up national and regional land use and protection programs, which was contained in Art. 44 of the Law of Ukraine "Pro zemleustriy", dated June 2, 2015, was repealed. Together with the most commonly used name "regional program of land use and protection" (Article 178 of the Zemel'noho kodeksu of Ukraine), in the list of powers of the Verkhovna Rada of the ARC, this program is called "republican program of land use, soil fertility improvement, land protection", and in the list of the State Geocadastre - "participation in the development and implementation of state, branch, regional and local programs on the regulation of land relations, land reproduction and protection" [2] (Table 1).

In connection with the exclusion of norms regarding the establishment of the state border, as well as the development of the procedure for drawing up the specified schemes, Articles 42, 43, 44 of the Law of Ukraine "On Land Management" remained without. [3] If forecasting, planning and organization of rational use and protection of land were excluded from the purpose of land management (Article 2 of this Law), such motives could be explained. However, the current Article 184 of the Land Code of Ukraine "Pro zemleustriy" of the development of national and regional land use and protection programs remained. This conflict can be eliminated only by making appropriate changes, leaving the issue of forecasting and planning of the land fund to the land administration.

Clause 18 of Art. 161 of the Law "Pro rehulyuvannya mistobudivnoyi diyal'nosti" it is established that in case of approval of a comprehensive plan, a general plan of a settlement, a detailed plan of the territory, the following shall not be developed:

"land management scheme for the territory of the relevant community;

the plan of the land management system of the settlements of the relevant community;

the land management project regarding the arrangement of the territory for urban planning needs;

land management projects regarding the organization and setting of boundaries for 10 types of branch land management projects". [4]

Since comprehensive spatial development plans, general plans of the settlement and detailed plans of the territory are included simultaneously in urban planning and land management documentation, it is not clear why the production of similar urban planning documentation is not prohibited in cases where the mentioned land management documentation was prepared earlier. What then is the principle of simultaneity, and will this not harm the quality and value of such "activity". And what is the logic of banning 14 types of land management documentation that does not belong to urban planning documentation at the same time?

Legal provisions regarding the development, approval and implementation of national and regional land use and protection programs are contained in legislative and regulatory acts of various levels. In particular, "national programs of economic, scientific and technical, social, national and cultural development, environmental protection, in accordance with Art. 85 of the Constitution of Ukraine, approved by the Verkhovna Rada of Ukraine". [14] The Basic Law (Articles 13, 14, 85, 116, 119, 138, 142, 143) fairly fully regulates issues in the field of land relations, which are also implemented by the Cabinet of Ministers of Ukraine, the Council of Ministers of the ARC, local self-government bodies, executive authorities when developing programs at the appropriate levels.

The Land Code of Ukraine defines the authority to resolve similar issues by all state authorities and local self-government bodies (Table 1)

Table 1. Powers of the Verkhovna Rada of Ukraine, the Verkhovna Rada of the ARC, local self-government bodies in the field of land relations according to the Land Code (ZK) [2]

No	Name of the body	Art. (ZK)	Content of powers
1	2	3	4
1	Verkhovna Rada of Ukraine	6	adoption of laws in the field of regulation of land relations
2	VR ARC	7	"ensuring the implementation of state policy; approval of national land use and protection programs, participation in their implementation; approval and participation in the implementation of republican programs of land use, soil fertility improvement, land protection";
3	Regional councils	8	"ensuring the implementation of state policy; approval of national land use and protection programs; approval and participation in the implementation of regional programs of land use, soil fertility improvement, land protection";
4	Kyiv and Sevastopol city councils	178 п. 2	"the program of land use and protection of the cities of Kyiv and Sevastopol is developed by the specified city administrations and approved by the relevant city councils";
5	District councils	10	"ensuring the implementation of state policy in the field of land protection and use";
6	Village, settlement, city councils	12	disposal of communally owned lands of territorial communities
<i>Powers of executive authorities</i>			
7	Cabinet of Ministers of Ukraine	13	"implementation of state policy in the field of land use and protection;

			development and implementation of national land use and protection programs";
8	Mindovkillya	14	"participation in the development of national and regional land use and protection programs";
9	Mindovkillya	14 ¹	"participation in the implementation of national and regional land use and protection programs";
10	Derzhekoinspektsiya	14 ²	implementation of state policy regarding the implementation of state supervision (control)
11	Minahropolityky	15	development and implementation of national and regional land use and protection programs;
12	Derzhheokadastr	15 ¹	"participation in the development and implementation of state, branch, regional and local programs on the regulation of land relations, rational use of land, their reproduction and protection";
13	Rada Ministriv ARK	16	participation in the development and implementation of national (republican) programs on land use and protection;
14	Mistsevi derzhavni administratsiyi	17	"participation in the development and implementation of national and regional (republican) programs on land use and protection."

The Law "«Pro zemleustriy» establishes a list of powers in the field of land management (Articles 9-19), the Law «Pro mistseve samovryaduvannya v Ukrayini»- in Articles 26, 31, 33, 43 (consideration only at plenary meetings of village, settlement, city councils; authority in the field of construction, in the field of land relations; decision-making by district and regional councils exclusively in plenary mode). [15]

The principle of the rule of law, which is recognized and operates in Ukraine, guarantees the adoption of normative legal acts that would correspond to the

Constitution of Ukraine regarding the special protection of land as the main national wealth, that is, it ensures the activity of government bodies and its officials in accordance with Article 19 of the Constitution.

In accordance with the Law of Ukraine "On State Targeted Programs" [16] and in accordance with the Resolution of the Cabinet of Ministers of Ukraine dated January 31, 2007 No. 106 "Pro porядok rozroblennya ta vykonannya derzhavnykh tsil'ovykh prohran" [17] "the purpose of the program is:

determination of the optimal option for solving the problem based on a comparative analysis of possible options;

ways and methods of solving problems, the term of the program;

expected results of program implementation, determination of its effectiveness;

assessment of financial, material and technical, labor resources necessary for the implementation of programs".

These problems make up the main sections of the target programs. [18]

Законом України № 2698 – IX від 19.10.2022 р. вирішено забезпечити внесення додатково до земельно-кадастрової документації відомостей про якісні характеристики угідь і заходів щодо охорони земель і ґрунтів, а також перелік обмежень у використанні земельних ділянок. [19] Вказані відомості та заходи включають: освоєння земель для сільськогосподарських і лісгосподарських потреб, поліпшення цих угідь і рекультивацію порушених земель, консервацію деградованих, малопродуктивних і техногенно забруднених земель.

"Land use restrictions are entered into the State Land Cadastre on the basis of land management documentation in the field of land protection - land management schemes and feasibility studies of land use and protection of administrative-territorial units (districts, villages, towns, cities), and the decision to enter it into the cadastre is made by the customer himself". He (the customer) is issued an Extract from the State Land Cadastre. [20] According to modern methodology, restrictions on land use are not included in working land management projects, therefore, in addition to land management schemes, these restrictions should be included from land management

projects, as well as from technical documentation regarding the establishment of boundaries, division and unification of land plots, reservation and land inventory. [20]

The period of development of the national target program of land use and protection; regional land use and protection programs of the Autonomous Republic of Crimea, oblasts, cities of Kyiv and Sevastopol; land management schemes and technical and economic justifications for the use and protection of lands of administrative-territorial units (districts, villages, towns, cities) and territories of territorial communities; of land management projects and technical documentation is long enough, extremely expensive to implement, contains an unreasonably huge amount of duplicate documentation and information according to current legal norms.

Two types of land use and protection programs - national and regional, the development of which is provided for by the Constitution of Ukraine, must certainly be drawn up. Moreover, it would be advisable to expand the content of regional programs by clarifying the natural-agricultural zoning of the territory, forming anti-erosion hydrographic basins, agrolandscape farming systems, etc. [21]

It is advisable to develop land management schemes only for the territory of territorial communities. From the composition of comprehensive plans for the spatial development of territories of territorial communities in the post-war period, it is possible to exclude the preparation of general plans of settlements, detailed plans, zoning plans of territories, as independent types of urban planning documentation at the local level. In areas of significant destruction of the settlement network and engineering infrastructure objects during hostilities, general plans of settlements must be developed out of turn. [22]

Conclusions

1. The legal basis for the development and implementation of national and regional land use and protection programs is the Konstytutsiya Ukrayiny (st. 14, 95, 116, 143), hlava 30 Zemel'noho kodeksu, Zakony Ukrayiny «Pro derzhavni tsil'ovi prohramy», «Pro derzhavne prohnozuvannya ta rozroblennya prohram ekonomichnoho i sotsial'noho rozvytku Ukrayiny», «Pro zemleustriy», «Pro

okhoronu zemel'». The principle of the rule of law, which is recognized and operates in Ukraine, guarantees the reproduction in normative legal acts of the provisions of the Constitution of Ukraine regarding the development, approval and implementation of programs of economic, scientific and technical, social development, environmental protection and is mandatory for state authorities and bodies Local Government.

Regional programs as a separate independent type of forecast documentation should be developed after the approval of the National target program for land use and protection.

2. The experience of the capital of Ukraine confirms that the implementation of targeted urban land use and protection programs has fully justified its purpose. The inventory of urban land is completed, the boundaries of all plots are determined, Kyiv will become the first city in Ukraine "without white spots" in the State Land Cadastre. An information model will be created as a tool for accounting for land plots and other real estate, fiscal goals, monitoring of green spaces and the number of floors of buildings.

3. After the entry into force of the new Land Code of Ukraine on January 1, 2002, the use of lands for recreational, recreational, historical and cultural purposes, industrial lands, security zones, sanitary protection zones, sanitary protection zones, special regime zones still require further regulation by separate laws land use, etc.

Demining, reclamation, use of technogenically polluted lands, approval of standards in the field of land protection and reproduction of soil fertility became especially relevant in the conditions of martial law.

4. Making changes to the State Land Cadastre to reflect in it the qualitative characteristics of land, measures to protect land and soil, as well as restrictions on the use of land plots, is the only possible measure in modern conditions to systematize the information base on the special protection of land as the main national wealth, conducting land and soil monitoring, ensuring the sustainable development of land use in conditions of global climate change.

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ПРАВОВІ ЗАСАДИ І ДОСВІД РОЗРОБЛЕННЯ РЕГІОНАЛЬНИХ ПРОГРАМ ВИКОРИСТАННЯ ТА ОХОРОНИ ЗЕМЕЛЬ

***Анотація.** Відповідно до Конституції України (ст. 14) землю визнано основним національним багатством, що перебуває під особливою охороною держави. З метою забезпечення потреб у землі населення та економіки, а також її раціонального використання і охорони розробляються загальнодержавні, регіональні, місцеві програми, землевпорядна та містобудівна документації, провадяться відповідні обстеження та розвідування земель.*

У зв'язку з тим, що порядок складання вказаних програм досі не затверджено, у статті проаналізовано правові основи розроблення регіональних програм використання та охорони земель України, розглянуто практику організації прогнозування міського землекористування столиці України, де за участю авторів статті, складено програми на 2006-2025 рр., а також, на прикладі ряду областей розглянуто зміст, результати затвердження та реалізації положень програм.

При дослідженні правових основ розподілу повноважень щодо регулювання земельних відносин у сфері прогнозування землекористування встановлено, що в ряді нормативно-правових актів не дотримується принцип верховенства права, є колізії щодо об'єднання окремих видів землевпорядної та

містобудівної документації; внесенні до Державного земельного кадастру інформації, необхідної для регулювання охорони земель і обмежень у використанні земельних ділянок.

Запропоновано розширити структуру регіональних програм використання та охорони земель за рахунок уточнення природно-сільськогосподарського районування території, формування гідрографічних басейнів, агроландшафтних систем, а також спростити склад схем землеустрою та комплексних планів просторового розвитку територій територіальних громад.

Ключові слова: *загальнодержавна програма, регіональні програми, схема землеустрою, містобудівна документація, просторовий розвиток, охорона земель.*