

LEGAL PROVISION OF FUNCTIONS OF LAND AS THE CONDITION OF SUSTAINABLE LAND USE

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In the article theoretical legal approaches regarding functions of land and their impact on determination of peculiarities of land use are investigated. Mechanism of legal regulation of sustainable land use development through perspective of provision of social function of proprietary right is proposed.

Functions of land, social function, proprietary right on land, sustainable development, land use.

Functional peculiarities of land is that unique foundation that determines the special legal regulation in the sphere of land legal relations and demands the theoretical legal substantiation of land use as the condition of vital activity of individual. Scientific works in the respective sphere disclose economic, social and other land functions [1, p. 11]. To the opinion of V.I. Andreyetsev, land value as the national wealth consists in its multifunctional designation [2, p. 13], but, probably, it is difficult to object general social character of the functional designation of land from the perspective on its importance in the life of individual. As M.V. Schulga notes, land executes important social functions. Then, it is objective condition, tool, source and place of vital activity of individual [3, p. 14].

Consequently, provision of appropriate use of land should be carried out only in view of their functions that should be determining not only among other objects of real estate but among other natural resources. M.M. Brunchyk has criticized the conception of rational use of nature only as achievement of necessary economical effect and proposed to bind it with fulfillment by the land different functions that nature carries out regarding the individual and the society as a whole: ecological, economical, recreational etc [4, p. 43].

The considerable contribution in the issue of substantiation the legal nature of functions of land and its significance to execution the different forms of land use in Ukraine was made due to the scientific works of V.I.

Andreytsev, A.G. Bobkova, P.F. Kulynuch, V.V. Nosik, V.I. Semchuk, N.I. Tutova, M.V. Schulga and others. Notwithstanding on this fact, the necessity of legal investigations and formation of the respective legal mechanism towards functionally balanced land use is of particular relevance under the conditions of aggravation of crisis events of ecological nature that create danger to realization of some of the rights and needs of citizens connected with land use as the condition and place of vital activity. Thus, purpose of this work is the determination of features for the legal provision of the land use in view on their unique social significance as condition of vital activity of the individual.

The basis of the legal regulation of the land use in our opinion, certainly, always will be its functional designation in view on that features which determine perception of land as the territorial basis that create vital sphere of human being and is the condition of biodiversity. The opinion of V.I. Semchuk is also undisputed because the mentioned author states that «land – is the basis of human existence and very existence; land is the spational, operational basis that is used for location of settlements; land is the most important component of the environment [5, p. 14–15]».

As V.I. Andreytsev notes, land from the one side, is the separate object of commercial use, from the other side – is the part of environment that promotes creation of the complicated natural formations, that are – ecological systems, gives biological effect to creation of the landscapes and other natural systems – natural reserves, preserves, sights of nature, natural landmarks, artificially created systems – dendroparks, botanical gardens, zoological gardens, parks-monuments of the landscape architecture, recreational, treatment, health zones etc.

In this respect the question is about specific features of land as the particular territory that accumulates in itself other natural formations, use of qualities of which is directed on the meeting the material, mental, cognitive, recreation, health, sport, tourism and other needs of the individual and society [6, p. 195–196].

The specified situation made possible for S.V. Yelkin, who was engaged in the special research of the land use from the position of landscape approach to assert that the basis for qualification of land shall be social economic and ecological function of the landscape. The author conceives landscape as the land territory with existing complex of natural and artificially created components that make the complete entire system, what consist against each other in the optimal proportion that is stipulated by law where the land is the spatial basis of the landscape [7, p. 184].

Thus, S.V. Yelkin subordinates land use from existing on it natural and anthropogenic resources, but from the other side, the possibility of existence of such resources in significant extent is determined by the qualities of land that create additional circumstances for rise of such resources. Therefore, as land is the territorial basis so it simultaneously is the unique natural resource and nutrient basis for existing on it natural landscape. The combination of land as the natural resource and the territorial basis creates the conditions that provide possibility for its use as means of construction in the agriculture and forestry.

In this regard it should be important the fact that providing the appropriate functional designative purpose is not possible without combining qualities of land that is their integrated perception. Therefore, as the land is not qualified as the unique natural resource it could not be nor the territorial basis for the flora and fauna neither the means of construction in the agriculture and forestry, so it could not provide its social function as the place of vital activity.

V.V. Knush has conducted special research of principles of land law on the assumption of priority of functions of land (ecological, economical and social) and proposed to formulate in appropriate order the special principle of land law as «the principle of combining of peculiarities of land use as the natural resource, main means of construction and territorial basis». For this purpose, to the author's opinion, the primary and main is the use of land as the natural resource that is also the spatial base for existence other natural objects and consequently influences on it ecological state. Land use as the main means of construction is the secondary as far as forms and methods of land management should be limited by requirements of conservation and protection of land as one of the basic natural resource and integral part of environment. This is the economic function of land. Instead land use as the territorial basis should be envisaged in the large and narrow meaning. In the large meaning land is the territorial basis of the Ukrainian state, in the narrow – is the territorial basis for location of separate inhabited localities, location of premises and buildings. This is the social function of land that is determined from one side by opportuneness of the environment, appropriate ecological state of land (that is ecological function of land), and from the other side – capacity to use land as the main means of construction (that is its economical function) [8, p. 110–111].

The author considers that specified approach also has the right to exist but requires some clarification determined by the fact that the whole

mechanism of the legal regulation in the considered case is the subject to necessity of ensuring the right to life. According to the Constitution of Ukraine the right to life is the highest social value and consequently priority of respective functions of land is determined by their role in providing safe and comfort conditions for human life. Indeed, V. V. Knush without noticing it, denies his conclusions in fact, providing an initial value to the environmental element, secondary – to economical, and, factually – to social. Simultaneously he notes that social function of land is determined, from the one side, by opportuneness of the environment, appropriate ecological state of land (thus ecological function of land), and from the other side – by ability to use land as the main means of production (thus its economical function). Thus, provision of the social function of land and ownership on it, is determined by all other function that create conditions for life and activity of individual. This issue is stated by the author when he notes that all abovementioned forms of land use are fulfilled in complex order, simultaneously and with account of the peculiarities of each one. Thus, mentioned author would not deny the final goal of this use that for any conditions will remain the social. As M. Brunchyk straightly states «to that extent in what problems of environment affect ecological interests of the individual these problems would be social in nature [9]». Indeed, there is no need of legal regulation of use and, particularly, reproduction and protection of the surface layer of any planet of solar galaxy, that do not create any conditions of vital activity of individual and which influence is very limited.

Thus, definitely, protection of land qualities as the natural resource and the part of environment has special importance since such qualities create acceptable existence environment.

Therefore, P.F. Kylunuch in any manner, but in the context of protection priorities to the respective functions of land also considers this issue. Use of agricultural lands as the natural resource, means of construction, operational basis and real estate constantly compete with one another, what would require creation of particular priority of mentioned functions of such lands in the system of legal regulation of land relations. In this regard, to the opinion of scientist the protection and use of agricultural land as the object of nature should be the highest priority, the next grade should take the protection and use of such lands as the means of agricultural production, and the final – the protection and use of agricultural lands as operational basis and object of real estate [10, p. 67]. Thus and once again it should be noted some conventionality in the priorities

concerning appropriate protection and use, because for any conditions it is used the same object that would impose on the owner the certain obligations for fulfillment. From the other side, agricultural lands in such form as they are do not reproduce their natural state and as a result are the means of production that require special protection for the reason of their use and protection as the object of nature. This fact should be envisaged in the issue of their restitution to the natural state with appropriate flora and fauna.

Only necessity of use of such lands according to their functional designation as place, condition and source of life of individual should determine the content of the legal regulation in the context of realization of the most important social function of lands that would accumulate and combine features of territorial basis for existence of the Ukrainian nation, unique nature resource, that provide the formation of landscape environment, recreational, health, esthetic, nature protection complexes, means of production what produces energy resource in the form of agricultural production that maintains biological functioning of the individual.

Multifunctional designation of land creates conditions of vital activity of the individual and as a result requires explicit legal mechanisms that would ensure safety and acceptable living standard of the individual within use of land at different legal titles primary of which would be the proprietary right on the land. All other legal forms are derived and are limited in time, and as the result only the owner should be obliged to provide qualitative use of land that covering the whole range of its functional purpose designation would guarantee permanence, and in some cases the improvement of qualities of the unique natural resource.

The foundation of the point of reference in the approach of the respective legal provision was laid by the Worldwide Conference of the United Nations on Environment and Development where the conception of sustainable development was determined as the dominant ideology of civilization in the XXI century. Fundamental principles of the mentioned conference are envisaged in the Declaration of Rio de Janeiro on Environment and Development on June 14, 1992 that establishes the principle that care about the human being should be the central link in the activity of provision of sustainable development [11].

The Law of Ukraine «On Main Foundations (Strategy) of State Ecological Policy of Ukraine within the Period till 2020 year» as of January 21, 2010 year, with reference on the mentioned Declaration, establishes that sustainable social economical development of any country provides

such functioning of its economic complex when simultaneously increasing material and spiritual needs are satisfied, rational ecological safe economical activity and high effective balanced use of natural resources is provided, favorable conditions for health of individual, maintenance and reproduction of environment and nature resource potential of public production are created [12]. Such approach should be determinative as for the relations of the ownership because the aim of the latter is directed on the combining the satisfaction of the needs of society, development of economy, balanced use and production nature resource potential and preservation of the environment. The key factor in the proposed legal formula should not be limitations but combining the social and private interests, because in the achievement of mentioned goals all subjects of social legal relations are interested equally.

At the moment there is the objective necessity of implementation the appropriate legal constructions regarding the content of the national legislative support of proprietary right on the land with the aim of realization its social function that envisages mutual satisfaction of social and private interests of use, maintenance and protection of lands. Thus, as the land as the object of the real estate according to the constitutional norm always would remain the national property, and as the result its use should be fulfilled in the order of satisfaction of private and social interests that consist in the preservation and recovery of quality of soils, improvement of their fertility, production of qualitative agricultural production according to the established standards; provision of the preservation of nature objects, landscape environment, territorial basis for which should be one or other land plot of respective type of use; provision of free access to the natural recreational, health, esthetic objects that are used on the right of general nature use.

Important in this case is the fact that the appropriate legal mechanism should ensure mutual interests as the proprietors of the land plot and as other persons, thus the social interests. Therefore, land as the object of proprietorship is characterized by its indispensability, and as a result as owners and other persons as potential owners and consumers of production are interested in the preservation of qualities of land and nature objects. Mutual interest is caused by the reason that mentioned subjects time from time could change one another, and the object of proprietorship would remain constant not for present but for the future generation too.

Unfortunately, special research in the sphere of provision of sustainable land use is insufficient for its full implementation in the he law-

making and law enforcement practice. Thus, some achievements in the respective sphere also exist. In 2012 year special research in the sphere of ecology legal provision of sustainable use of agricultural lands was made by B. V. Danulenko, who has concluded that sustainable land use consists in the provision of such land use that should meet the needs of the present generation and at the same time without compromising the needs of the future generations. The concept of the protection of lands the aim of which was preservation of lands at the features of the quantity and quality and as the means of production in the agriculture, to the opinion of the author was primary to the sustainable land use [13, p. 12].

Author gives advantages to the ecological component at the execution of land use, in particular, the author notes that principle of priority of agricultural lands should yield to the principle of priority of nature protection land use.

Agreeing at whole with proposed approaches it should be noted that mentioned term of the sustainable land use is too general and does not reflect the direct features of land use what in such case should guarantee the maintenance of features as lands at their agricultural use, and natural objects when it concerns the use of other categories of lands providing wide range of local needs of people in satisfaction of material and non-material needs of people from the qualitative agricultural production to wellness and recreation needs. Also it should be considered the different range of responsibilities of the individuals that execute general and special land use that at any conditions should guarantee the prevention of harmful effect on environment.

Therefore, sustainable land use is possible in the case of awareness of any land proprietor or land user and citizens of Ukraine that together create the Ukrainian nation and are the primary proprietors of all lands in the boundaries of the state border, and significance of land as the national property that provide physical existence of the individual and consequently needs the preservation of its qualities during all time of the human existence regardless of the specific composition of subjects and objects of the land legal relations, ecology safe management on the land, preservation and reproduction of the land features, high effective balanced of their use through respective mechanism of legal regulation.

Mentioned mechanism should be formed based on the needs of preservation of features of land as condition of the life activity of the human being that establish:

- Preservation and enhancement of area of lands as nature objects that were inflicted in the lowest anthropogenic level that would guarantee acceptable environment and natural conditions of human existence;
- Preservation and increasing of fertility of soil through mechanisms of rotation, land zoning, protection of lands etc;
- Preservation of landscapes and biodiversity that determine features of land for satisfaction of wellness, recreation, esthetic, spiritual needs of the individual;
- Guarantee to the proprietor of land the opportunity of proper possession, use and disposal of land plot subject to the measures of its protection that would improve the efficiency of use of such land plot and provide the transfer of ownership to the most effective proprietors;
- Guarantee of the economic interests of the land proprietors – producers of agricultural production; state support of agricultural producers that execute organic farming or take measures to protect land connected with their conservation;
- Guarantee of access to the land persons that are willing and able to manage on it.

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