Improvement of Public Control over the Use of Land Resources as an Important Aspect of Modernisation of the Ukrainian State in the XXI Century

Anatoliy V. Kostruba[1,*] and Pavlo F. Kulynych[2]

[1]*Department of Civil Law, Vasyl Stefanyk Precarpathian National University, Ivano-Frankivsk, Ukraine*

[2]*Department of Agrarian, Land and Ecological Law Issues, V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine, Kyiv, Ukraine*

Abstract: For the rational use and protection of land, the issue of effective implementation of land reform remains relevant. An important aspect in increasing the importance of this reform is the state's interest in land use. It is the main subject of land use control and protection. However, the consolidation of provisions on land protection in the Constitution of Ukraine demonstrates that the preservation of land resources in all spheres of public relations constitutes an important component of the legal policy of Ukraine in the land sphere and the constitutional obligation to protect land not only to the state but also to citizens, legal entities, and local communities. The purpose of the study is to analyse the legislative practice of compliance with the rules of rational use and protection of land resources. The main research methods were general science – analysis and synthesis, induction and deduction. The study considers the role of the state, people, local governments in the management and control of land resources. The main statutory documents governing the use of land resources were considered. Amendments to the legislation of Ukraine in the field of land ownership were proposed to delegate the powers of control of land resources between the state and local communities. The possible expansion of the land powers of the self-government bodies of the united territorial communities was considered. The practical significance of the study lies in the possibility of using results in the development of projects to improve public control over the use of land resources.

Keywords: Land use, policy, land reform, decentralisation, state control.

INTRODUCTION

The land reform that was launched in Ukraine in the early 1990s led to several stages in the development of Ukraine's land legislation. The key directions of its development were the decolectivisation of agricultural land use, demonopolisation of land ownership, and privatisation of land to create conditions for the implementation of private initiative of landowners in all spheres of economic and social life of the country. The 30-year period of land reform has fully confirmed the feasibility of such areas in the development of land legislation. In fact, the reformed land legislation laid the foundations for the modernisation of the land and legal system of Ukraine as a legal, democratic, and social state in the 21st century. In particular, the logic of land reform has led to a new direction in the development of land legislation – the decentralisation of power in the field of legal regulation of land relations. This aspect is related to the adoption of the Law of Ukraine "On Voluntary Association of Territorial Communities" (2015). And although this law is considered the basis of local government reform in Ukraine, it should be considered an important piece of legislation on land reform at its final stage. In particular, this Law creates preconditions for reforming such a rather "conservative" institution of land law of Ukraine developed in the Soviet period as an institution of public (state) control over land use and protection (Krasilshchikov *et al.* 2014; Kurbanova *et al.* 2020; Magsumov *et al*. 2019a; Magsumov *et al.* 2019b; Stepanchuk *et al.* 2017; Zhusupbekov *et al.* 2020).

The problem of control over the use and protection of land has become relevant in the science of land law in the 20th century. However, its relevance was conditioned by the dominance of state interests in the field of land use. This dominance developed in 1917 with the nationalisation of the country's land fund by the Bolsheviks and the proclamation of land as the object of exclusive property of one subject – the state. The state became the sole, exclusive, and monopoly owner of all land resources of the country and had to ensure their rational use. In a command-and-control economy, when the means of economic incentives for efficient use and protection of land were not used as attributes of a market economy, the state constantly tried to strengthen its control function in land relations. One of the means of ensuring the rationality of land use was a comprehensive state control over the use of state property by individuals and legal entities. Accordingly, the system of state control over land use and protection was developed in the system of Soviet land law. Gradually, its importance has increased significantly,

*Address correspondence to this author at the Vasyl Stefanyk Precarpathian National University, Ivano-Frankivsk, Ukraine; Tel: 0342 531 574;
E-mail: an.kostruba@ubogazici.in

E-ISSN: 1929-4409/20

and the implementation of control activities to ensure the rational use of land was allocated to a separate function of state management of land resources (Busuiok 2017; Akizhanova *et al.* 2014; Barashkin and Samarin 2005; Magsumov *et al.* 2018; Barabanshchikov *et al.* 2016; Molchanova *et al.* 2019a; Molchanova *et al.* 2018; Sultanbekov and Nazarova 2019a; Sultanbekov and Nazarova 2019b).

The beginning of land reform and the transfer of a significant part of the state land fund to the private ownership of citizens and legal entities and communal ownership of territorial communities of villages, settlements and cities significantly changed the structure of land ownership. However, the situation in the field of public control over land use and protection in Ukraine has not changed: such control is carried out only by the state. O. Batanov (2014) noted that the model of decentralisation and deconcentration of public power in Ukraine remains unchanged and is described by the actual implantation of local government in the matter of public administration, total dependence on the state. An important milestone in the development of the legislative framework for control over the use and protection of the country's lands was the adoption of the current Constitution of Ukraine on June 28, 1996. It contains several constitutional provisions that influence the development of the main "parameters" of the system of public management of land resources of the country, including control in the field of land use and protection. Thus, Article 13 of the Constitution of Ukraine (1996) declares that “Land, its subsoil, air, water, and other natural resources located within the territory of Ukraine, natural resources of its continental shelf, exclusive (marine) economic zone are the property of the Ukrainian people”. On behalf of the Ukrainian people, the rights of the owner are exercised by state authorities and local self-government bodies within the limits set by this Constitution. Every citizen has the right to use natural objects of property of the people in accordance with the law. However, this constitutional provision is ambiguously interpreted by Ukrainian politicians and scholars (Bashynska 2016; Bayanov *et al.* 2019; Koryahin *et al.* 2018; Mamadaliev *et al.* 2020; Molchanova *et al.* 2019b; Trusova *et al.* 2019; Zykova *et al.* 2021).

According to I. Kresin and O. Kresin (2016), the right of peoples to dispose of their natural wealth and resources was proclaimed in the Declaration of Independence of Colonial Countries and Peoples in 1960. In UN General Assembly Resolution 1803 (XVII) “Inalienable Sovereignty over Natural Resources” of 1962, this right was proclaimed a basic element of the right of the people to self-determination and was interpreted as the right to establish rules and conditions for economic activity in the territory of the people. The Declaration on the Establishment of a New International Economic Order of 1974 proclaimed the right of a people under foreign occupation, foreign and colonial rule or under the oppression of apartheid to reimbursement and full compensation for exploitation, depletion, and damage to natural and all other resources of their territory. I. Kresina and O. Kresin (2016) addressed the fact that in the Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States in 1981, the subject of the right to exercise sovereignty over their natural resources is no longer the people but the state, although the exercise of these rights must correspond to the will of the people of the respective state. Thus, international law means provision that in the process of self-determination of the people and the creation of their state, the main emphasis in the exercise of the sovereign rights of the people to natural wealth and resources rests with the state.

MATERIALS AND METHODS

In the course of the study, general scientific methods of analysis and description of legislative practice of use and protection of land resources were used. In reviewing the above provisions of Article 13 of the Constitution of Ukraine, one may come to an erroneous idea that this article regulates land ownership, endowing the Ukrainian people with the status of sole and exclusive owner of all land resources. However, Articles 14 and 142 of the Fundamental Law differently determine the subjective composition of land ownership in Ukraine. They stipulate that land ownership is acquired and exercised by the state, territorial communities, as well as legal entities and citizens. Thus, the Ukrainian people act in relation to the land resources of the state not as the owner, but as an entity that makes special demands on public authorities, local governments, and legal entities and individuals as owners of land, special requirements for land use and protection (Akizhanova *et al.* 2018; Zatsepin *et al.* 2018; Bieliatynskyi *et al.* 2018; Koryahin *et al.* 2019; Ushakov and Ermilova 2020; Zhukovskyy *et al.* 2019).

Thus, parts 3 and 4 of Article 13 of the Constitution of Ukraine declare that property is binding, it should not be used to the detriment of human and society. And the state must ensure the protection of the rights of all

subjects of property rights and management, the social orientation of the economy, as well as the equality of all subjects of property rights by law. The provision that the implementation of the owner's powers by all legal subjects of land ownership is possible subject to the preservation of land as an object of ownership permeates the above constitutional provisions on land relations regulation. Evidently, that is why Article 16 of the Fundamental Law of the country makes provision for ensuring environmental security and maintaining ecological balance in Ukraine, overcoming the consequences of the Chernobyl disaster – a catastrophe on a global scale, preserving the gene pool of the Ukrainian people on the state. After all, not only the social and economic scope of land ownership, but also its legal content is determined by the characteristics of land as its object (Bogaevskaya *et al.* 2020; Alieva *et al.* 2020; Bondarenko *et al.* 2018; Komilova *et al.* 2019b; Komilova *et al.* 2019c; Hryniak and Pleniuk 2018; Kuznetsova and Onishchenko 2018; Sheverdin 2018).

The above constitutional provisions are exhaustively summarised in Article 14 of the Constitution of Ukraine, which establishes an extremely important provision that all the lands of Ukraine are the main national wealth and are under special protection of the state. Thus, according to the Constitution of Ukraine, land protection is the responsibility not only of the state, but also of citizens, legal entities, and territorial communities. Accordingly, the state, territorial communities, legal entities and citizens must control the use of land as an important means and component of their protection. This model of the institute of control over land use and protection was enshrined in the Land Code of Ukraine (2001), adopted in the Constitution of Ukraine on October 25, 2001 and entered into force on January 1, 2002. In this Code, three articles are deal with the organisation of control over land use and protection – 188 (state control over land use and protection), 189 (self-governing control over land use and protection), and 190 (public control over land use and protection). It would seem that the Land Code of Ukraine has laid the foundations for the equal development of three types of control in the field of land use and protection – state, self-governing, and public (Alimbayev *et al.* 2020; Montaev *et al.* 2020; Semenycheva *et al.* 2020; Shakbutova *et al.* 2020; Trusova *et al.* 2020a).

However, subsequent legislative practice has refuted this assumption. Thus, Article 33 of the Law of Ukraine "On Local Self-Government in Ukraine" (1997), adopted on May 21, i.e., after the adoption of the Constitution of Ukraine, defines the powers of executive committees of village, settlement, city councils in the field of control over land use and protection as delegated by the state. This means that the powers of land control are exercised by the executive committees of village, settlement, city councils according to the rules established by the relevant state bodies and under their supervision, which makes the control activities of local governments in the field of land relations completely dependent on public authorities. Furthermore, on June 19, 2003, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On State Control over Land Use and Protection" (2003), which detailed and consolidated the functions and powers of public authorities in the field of land control. Thus, in Ukraine only one type of public control in this area has developed – state control. Accordingly, self-government control, or control over the use and protection of land, which should be carried out by local governments of territorial communities, is, in fact, in its infancy (Daurenbekova *et al.* 2020; Pivnyak *et al.* 2018; Piwniak *et al.* 2007; Shormakova *et al.* 2019; Trusova *et al.* 2020b; Komarova 2018; Politanskyi 2018; Nosik 2018; Luts 2018).

At the same time, back in 1998, Ukraine joined the European Charter of Local Self-Government, which makes provision for the establishment of local self-government based on the principles of universality and subsidiarity. However, only after the adoption of the Law of Ukraine "On Voluntary Association of Territorial Communities" (2015), Ukraine began to take measures to restructure local self-government based on its universality and subsidiarity. The principle of universality of local self-government means that it should cover the entire territory of the country, and the principle of subsidiarity states that local self-government bodies of territorial communities (communes, etc.) should address all issues of local life, except those that can be resolved only at higher levels of public authority – national, regional, or district. To implement the principles of this Charter, it is necessary to concentrate financial and other resources, which are now scattered in villages and other small settlements. Therefore, the draft Law of Ukraine "On Amendments to the Constitution of Ukraine" (2016) adopted on August 31, 2015 in the first reading stipulates the provision of other legal features to the territorial community. In fact, with the final adoption of this Law, the implemented division of power in Ukraine into three relatively independent branches – legislative,

executive, and judicial – will be modernised and include a new branch. The conventional legislative, state executive, and judicial branches of power will be supplemented with another branch – the power of local self-government, exercised by local councils and, above all, the councils of newly formed communities.

RESULTS AND DISCUSSION

According to the Concept of Reforming Local Self-Government and Territorial Organisation of Power in Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine No 333-r dated April 1, 2014, one of the key areas for improving the organisation of public power in Ukraine is the separation of powers between executive and local governments based on decentralisation of power. It is assumed that it is based on the decentralisation of power that the exclusion of local self-government from resolving issues in the field of land relations will be overcome. World practice indicates that the material basis for the development of a system of effective local self-government is land ownership and income generated in the field of land use. Recognition of local self-government as one of the foundations of the constitutional system of the country involves the establishment of a decentralised system of government – a form of organisation of public authority on the ground, which provides citizens with independent solutions to local life, considering historical and local traditions (Popko 2016). Accordingly, the principle of subsidiarity in the establishment of local self-government is designed to ensure the proper power of territorial communities (Fedorenko and Chernezhenko 2017), i.e., their legal capacity to address local life issues, including land use and protection.

At the same time, the literature suggests that the capacity of territorial communities and local governments in Ukraine depends only on their financial and budgetary support (Kovalenko 2013). Undoubtedly, resource provision is a particularly important area of building the capacity of united territorial communities. However, their capacity to achieve power can only be achieved through the availability of community self-government bodies not only with the appropriate material and financial resources, but also with appropriate authority, including in the field of land use and protection. The reform of decentralisation of power is aimed at developing the proper capacity of the united territorial communities and the local self-government bodies established by them. The decentralisation of powers in the field of land relations should be considered in two aspects: as decentralisation of powers to exercise the right of public (state and communal) ownership of land and as decentralisation of powers in the field of public (state) land use and protection (Alpysbayev *et al.* 2020; Degtyarev *et al.* 2019; Galamandjuk *et al.* 2017; Trusova *et al.* 2020c).

To ensure the decentralisation of power in terms of their authority in the field of land ownership, it is necessary to supplement the legislation of Ukraine with legal provisions that would contain criteria for defining land as an object of communal property rights of united (capable) territorial communities, including land both within settlements and outside them. In particular, land legislation should ensure the establishment of the priority of communal ownership of land within the community by: transfer of the vast majority of state-owned land located in the community to the communal ownership of the territorial community; establishment of the presumption of belonging to a territorial community on the right of ownership of lands, the owner of which has not been established. Finally, the legislation should define the powers of local governments to control the use of communally owned land of the united territorial community. Such control should be exercised as part of the implementation of the function of such a community as the owner of the respective lands. As part of such control, compliance with the use of communal land should be verified both by the provisions of the current land legislation and by the interests of the community as a landowner. It is obvious that the control over the use of land as an object of communal property rights should be exercised both by the councils of united territorial communities and their executive committees, and by the communities themselves, for example, by conducting polls and local referendums.

A more complex problem is the development of land legislation in terms of ensuring the decentralisation of powers of authorities in the field of land use management and protection. We believe that the implementation of the principle of subsidiarity of local self-government dictates the need to expand the land powers of self-government bodies of united territorial communities. The literature expresses the opinion that control in the field of local self-government as a kind of social control, which is a system of inspection by authorised entities (public authorities, general public) of bodies and officials of local self-government in order to identify violations of current legislation, inconsistencies of results with the task set (Smoliar 2016; Astapov *et al.* 2019). It is difficult to agree with this position. The control over the use and protection of land in the field

of local self-government should be understood as checking the compliance of all citizens, legal entities, and the state with the requirements of land legislation in the territory of the community, as well as the compliance of the results obtained with the tasks defined in the planning documentation approved by the council of the territorial community, carried out by the territorial community and its self-government bodies (council, executive committee, headman).

The main aspects of expanding the land powers of self-government bodies of united territorial communities should be: granting to the local self-government body of the united territorial community – the council of the territorial community – the authority to plan the use and protection of all the lands of the community, including state and private land, but without changing the purpose of such lands; crediting the land tax from all lands of the territorial community to the budget of the territorial community, as well as granting the council of the territorial community the right to establish and cancel benefits for the payment of land tax and rent for communal lands; granting the council of the territorial community the right to exercise control over the observance of the requirements of the current land, town-planning, and ecological legislation by owners and users of land plots located on the territory of the territorial community. Thus, the control powers of the councils of the united territorial communities in the field of land use and protection should become an important legal lever to ensure the implementation of all other land powers of the local self-government bodies of the united territorial communities (Durakovic 2018; Atabekova and Radic 2020; Galamandjuk *et al.* 2019; Komilova *et al.* 2020a; Komilova *et al.* 2020b; Sorokin and Novikov 2019).

The exercise of control over the use and protection of land by communities within their territories will not be sufficiently effective without obtaining the right of communities to establish “rules of the game” in land relations. In turn, the establishment of such rules is possible by giving communities the right to plan land use within their territories, which includes land both within settlements and outside them. That is why the draft Law of Ukraine “On Amendments to the Land Code of Ukraine and Other Legislative Acts on Land Use Planning” (2019), for the first time in the history of local self-government in Ukraine, makes provision for territorial planning tool as a comprehensive community spatial development plan. According to Article 16-1, which is planned to supplement the Law of Ukraine “On Regulation of Urban Development” (2011), a comprehensive plan of spatial development of the community, first, determines the planning organisation, functional purpose of the territory, basic principles and directions of developing a unified public service system, road network, engineering and transport infrastructure, engineering training and improvement, civil protection of territory and population from dangerous natural and anthropogenic processes, protection of lands and other components of the environment, protection and preservation of cultural heritage and traditional environment of settlements, as well as the sequence of solutions, including stages of development of the territory (Aubakirov *et al.* 2019; Bakhmat *et al.* 2019; Duraković and Mešetović 2019).

Secondly, a comprehensive plan of spatial development of the community establishes the functional purpose, the requirements for the development of individual territories (functional zones) of the territory of the entire community, their landscape organisation. Furthermore, a comprehensive community spatial development plan includes planning decisions of master plans of settlements located on the territory of the community, unless such master plans are approved earlier and their planning decisions are consistent with such a comprehensive plan. Thirdly, a comprehensive community spatial development plan is both urban planning documentation and land management documentation at the local level. Thus, for the first time in the history of land use planning and protection at the local level, the Soviet-era conflict between the two main institutions for the development of land use plans – architecture and land management, each of which previously defended its own approaches in preparing planning decisions for the use of the same territory, which often did not match. And this in turn reduced the effectiveness of control over the implementation of land use plans.

Furthermore, the draft Law of Ukraine “On Amendments to the Land Code of Ukraine and Other Legislative Acts on Land Use Planning” (2019) makes provision for the transfer of state-owned lands located outside settlements (except for lands needed by the state to perform its functions) to communal property of territorial communities. Such a transfer allows to control the use of land within its territory not only by the self-governing bodies of territorial communities, but also by the territorial communities themselves, based on the powers of the landowner. In particular, local self-government bodies of territorial communities will exercise the authority to change the purpose of privately owned land plots not only within settlements,

but also outside them (Golovchenko *et al.* 2020; Karmanovskaya *et al.* 2020; Komilova *et al.* 2019a).

An important legal precondition for granting and exercising powers in the field of land relations to territorial communities and their self-government bodies is provided by the draft Law of Ukraine "On Amendments to the Land Code of Ukraine and Other Legislative Acts on Land Use Planning" (2019), reorganisation of the State Service for Geodesy, Cartography and Cadastre (State Geocadastre). It loses the legal status of a specially authorised central executive body that implements national policy in the field of land relations, and acquires the legal status of a central executive body that implements state policy in the field of cadastral activities and geospatial data. The institute of state examination of land management documentation, within the framework of which the State Geocadastre exercised control over the compliance of land management documentation with the requirements of the land legislation of Ukraine, is also abolished. Instead of state examination of land management documentation, verification of land management documentation and land valuation is introduced by state bodies on the principle of "one touch" and "tacit consent", where this public inspection should be combined with control of topological connectivity and absence of land boundaries and other objects of the State Land Cadastre (Kalchenko *et al.* 2018; Bakhmat *et al.* 2020).

However, the main innovation is the introduction of voluntary independent quality control of land management work by reviewing land management documentation by certified land surveyors with at least two years of practical experience who did not take part in the preparation of this documentation, as well as expert advice from self-regulatory organisations in the field of land management, in cases when a mandatory state examination was previously envisaged. To increase the effectiveness of professional control over the quality of land management, full openness and accessibility of land management documentation, publicity of its consideration is guaranteed, access of citizens, authorities, developers of land management documentation to the materials of the State Fund of Land Management Documentation and Land Evaluation is simplified. Instead, the authority to exercise state control over the use and protection of land entrusted to the State Geocadastre is transferred to regional state administrations, which in the future, after the reform of decentralisation, will be transformed into prefectures and executive bodies of village, settlement, and city councils. And the authority to exercise state control over compliance with environmental legislation in terms of compliance with environmental requirements for land protection is vested in the central executive body that implements national policy on state supervision (control) in the field of environmental protection, rational use, reproduction and protection of natural resources.

CONCLUSIONS

The main subject of control over the rational use of land resources of the country is the state. The Ukrainian people only have the right to make demands on land use and protection. The established provisions of land protection are enshrined in the Constitution of Ukraine and other laws. Due to the decentralisation of power, control in the field of land relations was divided into delegation of powers between the executive and local self-government. For legal regulation, it is necessary to introduce changes in the legislation that would clearly define the criteria for the selection of communal lands within the settlement and outside it. Also, the powers of the bodies of the united territorial communities should be expanded in the field of rational use of land protection. Three main aspects of expansion of land powers are identified, which is an important basis for the implementation of land powers of local governments in practice.

At the legislative level, territorial communities have the right to plan land use through the implementation of a comprehensive community development plan. Among the innovations in the field of land control is the acquisition of the legal status of the central executive body by the State Service for Geodesy, Cartography, and Cadastre. The institute of state examination of land management documentation was abolished. Verification of documentation is carried out in compliance with the principles of "one touch" and "silent power". Checking the quality of land management is carried out by independent certified land surveyors with experience of two years. Control over the use and protection of land is carried out by regional state administrations, executive bodies of village, settlement, city councils.

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Received on 20-11-2020 Accepted on 18-12-2020 Published on 31-12-2020

DOI: https://doi.org/10.6000/1929-4409.2020.09.376