

## Legal issues of protection of agricultural land in Ukraine at the present stage

### Правові питання охорони земель сільськогосподарського призначення в Україні на сучасному етапі

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#### Abstract

Excessive anthropogenic pressure on land resources in Ukraine leads to a deterioration of their quality, and consequently they lose their potential. Human impact on the change of land quality can be direct (by involving land lots in use, carrying out economic activities) and indirect (as a result of such activity, enhancing the natural degradation of soils). The tendency of deterioration of the state of land resources requires the subordination of land relations to the main goal – to ensure comprehensive protection of this major national wealth of Ukraine.

Legal support for the protection of agricultural land is considered as a single complex of interdependent elements: legal standards for the protection of land, soil, agricultural landscapes, and the mechanism for their implementation – legally significant measures: economic, organizational, scientific and technical. At the same time, it was concluded that the system of legal regulation of the use of agricultural land is not sufficiently saturated with mechanisms for regulating agricultural activity.

**Keywords:** Ukraine, land protection, agricultural lands, soil, land plots, agriculture.

#### Анотація

Надмірний антропогенний вплив на земельні ресурси в Україні призводить до погіршення їх якості, а отже, вони втрачають свій потенціал. В процесі діяльності людина впливає на зміну якості земель безпосередньо (залучаючи земельні масиви до використання, здійснюючи господарську діяльність) та опосередковано (в результаті такої діяльності, посилюючи природну деградацію ґрунтів). Тенденція погіршення стану земельних ресурсів вимагає підпорядкування земельних відносин головній меті – забезпеченню всебічної охорони цього основного національного багатства України.

Правове забезпечення охорони земель сільськогосподарського призначення являє собою єдиний комплекс взаємообумовлених елементів: правових норм з охорони земель, ґрунтів, агроландшафтів, і механізму їх реалізації – юридично значимих заходів: економічних, організаційних, науково-технічних. Однак система правового регулювання використання земель сільськогосподарського призначення недостатньо насичена механізмами регулювання сільськогосподарської діяльності.

**Ключові слова:** Україна, захист земель, землі сільськогосподарського призначення, ґрунт, земельні ділянки, сільське господарство.

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## Introduction

Since the introduction of the land reform in Ukraine, the legislator has focused on reforming land ownership relations, improving land management and introducing a free land market. However, the problems of legal protection of land and legal support for increasing soil fertility have not received proper legislative consolidation. The result was a long-lasting, irrational and exhausting agriculture that led to a significant reduction in soil fertility.

Agricultural land as an object of legal relations is a unique natural resource that can be depleted if used improperly and requires huge expenses for the restoration of their fertility. In this regard, the article is devoted to a complex and comprehensive study of the legal problems of agricultural land protection in Ukraine. The article contains a theoretical generalization and a new solution to the scientific problem in the field of legal regulation of relations concerning the protection of land. The effectiveness and completeness of state regulation of the use of land has been studied and evaluated in the context of two main interrelated aspects: the parameters of the ongoing economic activity (directions, types and methods of agricultural production, land use efficiency) and the result of economic activity (agricultural products (its types, quantity), environmental impact).

The ecological and economic assessment of the state of agricultural land is considered. The functions of legal support for the protection of agricultural lands have been investigated. It is proposed within the framework of legal support for agricultural land protection to create the following conditions for effective implementation of land protection measures: economic; organizational; scientific and technical.

The aim of the study is a comprehensive study of theoretical and practical problems of legal regulation of land protection, formulating, on this basis, appropriate proposals and recommendations for improving the legal regulation of public relations arising in the course of implementing measures for the protection of land, eliminating gaps and contradictions in the legislation of Ukraine in the field of legal support for improving soil fertility. All this will contribute to the development of modern doctrine of land, environmental law and other branches of legal science, in lawmaking, law enforcement and legal education. To achieve this

goal, we use the general scientific methods of knowledge and special methods of legal science.

## Literature review

Agriculture is one of the most promising sectors of the economy and the basic component of the agrarian sector of Ukraine. The cultivation of agricultural products, the production, processing or export of food products is a progressive and promising sphere of business activity and attracting foreign investment. Effective agricultural management contributes not only to the achievement of profit, the revenues to budget through the payment of taxes and fees, but also to the rational use of agricultural lands, preserving their fertility and restoration. The development of agriculture indirectly affects the progress of other sectors of the economy, such as, for example, social development of rural areas.

There are many scientific studies of lawyers, economists and agrarians, which are devoted to the protection of agricultural land. In particular: land use economics was researched by scientists from the USA Klaus Hubacek; spatial simulation of agricultural land use changes – the US scientists P. Meiyappan, M. Dalton, Brian C. O'Neill, A.K. Jain and scientists from the Netherlands Peter H. Verburg, Paul Schot; sustainable agriculture – Jerry Courvisanos and Colin Richardson (France); sustainable development – O. Dubovyk, G. Menz, C. Conrad, J. Lamers, A. Lee, A. Khamzina and others.

All scientists came to the conclusion that the effective functioning of agricultural organizations based on reliable information about the quality of land is an important component of the process of protection of lands. This creates the basis to make informed management decisions by representatives of agribusiness and government, and also allows improving the activities in the field of land use. The latter, in turn, serves as a tool for the effective development of economic processes in the agricultural sector. In such a management system, particular attention should be paid to the impact of land quality on the effective functioning of agricultural organizations.

From an economic point of view, land quality is the basis for agricultural production and improving the supply of food to the population. At the same time, industry is supplied with raw materials. And precisely because of this, land has

a special natural-economic and geopolitical value (Gagay, 2015).

Nowadays, the quality of land resources in Ukraine is deteriorating due to excessive anthropogenic load, which results in the loss of their potential. In their activities, people influence the change of the quality of land directly and indirectly: directly – by attracting land masses to use, carrying out economic activities; indirectly – as a result of such activity, exacerbating the natural degradation of the soils. In most countries, this problem has become relevant.

It should be noted that the use of land resources in Ukraine, unfortunately, has a consumer character, and the economic efficiency of agricultural production is ensured by the use of their potential. Environmental requirements for land use and land protection are not met. There are also no economic preconditions for the effective use by land owners of their land plots directly for the purpose of small business development. Therefore, it is now necessary to develop scientifically sound measures for the rational use and protection of land resources and their potential to achieve sustainable rural development and progress in economic activity.

### Methodology

The theoretical and methodological basis of the work is the general scientific methods of research and special methods based on modern scientific foundations of economics, ecology, law and related sciences. We used the methods:

- economic and statistical – to analyze the current state of legal support for the protection of agricultural lands. In particular, a special paragraph “ecological and economic assessment of the state of agricultural land” is highlighted;
- complex and systematic analysis – for the study of literary sources, normative-legal acts in the studied sphere;
- experimental – to substantiate the conceptual model of the formation of the mechanism of legal support of land protection. For this purpose it is necessary to establish the following conditions for the effective implementation of measures for land protection: economic; organizational; scientific and technical;
- abstract-logical – for theoretical generalization and formation of

conclusions; 5) analysis and synthesis – for module research. Land protection should develop in three main areas: legal (consolidation and unification of all environmental requirements for land); organizational (development of a state land monitoring system, ensuring the steady implementation of all requirements for land protection through state land supervision); economic incentives for the efficient and rational use of land;

- systematic and functional method of scientific cognition helped to investigate the effectiveness of legal support for land protection in the system of guarantees of subjective rights of owners and users of agricultural land. To achieve the goals of protecting agricultural land, it is necessary not only to ensure the fulfillment of the obligation to protect land: active participation of state authorities in solving agricultural problems is also required;
- an analytical method has been applied to analyze and substantiate individual theoretical findings, for example, the use of land cannot be regulated exclusively by imperative methods, since it is effectively possible to implement mainly dispositive methods, primarily economic and social forms of motivation;
- formal legal method was used in formulating proposals for improvement of current legislation. In order to improve the legal regulation of the protection of agricultural land, it is necessary to regulate economic activity in more detail. This should be expressed in a wide range of measures for state stimulation and local regulation of the protection of land in agricultural production.

### Results and discussion

#### Ecological and economic assessment of agricultural land

Ukraine is the largest country in Europe. The land fund of the country is 60.35 million hectares (Vysochanska, 2015), which occupies 5.7% of the territory of Europe and 0.5% of the globe (Kulynych, 2011). In addition, Ukraine ranks third among European countries in terms of agricultural supply, behind only Belarus (0.90 ha per capita) and Greece (0.84 ha). Moreover,

Ukraine is 8th among the countries with the highest level of arable land, second to Australia (2.15 ha of arable land per capita), Kazakhstan (1.48), Canada (1.34), Niger (1), the Russian Federation (0.85), Argentina (0.77 ha) (Solovyanenko, 2012). Agricultural lands are located in more than 2/3 of the territory of Ukraine, which indicates a high level of agricultural development of the territory. It is the highest in the territory of Kirovohrad region – 84.6%, Zaporizhzhia – 84.5, Mykolaiv – 83.6 and Dnipropetrovsk region – 80.9%. The lowest level is in the Zakarpattia region, where its share is 36.8%, also in the territory of Ivano-Frankivsk – 46.3 and Rivne region – 47.8% (Krasnolutskyi, Shevchenko, 2018).

Agricultural lands have a special status, which is due primarily to their priority in use. Article 23 of the Land Code of Ukraine states that land suitable for agriculture should be available primarily for agricultural use. This provision is reinforced by Article 150, which emphasizes the inadmissibility of the seizure of particularly valuable land for non-agricultural purposes, except in cases provided for by law (VRU, 2001). It is important to emphasize that Ukraine's land-resource potential differs from other European countries. In its composition, the most valuable part – especially valuable lands – occupies an important place. In fact, thanks to them, the natural resource conditions of our country should be considered as the most favorable for the full use of the extremely scarce and limited resource of human life – the land. These lands are formed mainly by soil cover, which more than 70% consists of black soil and meadow-black soil. Such soils are characterized by a high level of fertility.

In the structure of the resource potential high-value soils together with agricultural land occupy 11 950.65 thousand hectares (19.8% of the territory of Ukraine) (Martyn, Osypchuk, Chumachenko, 2015). In turn, they are divided into soils of national and regional importance. Especially valuable lands dominate in the structure of agricultural lands in the forest-steppe and steppe zones of Ukraine. In these zones they occupy from 15.0% (Prydnayska zone) to 40.2% (Livoberezhna zone) (SCLR, 2003). The share of especially valuable agricultural land in different administrative regions of Ukraine is from 6 to 50%. High-value soils on agricultural land are dominant in the Central forest-steppe. The largest share of them is in Poltava (50.2%), Cherkasy (42.4), Kirovograd (37.4) and Kharkiv (35.2%) regions (Yevsyukov, 2016).

However, today Ukraine has a critical situation with the protection of these lands. Soil degradation, erosion and man-made pollution are progressing. The technologies used to grow crops lead to excessive soil mineralization and become one of the reasons for the decrease in humus content in soils. Studies show that the indicative indicators of permanent increase in production and sales of plant products hide the damage caused to the land fund (Shchuryk, 2017). Moreover, water and wind erosion are affected by one third of the total area of agricultural land. Excessive agricultural development and plowing of the territory is one of the main factors that destabilize the environmental situation in our country. The tendency to decrease the content of humus in the soil continues due to the decrease in the application of organic and mineral fertilizers, a significant reduction in the area of legumes, perennial grasses, etc. It is particularly unfortunate that nowadays in such a way lands are managed not only by tenants on private lands, but also by state and municipal enterprises and institutions on state-owned lands. Recently, neglect of crop rotations and cultivation of crops with gross violation of scientifically grounded norms of their rotation or even permanent crops has become widespread. The high level of plowed land, the spread of energy-intensive crops (sunflower, rapeseed, etc.), as well as the improper implementation of existing and failure to implement new soil conservation measures led to the rapid development of erosion processes. The vast majority of leased lands for commercial agricultural production are used without any scientifically grounded crop rotations.

Today there is a need for mandatory funding for national and regional land protection programs in order to preserve and restore soil fertility, protect them from water or wind erosion and increase their productivity.

The tendency of deterioration of the state of land resources requires the subordination of land relations to the main goal – to ensure comprehensive protection of this major national wealth of Ukraine. Appropriate programs for the development of land relations in the field of use and protection of lands should serve this purpose. Such programs should be based on a system of legal and regulatory documents that regulate the organizational and economic aspects of the development of land relations, in particular the land management mechanism. Land relations are designed to help overcome existing economic weaknesses, solving environmental and social problems.

### **Legal support for the protection of agricultural land**

Article 14 of the Constitution of Ukraine establishes a standard according to which land is the main national wealth. In addition, it enshrined the constitutional principle of the legal protection of land under special state protection. The Basic Law of the state establishes the main principles of social and legal relations in the acquisition and realization of land ownership, defines the function of protection of all subjects of land relations as a direct duty of the state (VRU, 1996). This provision was also reflected and detailed in the Land Code of Ukraine and other acts of land legislation. For example, Article 5 of the Land Code of Ukraine establishes that the land legislation is based on such "protection" principles as the principle of ensuring the rational use and protection of land and the principle of priority of environmental safety requirements.

One of the tasks of the state is to minimize the negative impact on the land by various means, among which is the improvement of the legal regulation of land ownership relations, as well as its rational use, reproduction and protection.

The system of Ukrainian legislation provides for the institute of legal protection of lands, which is at the same time a task of national environmental policy aimed at the environmentally balanced use of natural resources. Land protection rules are contained in the Constitution of Ukraine (Article 14), Land Code of Ukraine (Chapter 26), laws of Ukraine "On environmental protection", "On land protection", "On state control over use and protection of land" etc.

Land protection – a system of legal, organizational, economic, technological and other measures aimed at the rational use of land, prevention of unjustified seizure of agricultural land for non-agricultural needs, protection against harmful anthropogenic impact, reproduction and increase of fertility of soil, improvement of the productivity of the lands of the forest fund, provision of a special regime for the use of the lands of nature protection, health, recreational and historical and cultural purpose (Article 1 of the Law of Ukraine "On land protection") (VRU, 2003). Land protection is the responsibility of owners, users and tenants of land. However, to achieve the goals of protection of agricultural land, it is necessary not only to ensure the fulfillment of the obligation to protect land: active participation of state authorities in solving agricultural problems is also required.

### **The functions of legal support for the protection of agricultural land**

Implementation of measures for the protection of land is possible by fulfilling the function of the state on protection of agricultural land. So, organizational, economic, technical conditions must be created. Such conditions are necessary for agricultural producers to take measures to protect agricultural lands. We shall consider these conditions in more detail.

Organizational conditions include, first of all, the regulation of the legal form of activity of agricultural producers. In addition, the state solves many socio-economic problems of agriculture: maintaining the number of jobs, planning the development of rural territories, creating infrastructure and much more. Although formally legal regulation in this area is remotely related to the protection of agricultural land, it is nevertheless of great importance for the saving of land. For example, land use planning contributes to minimize the transfer of agricultural land to other needs, which helps to conserve areas of agricultural land.

Economic conditions imply the possibility of agricultural entities to carry out land protection measures without incurring financial losses. Measures for the protection of land can be divided into long-termed and short-termed ones according to the positive effect that they pursue. For example, the creation of forest shelter belts is aimed at reducing soil erosion, but requires the investment of substantial material resources and time. The advantage of this event is that the annual loss of soil fertility from wind erosion is reduced, and a long-term improvement in the quality of land is created. At the same time, fertilizing is an easier way to make up for the loss of land quality.

But, as it well known, the most effective measures to protect land are often costly and difficult to implement. Moreover, today agriculture in Ukraine is in an unfavorable economic situation, and therefore agricultural producers minimize the cost of protecting land. At the same time, they are trying to fully use the full potential of the earth in a short time. As it is noted in the literature, today in Ukraine there are agricultural enterprises, whose main purpose is profit maximization. It is achieved through specialization in the production of the most commercial products and cost minimization through the depleting use of the country's natural, social and infrastructural resources (Borodina, 2015). In the long run, savings on measures to



protect agricultural land appear unprofitable for such enterprises. So, the state should facilitate both short-term and long-term land protection measures, for example, through economic incentives.

Creation of technical conditions for the agricultural producer to implement the protection of agricultural land is also important. Taking into account that agricultural production is a complex science-intensive type of activity, therefore, special knowledge is required on the functioning of agricultural land, their processing techniques, etc. The development of agricultural production technologies, the improvement of agricultural systems will reduce the costs of the state and agricultural producers for financing land protection measures (for example, fertilizing).

The creation of targeted programs for the development of agriculture will also improve the conditions for the means and methods of farming, which will greatly contribute to the protection of land. The important thing in this case is not the sphere in which the norm is fixed, but its focus – the creation of conditions to prevent the negative impact on agricultural land. Also of great importance is the collection and analysis of information on the state of land and soils, which is the basis of legal support for the protection of agricultural land. Without the timely collection of information about the state of the land, the conditions and the process of their use, it is impossible to effectively provide measures to protect agricultural lands, and their implementation cannot be monitored.

### **Mechanisms of legal support for the protection of agricultural land**

In modern conditions, situations are very common when agricultural land is not used properly (overgrowing by various types of plants, the use of land for development not related to agriculture) or use with gross violations (removal and illegal sale of soil).

Therefore, the issue of state intervention in the use of land by agricultural producers is becoming more and more actual. Currently, legal regulation is concentrated mainly on the assessment of the results of activity. At the same time, in the literature there is expressed opinion about the need for a legal assessment of economic activity through the prism of not only results, but also the main parameters. Firstly, agricultural production has a complex, often highly predictable impact on the environment, and therefore the identification and limitation of the most

dangerous activities are of priority importance. Secondly, the qualification of a significant number of agricultural producers does not allow them to independently cope with the high environmental risks of agricultural activities. Thirdly, for the development of technologies it is advisable to stimulate the most progressive forms of agricultural use of land. Fourth, the legislation in the field of land protection practically does not provide for the application of preventive measures to prevent environmental harm (Ivashhuk, 2017).

At the same time, the presence of similar conditions of farming (climatic, soil-geographical, and other) within the boundaries of one territory creates the opportunity to establish the following restrictions on economic activity:

- a) permitted agrochemicals (types, classes, maximum application volumes, application periods);
- b) applied agricultural production technologies (classes and types of agricultural machinery, soil cultivation techniques);
- c) parameters of permitted construction (built-up area, types of buildings and structures, locations of buildings and structures);
- d) limiting parameters of biological effects (livestock and poultry, plant species);
- e) other parameters of economic activity that determine the level of negative impact on the environment (Brinchuk, 2009).

These standards can be considered as local restrictions on economic activity, which could theoretically be introduced through the establishment of protective zones. However, in this case, the protection zones will extend to most agricultural land plots. This seems to contradict their legal nature, which implies use only in special cases. Establishment of permitted uses in order to limit the adverse effects on the environment is crucial to encouraging more environmentally friendly technologies in agricultural production (Ivashhuk, 2017).

Currently, the legal regulation of the protection of agricultural land is implemented to the greatest extent through administrative measures to bring to legal liability in case of detection of signs of an offense. However, it is best to “take the lead” and use a preventive approach. Along with the assessment of business results, it provides for the development of land use programs taking into account the analysis of other key indicators,

including, for example, natural processes. A set of protective and preventive measures is aimed at fulfilling environmental goals when using agricultural land, ensuring their rational use, and also preventing the decline in the quality characteristics of soils. Moreover, the measures under consideration can be both imperative and dispositive (recommendatory) in nature. Unfortunately, today in the legislation there are no mechanisms that fully ensure the implementation of standards to limit the negative impact, as well as stimulate protection-oriented methods of agricultural production.

It should be noted that it is not always worth using only the imperative method by establishing restrictions and obligations. Both social and economic forms of stimulating agricultural entities can also have a positive meaning. For this, land use methods should be developed depending on the region. However, such methods should be developed only after a complete study of the relevant territory (soil composition, presumptive agricultural activities, etc.). As a result of the analysis of the collected information, an objective opportunity will arise for creating local restrictions in relation to the most harmful to the environment and economically insolvent activities.

Thus, the regulation of the protection and use of agricultural land should take into account both environmental conditions and agricultural production conditions in a particular territory.

## Conclusion

Legal support for the protection of agricultural land should include not only the legal rules governing the protection of land, soil and other objects. Such support should also include a mechanism for implementing these standards. The latter should be understood as a set of legally significant means (economic, organizational, scientific and technical, etc.) aimed at preserving and improving the quality indicators of agricultural land.

Land protection should be carried out in three directions:

- 1) legal (normative consolidation of all environmental requirements for land);
- 2) organizational (development of the state land monitoring system, ensuring the steady implementation of all requirements for land protection through state land control);

- 3) economic (providing incentives for the efficient and rational use of land).

It is also necessary to determine the procedure for carrying out economic activities taking into account environmental requirements on the respective lands, establish criminal and administrative measures for its violation.

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