

**UDC 332.3:349.415**

**NORMATIVE AND LAW REGULATION OF LAND PROTECTION IN  
THE PROCESS OF LAND REFORM**

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**Abstract.** *The current state of the regulatory framework in the field of land protection is analyzed; such regulatory framework is designed to ensure the regulation of land protection measures in the agricultural sector of the economy. The declarative, fragmentary and unsystematic nature of most of the norms of national environmental legislation on land protection, along with the lack of adequate financial support, results in the low volume of actually implemented land protection measures. The latter, in turn, is the cause of a significant spread of degradation processes, deterioration of soil quality, reduced productivity of agricultural landscapes.*

*It is proved that the only mechanism to ensure reliable protection of agricultural lands from harmful anthropogenic impact is land management, which provides improvement of land relations, planning and organization of rational use and protection of land at all levels from national to economic.*

*The necessity of developing the National Program of Land Use and Protection as the main legislative act of strategic direction in this area is substantiated, making*

*changes and additions to legislative acts on the content and structure of land protection measures, elaboration and approval at the legislative level of norms in land protection and soil fertility reproduction.*

**Key words:** *land protection, normative-legal acts, agricultural land use, land management.*

**Formulation of the problem.** The main normative legal acts regulating land relations in the field of land protection include the Constitution of Ukraine, the Land Code, and the Laws of Ukraine: “On Land Management” of May 22, 2003; “On Land Protection” of June 19, 2003; “On state control over the use and protection of land” of June 19, 2003; “On the basic principles, strategy of state environmental policy for the period up to 2020” of December 21, 2010, etc. In particular, Article 14 of the Constitution of Ukraine declares lands to be a national treasure, which is under special protection of the state (Article 14) [1]. In view of this, the protection and rational use of land are becoming important environmental and socio-economic factors of sustainable social development.

Negative changes in the ecological condition of lands such as increased erosion, chemical pollution, reduced soil fertility, etc., which occur under the influence of industrial, construction, agricultural, mining and other economic activities, generally lead to deteriorating environmental quality. These processes became especially acute during the period of radical reform of land relations, which is associated with the fragmentation of land, violation of scientifically sound organization of the territory and crop rotations, insufficient land protection measures, self-removal of the state from the control function in land protection. The practice of the last two decades shows that “sporadic, unsystematic partial and local land management measures, no matter how persistently they are carried out, cannot be environmentally and economically successful” [2, p. 146-147].

In addition, in both land and other environmental legislation, the norms on land protection remain, for the most part, declarative. The result is an annual increase in the size of degraded, unproductive and contaminated land area, a steady decline in particularly valuable agricultural land and conservation land, the use of which is

prohibited or restricted for the purposes of economic activity. The significant spread of unusable land in Ukraine, of course, is due to the insufficiency, vagueness, fragmentation and inconsistency of both legal norms and technical requirements for land protection in the process of economic activity.

In these conditions, the priority should be given to the improvement of the regulatory framework of the state in the field of land protection in accordance with the strategic objectives of land reform in Ukraine.

**Analysis of recent research and publications.** Problems of normative-legal regulation of land protection are considered in the works of V.V.Horlachuk, O.S.Dorosh, I.M.Peschanska, A.Ya.Sokhnych, R.B.Taratula, A.M.Tretiak, V.P.Yanchuk and works of other authors, who emphasize the need for a systematic, comprehensive approach to addressing land protection issues.

The works of V.I.Andreitsev, V.I.Hordeiev, V.M.Yermolenko, P.F.Kulynych, T.K.Overkovska, M.V.Shulha and others are devoted to the solution of the problem of legal protection of lands, including in the context adaptation of domestic land legislation to the requirements of the European Union (EU). In particular, T.K.Overkovska, analyzing the international legislation in the field of land protection, emphasizes that domestic land protection processes should be carried out on the basis of EU principles: the principle of a high level of environmental protection; the principle of preservation; the principle of preventive action for land protection; the principle of eliminating sources of significant damage to the environment; the “polluter pays” principle [3]. A.M.Miroshnychenko notes that the regulation of land relations in the EU is considered mainly in terms of protection of soils from pollution and erosion [4]. Y.S.Shemshuchenko claims that the EU strategy for soil protection is aimed at integration processes, soil monitoring, financial support for agricultural development, combating desertification, etc. [5]. In general, international environmental law is characterized by the absence of comprehensive and universal land protection norms and considers land protection mainly as part of a system of restrictions on economic activities, which should protect the environment from pollution by various chemicals.

The analysis of foreign experience in land protection regulation shows the urgent need for active participation of the state in the formation of land policy, especially control over land use and protection. In particular, the United States in its state land policy uses such levers of influence as fines and other sanctions, up to the confiscation of land or forced sale of it in case of violation of established soil protection restrictions [6]. In order to ensure highly efficient agricultural production, German land legislation prohibits the shredding of forest and agricultural land plots, and their alienation with a change of purpose. In Italy, land is forcibly leased (sold) to other users if the farmer does not ensure its rational use. France, in order to consolidate agricultural land and preserve its purpose, carries out state control over the market turnover of land. In Japan, changing the purpose of agricultural land is generally prohibited [7].

Thus, the analysis of international experience in implementing legal, organizational, economic, technological and other measures in the field of land protection confirms the need to improve regulatory and legal regulation of land protection in accordance with today's requirements, given the dynamic processes inherent in land relations in modern conditions.

**The purpose of the article** is to analyze the legal regulation of land protection in Ukraine and to substantiate the system of measures for its improvement.

**Presentation of the main research material.** The purpose of the land reform was to create a basis for equal development of various forms of ownership and land use systems, the formation of a diversified economy, the transition to a rational system of land use and their protection from degradation; however, the process of land redistribution was accompanied by violation of the soil protection systems, by violation of the scientifically substantiated crop rotations, by shredding of agricultural lands, by loss of boundaries and elements of contour and reclamation organization of the territory. The introduction of short-term leases in market-type agricultural formations has led to soil depletion and deterioration of land quality. After all, the observance of a deficit-free balance of humus in the fertile soil layer is a determining indicator of the ecological efficiency of agricultural land use. In this

regard, to stabilize the humus condition of soils within crop rotation fields, it is first necessary to adjust the fertilizer system (attracting alternative sources to replenish organic fertilizers through maximum use of livestock waste, crop by-products and expanding bacterial fertilizers), which will implement the idea of organic farming, [8, 178-179]. However, due to the dominance of leased land relations, soil fertility is currently exploited by other persons (not landowners), and therefore one of the main tasks of land reform – ensuring the rational use and protection of land – is implemented very slowly. In these conditions, it is important to form a regulatory framework that, along with creating favorable conditions for the development of small and medium-sized businesses in rural areas, has provided strict state control over the conservation of land resources. For example, “... determining the rate of environmental taxes, the size of administrative and punitive fines, fees to determine the amount of civil liability for environmental offenses, etc.” [9, p. 238].

The Land Code of Ukraine (LCU) is fundamental among the current regulations in the field of land regulation; its article 162 of defines the definition of land protection as a “system of legal, organizational, economic and other measures aimed at rational land use, prevention of unjustified seizure lands of agricultural and forestry purpose, protection from harmful anthropogenic influence, reproduction and increase of soil fertility, increase in productivity of lands of forestry purpose, maintenance of a special mode of use of lands of nature protection, improving, recreational and historical and cultural purpose” [10]. This definition focuses not only on the conservative side of legal protection of land, like preservation and prevention of their deterioration, but also on the restoration and improvement of land, in particular - on the reproduction and increase of soil fertility, which according to Art. 168 of the LCU is an “object of special protection”.

Solving this problem involves the development and implementation of a strategy for sustainable agricultural land use through the introduction of national and regional soil protection programs; providing a resource-integrated approach to the improvement of rural areas in the process of reforming land relations; improving the methodology, criteria, standards and principles of soil protection and reclamation of

modern agricultural landscapes, which will create, in turn, legal and socio-economic prerequisites for the preservation and reproduction of soil fertility [11]. At the same time, the list of land protection measures should be as comprehensive as possible, as the same type of measures can be introduced in different natural and agricultural areas, while the methods of their implementation depend on the landscape conditions of a particular area, its geomorphological and soil characteristics. Therefore, the protection of agricultural land requires a comprehensive national program with a specific list of priority and future measures, which should include a harmonious combination of various factors (organizational, technical, technological, environmental and economic) aimed at improving land use and encouraging landowners and landusers to the rational use and protection of land.

Economic levers of influence on the behavior of economic entities on the land are aimed primarily at the proper performance of their duties of landowners and land users, which are enshrined in Articles 91, 96, 168 of the LCU [10]. State and local self-government bodies should create economic and legal conditions that would encourage land owners and land users to voluntarily participate in the implementation of land protection measures. According to Art. 205 of the LCU, citizens and legal entities have the right to “provide tax and credit benefits, allocate them state or local budget funds, exempt them from payment for land, compensation from budget funds to reduce the income of landowners and land users” [10]. The mechanism of financial and economic incentives for land protection measures should be based on a system of methods of direct and indirect incentives, the first of which should be based on “direct subsidies”, and the latter “should be developed on the basis of preferential tax treatment, various types of soft loans, other methods that allow to perform work without allocating funds from the budget, and due to the accumulation of agricultural producers’ own resources” [12, p. 61]. However, in practice there are problems with the implementation of certain provisions of this article, as the procedure for economic incentives for efficient use and protection of land by the tax legislation of Ukraine is not sufficiently regulated. Under this law, most taxes and fees paid at the regional level cannot provide financial autonomy to

local governments because they accumulate at the national level. To address socio-economic and other problems at the local level, the powers of local governments should be expanded and effective mechanisms should be put in place to increase the flow of financial resources to local budgets.

The definition of legal, economic and social bases of land protection is devoted to the norms of the Law of Ukraine “On Land Protection” [13], which contains about two dozen reference norms and provides for the development of more than ten different legal acts, most of which have not yet been adopted. In view of this, in the future the legislative regulation of land protection will be provided by a significant number of normative legal acts, which, of course, will not contribute to the effective legal provision of land relations.

A relatively developed national legal framework in the field of land protection cannot be sufficiently effective without the appropriate support of the rules of direct proceedings contained in regulations at various levels. Hence, the regulatory framework in the field of land protection must meet the requirements of current legislation in this area, as well as take into account international experience in its creation and specifics, which is due to the significant features of natural and economic conditions in different regions.

In view of the above, the priority areas for standardization in this area include: the need to revise the current system of interstate standards in Ukraine (GOST “Soils”, “Lands”), regulations in accordance with applicable law and regulations; definition of objects of standardization, concepts and terms, their arrangement for creation of system of classifiers; substantiation of existing control methods for assessing the quality of soils, natural and wastewater irrigation and providing proposals for their renewal; implementation of cataloging (certification) of soils; establishment of norms and rules on rational use and protection of lands; determination of requirements for economic development of lands, their quality condition, soil fertility, allowable anthropogenic load; introduction of standards for soil protection for products, processes; standardization of criteria for the organization of land management, monitoring of lands (soils); introduction of a

methodology for environmental risk assessment and environmental safety in national and other levels [14].

It should be taken into account that in addition to the norms defined by the Land Code and the Law on Land Protection, a set of normative documents on special soil protection needs to be properly developed as well as the use and monitoring of man-caused and radiation-contaminated lands, lands intended for organic production, land reclamation and conservation of species diversity of soils, etc. [13].

Creating a perfect regulatory framework in the field of land protection is impossible without the use of basic principles and methods of standardization and regulation, which provide for the functioning of a mutually agreed system of national norms and standards aimed at “ensuring environmental and sanitary safety of citizens by defining requirements for land quality, soil fertility, allowable anthropogenic load and economic development of lands” [13]. However, the country has not yet completed the development and adoption of relevant standards and regulations in the field of land protection and soil fertility reproduction, which often applies to the standards and regulations of the former Soviet period, developed in the 60-80’s of the twentieth century. Therefore, it is important to modernize existing regulations and develop new ones that take into account regional specifics of land use and are harmonized with international law.

Article 165 of the Land Code and Article 30 of the Law “On Land Protection” in the field of land protection and soil fertility reproduction provide for the establishment of four groups of standards: “optimal ratio of land; quality of soils; maximum permissible soil contamination; degradation of lands and soils” [10, 13]. Despite the urgent need to establish restrictions on the area under crops that may damage soil fertility, the current version of this law without proper justification removed the standard for the optimal ratio of crops in crop rotations. Legislation, governing land relations regarding the rational use of agricultural land through the introduction of science-based crop rotations, also needs to be amended accordingly. In this aspect, the regulations defining agro-technical requirements include the Resolution of the Cabinet of Ministers of Ukraine “On approval of standards for the



optimal ratio of crops in crop rotations in different natural and agricultural regions” from 12<sup>th</sup> of July, 2010, №164-2010-n, however, the rules specified in it should not be recommended, but applicable. The ecological and economic substantiation of crop rotation is devoted to Art. 52 of the Law of Ukraine “On Land Management” [16], which states that the development of relevant land management projects involves, inter alia, “drawing up schemes of crop rotation in crop rotation”. The procedure for developing such land management projects is determined by the Resolution of the Cabinet of Ministers of Ukraine of November 2<sup>nd</sup>, 2011, № 134. However, the obligation of this requirement was valid until the 1<sup>st</sup> of January, 2015 and applied only to the massifs of agricultural land with an area of more than 100 hectares.

Standards for the optimal ratio of land are set in the process of planning land use “to prevent excessive anthropogenic impact on them” in accordance with Art. 165 of the LCU and Art. 33 of the Law “On Land Protection” [10, 13]. However, it should be noted that the legislative regulation of these aspects is insufficient, because the norms of the optimal ratio of land currently exist only in the form of scientific and methodological recommendations. It is generally accepted that the optimization of the structure of agricultural land should be carried out by gradually reducing the share of arable land and a corresponding increase in the share of ecologically stabilizing lands. Since the territory of the country is characterized by a significant diversity of natural and economic conditions and factors of soil degradation, the optimization standards need to take into account regional characteristics. Experience shows that the practical implementation of optimization measures by removing degraded and unproductive lands from intensive cultivation and their conservation is possible only on the basis of legislation, because the implementation of the decree on conservation of degraded lands can be extended indefinitely [15].

Standards for quality and maximum allowable soil pollution apply to anthropogenic loads only of a chemical nature, and standards for reclamation, physical, mechanical and other types of loads are not available at all. The Law of Ukraine “On Land Protection” stipulates that the above standards are set by the

Cabinet of Ministers of Ukraine, however, the mechanism of their creation is still undeveloped, and the work of research institutions in this direction is carried out mainly without a state order.

The decisive role in ensuring the protection of land as the main national wealth of Ukraine should be played by state control, the legal, economic and social foundations of which are defined by the Law of Ukraine “On State Control over Land Use and Protection”. It aims to ensure the rational use and reproduction of natural resources and environmental protection [17]. However, the implementation of the norms of this Law in the daily life of society is complicated by the permanent reorganization of the system of specially authorized central executive bodies in the field of land protection.

The main state lever for ensuring reliable land protection is land management, among the main tasks of which, according to the Law of Ukraine “On Land Management”, are “the implementation of state policy on land use and protection” [16]. In practice, this is implemented through the development and implementation of working land management projects that should improve the condition of land and the environment, regulate all economic activities for the conservation and efficient use of land resources. It should be noted that now in the structure of land management works the dominant share falls on the development of land management projects for the allocation of land and the preparation of documentation certifying the right of ownership. In turn, the lack of technical documentation for the establishment (restoration) of the boundaries of most lands of nature reserves, health, recreational and historical and cultural purposes makes it impossible to optimize the structure of land, as the latter must be accompanied by the development of protected areas as an extension of the ecological network. territory.

Given this, to regulate the use and protection of land there is a need to introduce at the local level the development of land management projects for land zoning in the territorial community [18, p. 26].

Despite the large number of current regulations, the practical implementation of land protection measures is far from optimal, due to a number of reasons:

1) there is no consistent state policy on land protection (so far the National Program of Land Use and Protection has not been approved, there is a constant reorganization of the system of specially authorized central executive bodies on land resources, in practice the priority of environmental safety over economic interests of land users);

2) insufficient funding of land protection measures and lack of a real mechanism of economic incentives for landowners and land users;

3) lack of interest of landowners and land users in the implementation of land protection measures due to the low level of environmental awareness, both in the society as a whole and in individual citizens;

4) the effective mechanism of normative-legal regulation of land protection is not involved, which is caused by the lack of a clear legally established algorithm of implementation (with clearly defined stages and stages) of legal, organizational, economic, technological and other land protection measures.

**Conclusions.** The regulatory framework of land protection, formed during the land reform, does not provide proper regulation of land relations in this area due to fragmentation, lack of system, declarativeness of both legal norms and technical requirements for land protection in the process of economic activity. Currently, the process of development and adoption of regulations on land protection needs to be intensified, as neither the Land Code of Ukraine nor the Law of Ukraine “On Land Protection” provide comprehensive legal regulation in this area. To date, the country has not completed the development and adoption of relevant standards and regulations in the field of land protection and soil fertility, aimed at ensuring environmental and sanitary safety of citizens by defining requirements for land quality, allowable anthropogenic load and economic development.

Improving the legal regulation of land protection should be carried out in the direction of filling existing gaps in the relevant legal field, eliminating unnecessary layers and conflicts in regulations in the field of land protection, systematization of land protection norms contained in numerous laws and regulations. This requires:

1) taking into account the peculiarities of the current stage of development of land relations in Ukraine (decentralization of power, formation of united territorial communities, preparation for the opening of market circulation of agricultural land, etc.), develop the Concept “System of measures for protection and monitoring of land until 2030”. would become the basis for the formation of the “National Program of Land Use and Protection” and the introduction of effective mechanisms for its implementation;

2) taking into account the special status of soils in the land resource potential of the country and the importance of soil fertility in ensuring food security of the country, to develop a separate law on soil protection;

3) to ensure high quality of land, not to exceed the allowable anthropogenic load and economic development of land, to develop and approve at the legislative level standards in the field of land protection and reproduction of soil fertility, provided by the Law “On Land Protection”;

4) to regulate the technological load on the soil cover of agricultural landscapes, to enter into Art. 30 of the Law “On Land Protection” standard for the optimal structure of sown areas and crop rotations.

In this context, it is necessary to coordinate the efforts of scientists and specialists in the relevant field to develop standards for anthropogenic pressure on land resources, as many types of this load do not have a consistent assessment. The problem of harmonization of the national land protection legislation with the international one can become a prospect of further researches.

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### ***НОРМАТИВНО-ПРАВОВОЕ РЕГУЛИРОВАНИЕ ОХРАНЫ ЗЕМЕЛЬ В ПРОЦЕССЕ ОСУЩЕСТВЛЕНИЯ ЗЕМЕЛЬНОЙ РЕФОРМЫ***

Проанализировано современное состояние нормативно-правовой базы в сфере охраны земель, которая призвана обеспечить регламентацию осуществления землеохраняющих мероприятий в аграрном секторе экономики страны. Результатом декларативности, фрагментарности и бессистемности большей части норм национального природоохранного законодательства по охране земель наряду с отсутствием надлежащего финансового обеспечения является низкий объем реально внедренных землеохраняющих мероприятий. Последнее, в свою очередь, является причиной широкого распространения деградационных процессов, ухудшение качества почвенного покрова, снижение производительности агроландшафтов. Доказано, что единственным механизмом обеспечения надежной защиты сельскохозяйственных земель от вредного антропогенного воздействия является землеустройство, который

обеспечивает совершенствование земельных отношений, планирование и организацию рационального использования и охраны земель на всех уровнях от национального до хозяйственного. Обоснована необходимость разработки Загальнодержавної програми використання і охорони земель як основного законодавчого акта стратегічного напрямлення в цій сфері, внесення змін і доповнень в законодавчі акти стосовно змісту і структури землеохоронних заходів, розробки і затвердження на законодавчому рівні нормативів в області охорони земель і відтворення родючості ґрунтів.

Ключевые слова: охрана земель, нормативно-правовые акты, сельскохозяйственное землепользование, землеустройство.

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### ***НОРМАТИВНО-ПРАВОВЕ РЕГУЛЮВАННЯ ОХОРОНИ ЗЕМЕЛЬ В ПРОЦЕСІ ЗДІЙСНЕННЯ ЗЕМЕЛЬНОЇ РЕФОРМИ***

*Проаналізовано сучасний стан нормативно-правової бази у сфері охорони земель, що покликана забезпечити регламентацію здійснення землеохоронних заходів в аграрному секторі економіки країни. Результатом декларативності, фрагментарності та безсистемності більшої частини норм національного природоохоронного законодавства стосовно охорони земель поряд з відсутністю належного фінансового забезпечення є низький обсяг реально впроваджених землеохоронних заходів. Останнє, в свою чергу, є причиною значного поширення деградаційних процесів, погіршення якості ґрунтового покриву, зниження продуктивності агроландшафтів.*

*Доведено, що єдиним механізмом забезпечення надійного захисту сільськогосподарських земель від шкідливого антропогенного впливу є землеустрій, який забезпечує вдосконалення земельних відносин, планування і організацію раціонального використання та охорони земель на всіх рівнях від національного до господарського.*

*Обґрунтована необхідність розробки Загальнодержавної програми використання та охорони земель як основного законодавчого акта стратегічного спрямування в цій сфері, внесення змін та доповнень до законодавчих актів стосовно змісту та структури землеохоронних заходів, опрацювання та затвердження на законодавчому рівні нормативів у галузі охорони земель і відтворення родючості ґрунтів.*

**Ключові слова:** охорона земель, нормативно-правові акти, сільськогосподарське землекористування, землеустрій.