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ON THE QUESTION OF THE IMPLEMENTATION BY THE LOCAL COUNCILS OF OWNERSHIP POWERS IN THE FIELD OF LAND RELATIONS

Abstract. *Land plots owned by territorial communities of villages, settlements, cities, city districts can be combined as objects of their rights with the emergence of their joint ownership and transfer of these objects to the management of district and regional councils, representing the common interest of territorial communities of villages, settlements, cities. At the same time, territorial communities do not lose their ownership rights, but the ownership of district and region does not arise. Only the legal regime of communal property and the authority authorized to manage it changes. District or regional councils become owners instead of the corresponding village, settlements, cities or city districts, depending on which territorial communities unify their property, including land plots.*

Thus, district and regional councils, on the one hand, are defined as managers of unified land plots, which are the objects of the right of joint ownership of territorial communities, and on the other – recognizes their right of joint ownership on land plots of territorial communities.

One of the possible solutions to problems related to the management of unified land plots of communal property is the use of the norms of the civil law institute of trust ownership. This institution is borrowed from Anglo-American law and according to the Civil Code of Ukraine is defined as a special type of property right. Under such a model of legal regulation, the ownership of two subjects comes into ownership on the unified land: nominal owners – territorial communities of villages, settlements and cities (founders of trust

property) and trusted owners – district or regional council. It is the district or regional council that will manage the unified land in the interests and in favour of the territorial communities of villages, settlements and cities as founders of trust ownership.

Key words: *local councils, competence, management, land relations, local self-government, decentralization, trust ownership*

The relevance of the topic of the research is due to the fact that in the conditions of modern reform of land relations in Ukraine and in view of the processes of decentralization of the system of public authority, the problems of realization by the local councils of ownership powers in the sphere of use, protection and reproduction of lands become more important.

Formulation of the problem. It is known that until 1990, in the Ukrainian SSR, as well as in the former Union of SSR in general, there were local councils that belonged to state authorities and were subordinate to lower-level councils in the hierarchy. The activities of local councils were aimed primarily at securing national interests rather than local interests. This approach was implemented in the Land Code of the Ukrainian SSR (1990). According to its Article 5 the disposal of land was carried out by local councils, who provided land into lease and seized it. In the future, the powers of local councils in this area changed depending on the position of the legislator. Thus, for a certain period of time the ownership powers in the field of land relations were exercised by local councils depending on the location of the land plots, for example, only within the settlements.

The analysis of publications shows that the problems of realization by the local councils of ownership rights in the sphere of use, protection and reproduction of lands have not been comprehensively and systematically studied. Only certain aspects of this issue were considered in the works of such domestic and foreign authors as D. V. Busuiok, O. A. Zabelyshenskyi, A. P. Hetman, V. V. Nosik, A. M. Miroshnychenko and others.

The purpose of the article is to investigate the conflicts of legal regulation of ownership competencies of district and regional councils in the field of land resources management, use, protection and reproduction of land, to develop recommendations for improving the legal basis of local councils in the field of land relations.

The main material. As a result of the demarcation of lands of state and communal property, as well as the formation of communal property lands as an object of this right, the status of local councils as subjects of land relations has also undergone significant changes.

The Constitution of Ukraine (Article 142) and the current Land Code of Ukraine (Article 80) recognize territorial communities as the subject of communal ownership of land that directly exercise ownership of land (by holding local referendums, Article 7 of the Law of Ukraine «On local self-government in Ukraine»), or indirectly, that is, through bodies of local self-government.

As we can see, the above legal regulations determine not only the subjective and objective composition of communal land ownership rights, but also the ways of territorial communities exercising their ownership rights. This is due to the fact that in the vast majority of cases territorial communities, such as villages, settlements and cities cannot directly exercise their powers as communal land owners. Therefore, on their behalf, the administrative powers for these lands are exercised by the respective self-government bodies. The systematic analysis of the current legislation shows that the following local councils act as such bodies: 1) village, settlement, city – regarding the lands of territorial communities of villages, settlements and cities; 2) district, region and Verkhovna Rada of the Autonomous Republic of Crimea – concerning the lands of joint ownership of territorial communities. At the same time, according to the legislation, issues related to the regulation of land relations, including the exercise of ownership powers by these bodies, are solved by councils exclusively in plenary meetings.

It is known that the disposal of land provides for the possibility of determining its legal fate by taking appropriate actions, for example, by making decisions by the authorized bodies on the transfer of land to property or the lease or use of civil transactions, namely the purchase, sale, lease of land, etc. The administrative actions of the owners of communal lands are also reduced mainly to the transfer of the land plots to the property, the provision, use, establishment and change of purpose of the land, etc.

The powers of local self-government bodies to transfer land into ownership or use are defined in the Article 122 of the Land Code of Ukraine. From the content of the mentioned norm it follows that village, settlement and city councils transfer land plots to the ownership or use from the lands of communal property of the respective territorial communities for all needs. According to this norm, the Verkhovna Rada of the Crimea, region, district councils transfer land plots for ownership or use from the respective lands of joint ownership of territorial communities also for all needs. Unfortunately, Article 122 of the Land Code of Ukraine does not clearly define the powers of local self-government bodies of the united territorial communities, the emergence of which is caused by the reform processes in the local self-government system. The absence of specific regulations in the Land Code of Ukraine, which directly relate to the powers of the united territorial communities and their local self-government bodies in the field of land relations, creates a number of problems related to the regulation of land relations within the territories of the united territorial communities. It is obvious that there is a need to amend the Land Code of Ukraine, which would determine the powers of local self-government bodies of the united territorial communities.

In modern conditions, there is some interest in the question of the exercise of ownership rights to joint ownership of land plots of territorial communities.

It should be noted that land relations are regulated not only by land but also

by civil legislation. This is especially relevant for public relations concerning the possession, use and disposal of land, which according to the Article 2 of the Land Code of Ukraine form the basis of land relations, i.e. the subject of land law as a separate branch of the legal system of Ukraine.

According to the Article 355 of the Civil Code of Ukraine, property owned by two or more persons (co-owners) belongs to them under joint ownership (joint property). The Land Code of Ukraine (Article 86) stipulates that the land plot may be jointly owned with the determination of the share of each of the participants in the joint ownership (joint partial ownership) or without the determination of the shares of the participants in the joint ownership (joint compatible ownership). Outlining the range of possible subjects of joint ownership, this rule refers to citizens, legal entities, as well as the state, territorial communities. Possible subjects of joint ownership of land plots of territorial communities are separately recognized by district and regional councils.

It is customary to define joint ownership of a land plot as the right of two or more persons for one object, that is, for one land plot. Therefore, in this case it is a question of the multiplicity of subjects of this right and the unity of its object. It should be emphasized that the right of joint ownership on the land plot is precisely the division of the right to the integral object, not the division of the object itself. In this case we are talking about a share in the right, not the right of the share of the object.

Article 83 of the Land Code of Ukraine provides for the possibility of territorial communities of villages, settlements, cities to unite on a contractual basis their land plots of communal property. Such land consolidation is the basis for the emergence of the right of joint partial ownership of territorial communities on the unified land. According to the Article 87 of the Land Code of Ukraine the right of joint partial ownership of the land arises at the voluntary association of the owners of the land owned by them. Only adjacent land plots that share the same purpose and common border can be combined. Obviously, the land of communal property, to which the Article 83 of the Land Code of Ukraine applies: all land within settlements, except land of private and state ownership; Land plots on which buildings, structures, other objects of communal property are located, irrespective of their location, can be difficult to combine, and often not possible, since it is necessary to take into account the requirements for the same purpose of land and location (adjacent areas that share a common border).

The possibility of emergence of a joint partial ownership of a plot of land is linked to the law, including the joint pooling of funds for construction, for example, a joint property located on such a plot of land. In this case the basis of the common ownership rights is according to the Article 120 of the Land Code of Ukraine.

The first version of the Article 83 of the Land Code of Ukraine stipulated that the management of the unified land plots had to be carried out by district and re-

gional councils. The current version of the part 6 of Article 83 of the Land Code of Ukraine stipulates that the management of land plots of united territorial communities is carried out in accordance with the law. This means that the legislator has foreseen the possibility of different options for managing land plots. An example of such regulation is the Law of Ukraine "On cooperation of territorial communities", which sets out the forms and procedure for cooperation of territorial communities. This approach is more in line with Part 2 of Article 142 of the Constitution of Ukraine, which enshrines the right of territorial communities of villages, settlements and cities to unite on a contractual basis objects of communal property, as well as budget funds for joint projects or for joint financing (maintenance) of communal enterprises, organizations and institutions, to create for the relevant authorities and services.

Another circumstance should be noted. Part 3 of Article 86 of the Land Code of Ukraine establishes that subjects of joint ownership of land plots of territorial communities may be district and regional councils. This position of the legislator seems contradictory, since Article 80 of the Land Code of Ukraine, which defines the subjective composition of land ownership and does not name district and regional councils as subjects of land ownership. Thus, district and regional councils, on the one hand, are defined as the subject of management of the unified land plots, which are objects of the joint ownership of territorial communities, and on the other hand, recognizes them as the subjects of the joint ownership of the land plots of territorial communities. Therefore, named councils at the same are time determined both as the landowners and the entities that manage the land plots.

It is appropriate to point out that the Law of Ukraine «On local self-government in Ukraine» defines district and regional councils as bodies of local self-government, representing the common interests of territorial communities of villages, settlements and cities (Article 1) and exercising on their behalf the management of the objects of their joint property that meets the common needs of territorial communities (Part 4 of Article 60). It is the district and regional councils that can manage the trusts of jointly owned partial territorial communities in accordance with the current legislation and taking into account the peculiarities of the legal regime of such land plots. The granting of these councils with ownership rights over land of territorial communities can hardly be considered correct. In this regard, the provisions of Article 122 of the Land Code of Ukraine, which define the powers of the Verkhovna Rada of the Autonomous Republic of Crimea and local self-government bodies for the transfer of land for ownership or use, need adjustment. These councils should have managerial functions, and territorial communities, as co-owners, should not lose their powers to own, use and dispose of the unified land.

At the same time, there is still a question to be clarified: what does land management mean? As it is known, the land law doctrine uses different terms: «land management»; «state management of

land fund»; «state regulation of land relations» and others. Usually these terms are used as synonyms.

Studies of legal relations of public management in the field of land use and protection were carried out in the legal literature of the Soviet era. The definition of this category was debatable.

Management in this area was sometimes regarded as an activity carried out on the basis of property rights and determined the content of the right of exclusive state ownership of land. It was emphasized that such traditional functions as land management and land accounting was previously exercised by the state, which had the status of a sovereign and supreme political body. The Soviet state began to fulfill these functions in relation to nationalized lands as sole owner [1, p. 40].

Subsequently, in the land literature, the right of management was considered as an element of exclusive state ownership of land [2, p. 344].

It is sometimes emphasized that land management cannot be regarded as an additional power of the landowner. In this case, it is about land management and protection, the legal basis of which is not the right of ownership, but the right of territorial rule [3, p. 174].

Management has been considered by some authors in two aspects: as a form of realization of the content of land ownership and its integral component [4, p. 11–13]. O.A. Zabelyshenskyi considered management as a set of powers that covered ownership, use, and disposal. In his view, the lack of the need to construct a fourth power, which constitutes a management right, was obvious [5, p. 9–12]. Finally, management ceased to be classified as constituents of the content of land ownership and began to define it as a form of content of exercising of ownership. Elements of the content of ownership (possession, use and disposal) made up its content. And management was a form of its exercising [6, p. 53–55].

Modern land law doctrine also lacks a systematic view of management as a legal category. A study of literary sources shows that approaches to defining managerial relationships differ. According to A. P. Hetman, the state management in the field of land use, protection and reproduction should be considered as based on the legal organizational activity of the authorized bodies for ensuring the effective and rational use of land and protection within the limits defined by the legislation of Ukraine [7, p. 259].

V.V. Nosik believes that the concept of «land management» is generally not sufficiently substantiated, first of all, in terms of general management theory. In his view, it is possible to manage not the land, not the land resources, but the social relations that arise between the subjects. He proposes to consider the realization of the rights and obligations of the state in the field of land relations by means of the category «state regulation of land relations», the essence of which the author sees is that it is the state itself that should introduce such mandatory rules of conduct that would ensure the stability of the land system, guarantee of rights to land, land protection, law and order in land relations [8, p. 217–220]. A.M. Miroshnychenko, defines management in the

field of land relations as activity with the use of power coercion aimed at ensuring the rational use, protection and restoration of land [9, p. 320–321].

In Soviet times, representatives of the land law science, exploring public management in the field of land use and protection, offered different approaches to the definition of this category. Based on the analysis of the legal literature of the Soviet era, D. V. Busuyok proposes to distinguish at least seven such approaches [10, p. 36–37].

The question of the legal nature of managerial relations in the field of land use and protection was investigated at the doctrinal level by D. V. Busuyok. She came to a well-founded conclusion that the legal relations in the field of land use and protection in a narrow sense it is advisable to understand as the relations arising from the rulemaking and administrative activity of the executive authorities with the purpose of power-organizing influence on the subjects of the land legal relations in order to predict and planning in the field of land use and protection, land monitoring, maintenance of the state land cadastre, standardization and normalization in the field of land use and protection, control in this area [10, p. 31–44].

The term «management» is also used in civil legislation. Civil law scholars understand the term «management» quite broadly and associate it with industrial or purely organizational relations. This term is considered by them as the competence of the owner. Since the civil law of Ukraine refers to the management of property, for example, the ward (Article 72 of the Civil Code), the inheritance (Article 1285 of the Civil Code), by contract (Article 1029 of the Civil Code), this makes the term «management» civil law one. Various suggestions are made regarding the management of the owner of his property. It is proposed to be considered as: a) part of the owner's right of disposal; b) the method of realization by the owner of three other powers; c) a separate jurisdiction that does not coincide with his other competences [11, p. 427].

It is known that the state exercises ownership through state bodies acting on behalf of the state and in its interests. The legislation does not exclude the possibility of exercising state ownership by involving private individuals (natural or legal) and contracting them to manage individual objects on a contractual basis. Thus, the special Law of Ukraine «On the management of state property» [12] not only outlines the range of state bodies authorized to manage state property, but also defines the powers of these bodies. The competence of bodies, which are granted the right to manage state property, includes the creation and termination of state legal entities, control over their activities, granting permission for the alienation of fixed assets of production, etc. Along with the powers that actually belong to the sphere of public law regulation, representatives of civil law also call the civil aspects of such management, in particular, the transfer of ownership of state property in the process of privatization, the leasing of property objects of state property, and more.

Territorial communities, exercising ownership rights, in accordance with the law (Constitution of Ukraine – Articles 142; 143), Law of Ukraine «On local self-government in Ukraine» – Article 1, have extensive rights to manage communal property, including land. They have the right to take any action that does not contradict the law with respect to these objects – to transfer the objects of ownership for temporary or permanent use, to rent, to transfer them in the course of privatization, to be redistributed on a competitive basis between their own legal entities.

Territorial communities of villages, settlements, cities and districts in cities may unite land plots as objects of their rights with the emergence of common property in them and the transfer of these objects to the management of district and regional councils representing the common interests of territorial communities of villages, settlements and cities. In this case, as emphasized in the civil legal literature, territorial communities do not lose their property rights and the ownership of districts and regions does not arise [11, p. 429]. Only the legal regime of communal property and the body empowered to manage it change. This body, instead of the respective village, town, city or district councils in the city, becomes a district or regional council, depending on which territorial communities combine their property, including land. If land plots of territorial communities of villages and settlements are combined, their management is exercised by the district council, and in the case of merging, for example, land plots of territorial communities of cities of regional importance, they are transferred to the management of regional councils.

One of the possible solutions to the problems related to the management of land plots of communal property is to use the rules of the civil law institute of trust property. This institute is borrowed from Anglo-American law and according to Part 2 of Article 316 of the Civil Code of Ukraine is defined as a special kind of property right. In this model of legal regulation of the unified land, the ownership of two entities arises: nominal owners – territorial communities of villages, settlements and cities (founders of the trust property) and the trustee – in the person of a district or regional council. It is the district or regional council that will manage the land in interest and for the benefit of the territorial communities of the villages, towns and cities as the founders of the trust.

However, representatives of civil law science claim that in the absence of a definition of a given right in the domestic law, the construction of a trust property is alien to the law of Ukraine. In their view, the introduction of the right of trust property into the legislation of Ukraine destroys the general principles of legal regulation of property rights as a single, monolithic, absolute right and introduces the concept of split property [11, p. 416].

Conclusion. In our opinion, the management of unified land plots of territorial communities of villages, settlements and cities should be exercised on the title of trust property by district or regional councils with the execution of the rele-

vant property management agreement, which does not entail the transfer of ownership to the property manager (land plots, which are merged), submitted to trust. At the same time, it is worth noting that the proposed version of the regulation of relations concerning the exercise of powers to own, use and dispose of a jointly owned land plot is possible only after amendments to the current legislation of Ukraine. Taking into account the provisions of Part 2 of Article 1033 of the Civil Code of Ukraine, it is necessary at the legislative level to allow district and regional councils to be governors and to manage the objects of joint property of territorial communities of villages, settlements and cities. There also should be provided the possibility of concluding between the respective village, settlement, city councils, on the one hand, and district, regional councils, on the other, a property management agreement, in which to determine the district, regional councils as the trusted owner of the property they own, use and dispose of in accordance with the law and the contract of property management.

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