

Tetiana Kovalenko, Doctor of Laws

Taras Shevchenko National University of Kyiv, Ukraine

DEFECTS OF NORMATIVE LEGAL ACTS OF UKRAINIAN LAND LEGISLATION

In this article legal defects of normative legal acts of Ukrainian land legislation have been classified depending on place of their appearance into: a) legal defects of the content of normative legal act and b) legal defects of the form of normative legal act. Legal defects of the content of normative legal acts are next: a) the inconsistency of requirements of normative legal acts, b) the inaccuracy of prescriptions of such acts, c) the uncertainty of prescriptions of normative legal acts, d) the incompleteness of the objectification of land law norms in normative legal acts and other sources of Ukrainian land law. Legal defects of form of normative legal act are next: a) incorrect choice of a type or of the form of normative legal act to regulate certain land relations and b) differences in the content and in the title of normative legal act of land legislation.

Key words: Ukrainian land law, Ukrainian land legislation, legal defects, defects of legal acts.

Effective system of land legal norms guarantees realization of land rights of different subjects and provides an optimum combination of private and public interests in land sector. Such system is a prerequisite of rational use and protection of land as valuable natural resource. Land law norms are objectified in normative legal acts and other sources of Ukrainian land law. Incorrect or incomplete fixation of behavior models of land relations subjects, other defects of normative legal acts have extremely negative impact on the mechanism of legal regulation of land relations.

The first scientific researches of some drawbacks of legal regulation on the territory of modern Ukraine were initiated at the beginning of the twentieth century by M. Yunkovskiy, E. Vaskovskiy, G. Demchenko, N. Korkunov and other scientists.

In modern jurisprudence of Russia, Belarus and other former Soviet republics problems of legal defects are studied both by the theory of law (N. Vlasenko, N. Gushina, S. Yefremova, N. Suslova, G. Sibgatullina, Y. Tikhomirov, M. Khairtdinova, A. Khersontsev) and by different branches of legal science (S. Avakian, D. Andrieiev, G. Vasilievich, S. Golovin, M. Zhiltsov, V. Ignatenko, O. Kutafin, T. Makarova, A. Krasnov, S. Tsybuliak etc.).

In the doctrine of Ukrainian land law, legal defects did not become the subject of a comprehensive legal research. However, V. Andreitsev, V. Yermolenko, I. Karakash, P. Kulinich, A. Miroshnichenko, V. Muntian, B. Nosik, V. Semchik, N. Titova, Y. Shemshuchenko, M. Shulga and other scientists, investigated general problems of the quality of land law norms and possible ways to improve their efficiency.

The purpose of this article is to analyze peculiarities of legal defects in normative legal acts of land legislation and to identify the nature of their impact on the effectiveness of legal regulation of land relations in Ukraine.

According to E. Kamienieva, statutes and other legal acts, adopted in violation of the requirements, are defective acts¹. However, the author does not specify what these violations are and when normative legal acts acquire features of defective.

Normative legal acts of land legislation are legal documents which: a) are accepted by the competent public authorities or other bodies, authorized by the state, b) have formally defined and obligatory character, c) contain new, modify or cancel existing land law norms and d) are guaranteed by the state. Based on these features of normative legal acts of land legislation, legal defects of normative legal acts can be classified depending on the place of their appearance: a) legal defects of the content of normative legal act and b) legal defects of the form of normative legal act.

Legal defects of the content of normative legal act emerge in the lack, defectiveness of legal

¹ Каменева, Е.Н. (2002). *Дефектные акты органов законодательной и исполнительной власти*: дис. ... канд. юрид. наук: 12.00.02. Москва: Московский государственный университет им. М. В. Ломоносова Министерства образования РФ, 7.

prescriptions, which are fixed in articles and paragraphs of land statutes and other normative legal acts, and contain land legal norms. Such legal defects of content of legal prescriptions may be manifested as follows: a) the inconsistency of requirements of normative legal acts, b) the inaccuracy of prescriptions of normative legal acts, c) the uncertainty of prescriptions of normative legal acts, d) the incompleteness of objectification of land law norms in normative legal acts and other sources of Ukrainian land law.

In legal theory scientists note, that during preparation, adoption and publication of legal normative act legal material has to be grouped according to the legislative technique, so that the act has become compact and its provisions will be easily perceived¹. An important condition for the perception of the normative material, which is placed in the text of normative legal act, is meaningful correspondence, consistency of its provisions, when: a) the content is determined by some other prescriptions, b) all prescriptions are logically interrelated and interdependent, c) there is development of previous legal prescriptions in the following. Violation of this conditions leads to loss of continuity and logical interdependence of legal prescriptions. Text of normative legal act becomes difficult for understanding and use. Such situation violates constitutional right of everyone to know rights and duties, as set out in Article 57 of the Constitution of Ukraine.

As an example of legal defects of the content of normative legal act, we can bring the prescriptions, placed in Chapter 22 “Termination of Land Rights” of the Land Code of Ukraine of October 25, 2011. Article 140 of this Code defines grounds of termination of ownership rights to land plot; Article 141 fixes grounds for the termination of land use rights. However, the next Article 143 of the Land Code of Ukraine provides grounds for compulsory termination of land rights. But it is not clearly understood neither from the title no from the text of this article, the process of termination of what exact land right does it regulate – property right, land use right, servitude right, right of perpetual lease, etc. Only on the basis of systematic interpretation of this and other articles of the Land Code of Ukraine we may conclude that some of these enforcement reasons may refer only to termination of land ownership rights (confiscation of land plot, expropriation of land plot for reasons of social necessity, foreclosure on land plot for the obligations of land owner). Others may refer to termination of land use rights (use of land parcel inappropriately, failure to eliminate committed violations of legislation).

Such meaningful defect of normative legal acts of land legislation as inconsistency of prescriptions exists in the Law of Ukraine “On Farming” of June 19, 2003. According to part 3 of Article 36 of mentioned Law “In the event of farm activity termination before expiration of tax exemptions, farm had to pay to the budget for the whole period of its activity the amount of tax, calculated at the rate established for farming, except as provided in part 4 of Article 34 of this Law”. Research of the content of part 4 of Article 34 of the Law of Ukraine “On Farming” shows that this article establishes the right of farm members and those who work in it under the labor agreement (contract) to pension. Therefore, it is not related to cessation of farm as legal entity and to return of obtained tax benefits. Systematic interpretation of other provisions of this Law leads to the conclusion, that it was necessary to link Article 36 not to part 4 of Article 34, but to part 4 of Article 35 of the Law of Ukraine “On Farming”, under which farm activity is terminated if there are no members of the farm or heirs who wants to continue its activity. In this case, there are grounds for exemption of farm from the obligation to return to the state budget received tax benefits, since it objectively cannot continue to function.

Legal defects of the content of normative legal acts of land legislation may include inaccuracy of their prescriptions. The accuracy of prescriptions, which are expressed in the sources of Ukrainian land law, is determined by strict correspondence between the content of legal norm and its verbal fixation of in the text of normative legal act. In the legal theory scientists draw attention: “How much external symbolic expression of the legal prescriptions corresponds to their content (the will of the legislator), so depends the essentially correct, defect-free application and implementation of such prescriptions”².

Inaccurate, defective fixation of land legal norms in the text of normative legal act leads to distortion of the model of behavior, embodied in such legal norm. Land relations acquire other quality features that are different from those, on the achievement of which land law norm was set. This leads to complication of legal regulation in land sphere and to violation of land rights of different subjects. In particular, paragraph 13 of Section X “Transitional Provisions” of the Land Code provides, that legally established maximum area of agricultural lands, which can be acquired into ownership of citizens and legal entities before January

¹ *Проблемы теории государства и права* (2008). Москва: Норма, 739.

² Шмелева, Г.Г. (1988). *Конкретизация юридических норм в правовом регулировании*. Львов: Вища школа, 28.

1, 2015, may be increased in the case of “inheritance of land plots by statute”. However, term “inheritance by statute” has especially legal meaning in the civil legislation of Ukraine. According to Article 1217 of the Civil Code of Ukraine of January 16, 2003, the inheritance is possible “by will” or “by statute”. The right to inheritance has defined in the persons’ will. Only in the case of absence of will, recognizing of it as an invalid, rejection or refusal from the inheritance of heirs “by will”, also in the case, if will does not cover all inheritance, specified in the Civil Code persons will have the right to inherit “by statute”. Thus, the Land Code of Ukraine significantly limits the ability of legal entities and individuals to increase the area of land plots by means of inheritance only “by statute”, without considering the will. Such legal defects revealed in the misuse of the legal term “by statute” instead of term “in accordance with statute”.

Legal defects of the content of normative legal act of land legislation are in uncertainty, vagueness of its text. Land law consists of legal norms, which found their outward expression in legal prescriptions and are fixed in texts of normative legal acts with the help of language means – words, phrases, sentences. As G. Shershenevich said, a law is an idea expressed in words, then in the process of interpretation we must first address to the clarification of the meaning of words, in which an idea was embodied, in order through them penetrate into the content of the thought itself¹. The uncertainty, vagueness of the text of normative legal act as its meaningful defect can appear in syntactic, semantic or grammatical ambiguity of language expressions, used in land legislation of Ukraine.

Syntax uncertainty may occur when there are defects in grammatical construction of sentences and phrases in the text of normative legal act, when rules and scheme of creation of phrases, sentences and texts as verbal models of certain land relations are ignored.

Semantic uncertainty of a text of normative legal act of land legislation will occur when wrong, incorrect lexical units are used for the fixation of the content of land legal norms.

Grammatical uncertainty, as legal defect of the content of normative legal act, appears in violation of word formation rules, as well as in violation of the rules of association in meaningful phrases and sentences words, that in this situation acquire forms, depending on their functions in sentence.

An example of uncertainty, lack of clarity in a text of normative legal act of land legislation can be found in Article 79 of the Land Code of Ukraine, according to which the ownership right to land plot extends to the space, located above and below the surface of this plot, on the height and depth necessary for the construction of residential, industrial and other buildings and structures. At the same time either in land legislation, no in land law theory criteria to determine the height and depth, necessary for the erection of buildings and structures, are not clearly defined.

Sources of land law are the external form of objectification of land law norms. In the theory of law scientists note that sources of law constitute an information system, the special means of communication between subjects and objects of legal relations; with their help there is a coordination of interests, which reflects their perception². Depending on the degree of objectification of Ukrainian land law norms, legal normative acts may: a) reproduce all land legal norms, that guarantees rights, freedoms and interests of various subjects in the land sphere; b) partially reproduce land legal norms, that allows realization of certain land rights or only by certain subjects; c) do not reproduce some land legal norms in general, that leads to different limits in acquisition and implementation of various land rights.

Incomplete, partial objectification of land legal norms in normative legal acts and other sources of land law may cause: a) deformation of organic relationship between land law and land legislation, b) uncertainty of legal status of land relations subjects, c) narrowing of the scope of existing land rights, d) complexity or inability to satisfy land needs of individual etc. In particular, land ownership right of Ukrainian people³, the right of citizens to common land use⁴, the right to collective ownership of land⁵ and other land rights have not received yet their further development in Ukrainian land legislation. In the theory of land law researchers attract attention, that the key constitutional principle of recognition of land as the

¹ Шершеневич, Г.Ф. (1998). *Общая теория права*. Хропанюк, В.Н. *Теория государства и права*. Москва: Интерстиль, 730.

² Пархоменко, Н.М. (2008). *Джерела права: проблеми теорії та методології*. Київ: Юридична думка, 120.

³ Носік, В.В. (2004). *Право власності на землю за Конституцією України*. Бюлетень *Міністерства юстиції України*. 11. 48–59.

⁴ Костяшкін, І.О. (2003). *Проблеми правового забезпечення права загального землекористування громадян*. *Вісник Київського національного університету ім. Т. Шевченка. Юридичні науки*, 51, 134–136.

⁵ Кулинич, П.Ф. (2005). *Правовий режим земель, переданих сільськогосподарським підприємствам у колективну власність*. *Підприємництво, господарство і право*, 10, 29–32.

main national wealth under the special state protection, found only certain reflection in the legislation of Ukraine and requires more systematic fixing in it¹.

The second group of legal defects of sources of Ukrainian land law, as an external expression of land legal norms, are defects of the form of normative legal acts of land legislation, that may be manifested in: a) wrong, incorrect choice of a type or of a form of normative legal act to regulate certain land relations, b) differences in the content and in the title of normative legal act of land legislation.

Incorrect, wrong choice of the type of normative legal act, directed at regulation of certain land relations, leads to contradictions between real needs of society in a legal act of certain type and therefore legal force, and existing normative legal act and its actual legal force. In particular, taking into account important social, economic, political and environmental importance of land, land plots in the state and Ukrainian society, land reform in Ukraine would have to be regulated by relevant statute as an act of the highest legal force. However, more than twenty years land reform in Ukraine is carried out in accordance with two resolutions of the Parliament (Verkhovna Rada of Ukraine) – “On Land Reform” of December 18, 1990 and “On the Acceleration of Land Reform and Land Privatization” of March 13, 1992, which contain, respectively, eight and ten paragraphs. Consequently, as P. Kulinich notices, that land reform conducted in Ukraine has not only failed to improve the productive capacity of agricultural lands of the country, but, in the contrary, has become a kind of catalyst of negative trends in quality condition of agricultural lands².

Defects of the form of normative legal acts of Ukrainian land legislation also appear in the case of adoption of new land statutes instead of making changes and amendments to existing ones. This complicates the legal regulation of land relations, leads to its informational redundancy. For example, the Law of Ukraine “On the Use of Defense Lands” of November 27, 2003 contains seven articles. The Law of Ukraine “On Protection of the Constitutional Rights of Citizens on Land” of January 20, 2005 includes only two articles.

Defects of the form of normative legal acts of land legislation in Ukraine may appear as the differences in their content and title. These legal defects inherent to the draft statute of Ukraine on the land market (№ 9001-d). The preamble of the draft notes that its aim is to determine legal and economic foundations of land market organization and functioning. However, examination of the draft statute text indicates that its title does not match with the content, since the draft is actually regulates only certain elements of land market, mainly regulating transactions with agricultural lands.

Thus, legal defects of normative legal acts as sources of land law of Ukraine should be considered as drawbacks of both the content and the form of normative legal acts of land legislation. Such defects adversely affect legal regulation of land relations and reduce the effectiveness of legal norms, principles of land law, methods of state impact on the behavior of land relations participants. Preventing the emergence of legal defects of normative legal acts of land legislation on the legislative stage, as well as early detection and minimization of their negative impact in the land sphere are the guarantees of stability and efficient functioning of the mechanism of legal regulation of land relations, of land rights implementation and protection of land as the main national wealth of Ukraine.

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¹ Андрейцев, В.И. (2002). Правовой режим земли как основного национального богатства. *Законодавство України. Науково-практичні коментарі*, 4, 15–26; Кулинич, П.Ф. (2011). *Правові проблеми охорони і використання земель сільськогосподарського призначення в Україні*. Київ: Логос, 213.

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