

Recommended for publication by the Presidium
of the National Academy of Legal Sciences of Ukraine
(Resolution № 89/3 on 07.11.2014)

Yearbook of Ukrainian law : Coll. of scientific papers / responsible for the issue O. V. Petryshyn. – Kh. : Law, 2015. – № 7. – 296 p.

In the scientific journal «Yearbook of Ukrainian law» the best articles published by scientists of the National Academy of Legal Sciences of Ukraine, other educational and research institutions in the field of law, theory and history of state and law, state-legal sciences and international law, civil-legal sciences, environmental, economic and agricultural law and criminal-legal sciences in 2014, have been gathered.

Founder – National Academy of Legal Sciences of Ukraine

Publisher – National Academy of Legal Sciences of Ukraine

Editorial board:

V. Ya. Tatsii (Editor in Chief), Yu. S. Shemshuchenko (Deputy Chief Editor), O. V. Petryshyn (executive Secretary), Yu. V. Baulin, Yu. P. Bytiak, V. I. Borysov, L. K. Voronova, A. P. Hetman, V. D. Honcharenko, V. N. Denysov, O. D. Krupchan, V. V. Komarov, N. S. Kuznietsova, V. M. Lytvyn, V. K. Mamutov, V. T. Nor, O. P. Orliuk, P. M. Rabinovych, O. V. Skrypniuk, O. D. Sviatotskyi, V. P. Tykhyi

Responsible for the issue O. V. Petryshyn

Registered by the Ministry of Ukraine for Press and Information
(Certificate of State registration of the print media.
KV Series number 15596-4068 R from July 9, 2009)

Address of the Editorial Board: 61024, Kharkiv, Pushkinska st., 70, National Academy of Legal Sciences of Ukraine, tel. 704-19-01.

Рекомендовано до друку президією Національної академії правових наук України
(Постанова № 89/3 від 07.11.2014 р.)

Щ92 **Щорічник українського права** : зб. наук. пр. / відп. за вип. О. В. Петришин. – Х. : Право, 2015. – № 7. – 296 с.

У науковому виданні «Щорічник українського права» зібрані найкращі статті, які були опубліковані у 2014 р. науковцями Національної академії правових наук України, інших навчальних і наукових закладів у галузі правознавства, з проблем теорії та історії держави і права, державно-правових наук і міжнародного права, цивільно-правових наук, екологічного, господарського та аграрного права і кримінально-правових наук.

Засновник — Національна академія правових наук України

Видавець — Національна академія правових наук України

Редакційна колегія:

В. Я. Тацій (головний редактор), Ю. С. Шемшученко (заступник головного редактора), О. В. Петришин (відповідальний секретар), Ю. В. Баулін, Ю. П. Битяк, В. І. Борисов, Л. К. Воронова, А. П. Гетьман, В. Д. Гончаренко, В. Н. Денисов, О. Д. Крупчан, В. В. Комаров, Н. С. Кузнєцова, В. М. Литвин, В. К. Мамутов, В. Т. Нор, О. П. Орлюк, П. М. Рабінович, О. В. Скрипнюк, О. Д. Святоцький, В. П. Тихий

Відповідальний за випуск *О. В. Петришин*

Зареєстрований Міністерством України у справах преси та інформації
(Свідоцтво про Державну реєстрацію друкованого засобу масової
інформації. Серія КВ № 15596-4068 Р від 09.07.2009 р.)

Адреса редакційної колегії: 61024, Харків, вул. Пушкінська, 70,
Національна академія правових наук України, тел. 704-19-01.

M. Shulha, Doctor of Laws, Professor, Head of the Department of Land and Agrarian law of Yaroslav the Wise National Law University

Responsibility in land law

Legal responsibility – is one of the most important guarantees of constitutionality, legal order and implementation of rights and freedoms of citizens, including in the sphere of land legal relationship. Research of actual problems of the essence and characteristics of legal liability for violations in land relationship is important and essential not only for law science, law-making, but also for the application of law. They acquire particular significance in modern conditions when, on one hand, rights on land, guaranteed by Constitution of Ukraine, legality and legal order are violated, on the other hand – there is total responsibility for violations of land legislation. Necessities of analysis of problems of legal liability in the land law are conditioned by current and future requirements development of land law science. Theoretical aspects of legal liability in the land law repeatedly studied in monographs scientific articles, dissertations, as in the Soviet¹, so in the

modern times². They also set out in textbooks and handbooks land law³.

ли в СССР. – М.: Наука. – 1969; Ерофеев Б. В. Основы земельного права (теоретические вопросы). – М.: Юрид. лит. – 1971; Казанцев Н. Д. Законодательные основы советского земельного строя в СССР. – М.: Юрид. лит. – 1971; Осипов Н. Т. Теоретические проблемы советского земельного права. – Л.: Изд-во ЛГУ. – 1972; Титова Н. И. Ответственность за нарушение законодательства об охране природы. – Львов. – 1973; Рябов А. А. Охрана права государственной собственности на землю и права землепользования. – Казань. – 1976; Измайлов О. В. Ответственность за нарушение земельного законодательства: автореф. дис. ... канд. юрид. наук. – М., 1973; Шемшученко Ю. С., Мунтян В. Л., Розовский Б. Г. Юридическая ответственность в области охраны окружающей среды. – К., 1978; Общая теория советского земельного права / отв. ред. Г. А. Аксенёнок, И. А. Иконицкая, Н. И. Краснов. – М.: Наука. – 1983. – С. 301-319.

² Саркісова Т. Б. Земельне правопорушення як підстава юридичної відповідальності в Україні: автореф. дис. ... канд. юрид. наук. – Київ, 2012. – 17 с.

³ See .: Земельное право. – М.: Юрид. лит. – 1969; Земельное право. – М.: Юрид. лит. – 1971; Советское земельное право. – М.: Юрид. лит. – 1977; Советское земельное пра-

¹ See .: Право землепользования и его виды. – М.: Юрид. лит., 1964; Правовое обеспечение рационального использования зем-

As a result of scientific research produced almost universally accepted representations about the essence of legal liability in land law, the concept of species and land violations as grounds for liability, the features of applying of certain measures of responsibility.

As an achievement of theoretical thought in this area should be considered justification of autonomy land-legal sanctions or legal land liability, the essence of which is in compulsory termination or limitation of land rights of violator. However, further development of the land – legal theory conditioned by the current and perspective necessities of application of law, should be directed primarily toward elaborating of legal measures to ensure strict fulfilment of requirements of land law and increase of the efficiency of legal responsibility in this area.

Art. 92 of the Constitution of Ukraine established that only by laws of Ukraine, are defined including principles of legal civil liability; acts that are crimes, administrative or disciplinary offenses, and liability for them. The foregoing fundamental constitutional provisions form the basis of the traditional allocation of

these major sectional types of legal responsibility: civil, criminal, administrative and disciplinary. In addition, in view of the various characteristics and aspects of the offense as the basis of legal liability, and sectional affiliation of norm for the violation of which a person must comply, subjects who carry it in a certain way, distinguish also constitutional and material liability. Sectional kinds of legal responsibility are a necessary condition for strengthening of law and legal order. Legal responsibility for the offense of land relationship in modern legal literature is defined as a special kind of guarding relationship type, which appears from the combination of legal norms with legal liability for the offense in land relationship as a legal fact, in which implemented the right of the state to protect the respective values, on which infringes land offense, to restore the violated right or claim a compensation for damages, that is to punish the guilty person, and require the offender to suffer from some deprivations of personal, property or organizational character¹.

Authors of scientific and practical commentary to the Land Code of Ukraine A. M. Miroshnichenko and R. I. Marusenko rightly point out that the legal responsibility can be defined as the relationship with the forced imposition of additional duties with negative nature on the offender or deprivation of rights in connection with the commission of the offense².

во / под. ред. проф. В. С. Шелестова. – Харьков: Вища школа, изд-во при Харьк. ин-те, 1981; Земельне право України: підручник / М. В. Шульга (кер. авт. кол.), Г. В. Анісімова, Н. О. Багай, А. П. Гетьман та ін. – К.: Юрінком Інтер. – 2004; Земельне право України: підруч. / Г. І. Балюк, Т. О. Коваленко, В. В. Носік та ін.; за ред. В. В. Носіка. – К.: Видавничо-поліграфічний центр «Київський університет», 2008; Земельне право: підручник / М. В. Шульга, Н. О. Багай, В. І. Гордєєв та ін.; за ред. М. В. Шульги. – Х.: Право, 2014. – 520 с. та ін.

¹ Саркісова Т. Б. Земельне правопорушення як підстава юридичної відповідальності в Україні: автореф. дис. ... канд. юрид. наук. – Київ, 2012. – С. 19.

² Ерофеев Б. В. Земельное право: учебн. – 1999. – С. 506.

In the conditions of development of legal state one of the most important guarantees of the rights and freedoms of land relations traditionally recognized their legal protection. In the process of protecting the violated rights of subjects of land relationships is inextricably linked to the question of bringing legal responsibility of specific offenders. Today the problem of ensuring proper compliance with land legislation through the full range of potential measures of legal liability for violations of land legislation substantially actualized. This especially concerns the specific application such liability and its grounds and kinds.

Peculiarity of legal responsibility in Ukraine land law is primarily that the Land Code of Ukraine uses dualistic approach to determine its legal nature. First, the Land Code of Ukraine regards it as a guarantee of protection of land ownership. Thus, articles 154; 155 Land Code establishes liability of executive power and local authorities for violation of land ownership and for the publication of acts that violate the rights of land owners. Secondly, it also serves as an independent legal remedy forced to respond by government influence against those who violate the law of the land.

In addition, the specific features that characterize this responsibility should include blanketist of the legal norms that create legal institution of legal liability in the land law, and insufficient systematization of legal rules governing relations in the field of legal liability for land offense.

Thus, current version of art. 211 LC of Ukraine, entitled «Responsibility for

violations of land legislation» provides that citizens and legal entities bear civil, administrative or criminal liability under the law for violations inexhaustible list of which contained in this article. So the norm is actually limiting the range of possible subjects by citizens and legal entities, has no regulatory or security value. This is the archaism in a system of land regulation, which is still, unfortunately, not overcome, as rightly noted at the parliamentary hearings¹. This «remnant of the Soviet passed» was assigned at the time in Art. 170 Land Code of the USSR (1970), under which officials and citizens, guilty in carrying out violations of land legislation, bear criminal or administrative liability in accordance with the legislation of the USSR and the Ukrainian SSR.

A separate norm of the Code (Art. 173) regulated relations for the damages caused by a breach of the land legislation. In particular, it assumes that companies, organizations, institutions and citizens must compensate for damage caused by them as a result of violations of land legislation. As we see, in this case it also dealt with the limited number of people who could be as potential violators of land legislation.

In connection with the plausible and reasonable issued a proposal to the new wording of Article 211 LC of Ukraine: «Persons, including local authorities and executive authorities and their officials are guilty for violating the rules of land

¹ Мірошниченко А. М., Марусенко Р. І. Науково-практичний коментар до Земельного кодексу України, 5-е видання, змінене і доповнене. – К.: Алерта, 2013. – С. 506.

law, shall be liable under law»¹. Significantly, the Land Code, such as the Republic of Kazakhstan (art. 168) establishes the position that violations of land legislation of the Republic of Kazakhstan are responsible according to the laws of the Republic of Kazakhstan.

Code of Belarus about the land (Art. 96) provides that those who break the law on the protection and use of land are responsible by legislative acts.

Chapter XIII «Responsibility for violations in the field of guard and use of land» Land Code of the Russian Federation contains three separate articles with the name «Administrative and criminal penalties for violations of land», «Disciplinary liability offense for land» and «Compensation for damage caused by land offenses». The following variants are solutions to the issue of legal liability and in the land law of foreign countries they are more attractive than in the law of Ukraine.

Land legislation of Ukraine provides civil, administrative or criminal responsibility for individuals and legal entities for a number of violations set forth in ch. 1, Art. 211 Land Code. However, as noted in ch. 2, Art. 211 of the Land Code, the law may establish responsibility for other violations of land legislation. So the list of grounds for prosecution is open and can accordingly be supplemented. A systematic analysis of the content of art. 211 LC of Ukraine contains referential regulations and special

law, including the Criminal Code of Ukraine and the Code of Ukraine about Administrative Offences, indicates that, for example, administrative and criminal responsibility has not yet been established for certain violations of land legislation including: conclusion of agreements with violation of land legislation, avoidance from the state land registration of land plots and submission of false information on them; violation of terms of consideration of applications for the allocation of land plots. However, as follows from the content, we can say, the Criminal Code of Ukraine provides criminal penalties for such violations of land legislation which are not mentioned in Article 211 LC of Ukraine, namely: illegal acquisition of surface soil (surface layer) land (Art. 239 -1 Criminal Code of Ukraine); wasteful use of lands that caused a lasting reduction or loss of fertility, exclusion of land from agricultural use, washing the soil layer, soil structure violation (Art. 254 of the Criminal Code of Ukraine).

Availability legally enforceable violations of land legislation determines necessitates of the establishment of law and relevant, adequate offense penalties. The lack of such sanctions demonstrates the shortcomings in the legal regulation of a particular kind of social relations.

In literature is suggested a sensible and reasonable proposal for the establishment of administrative responsibility for these land offenses: «Avoidance of state registration of rights on land»; «Violation of terms of consideration of applications for land allocation of land plots, acquisition and sale of land rights»;

¹ Саркісова Т. Б. Земельне правопорушення як підстава юридичної відповідальності в Україні: автореф. дис. ... канд. юрид. наук. – Київ, 2012. – С. 5.

«legal changing topography of land;» Violation of the regime for the use of land on which is situated the cultural heritage».

An important and fully justified also is a proposal to supplement the Criminal Code of Ukraine with new compositions land crimes. In particular, on: 1) knowingly illegal transfer of state and municipal property land, distortion of the information for the State Land Cadastre or intentionally understating of the size of payments for the land, if they are committed by an ax to grind or other personal interest of official person using his official position and 2) violation of the legal regime of forest land, recreational, health, medical, historical and cultural significance and other land that makes impossible to use them by the intended purpose. Especially should pay attention to the proposal to amend the current art. 239-2 of the Criminal Code of Ukraine. Based on content analysis of the disposition of the norm the author rightly says that its generic object essentially acts the ownership of land and water fund. He makes a reasoned conclusion that specified norm has to find its place in Section 6 of the Criminal Code of Ukraine «Crimes against property». As an alternative, the author proposes that the current edition of Article disposition. 239-2, stating it as: «Actions that violate the regime targeted land use and protection of water fund, including carrying out any work on changing the topography of coastal protection bands except shore, causing or may cause significant damage ...»¹.

¹ Саркісова Т. Б. Земельне правопорушення як підстава юридичної відповідальності

The expressed proposals to improve the appropriate legal regulations governing relations in the field of legal responsibility merit and can be successfully used by the legislator of Ukraine.

Lately prevalent approach according to which self-importance also provides that kind of responsibility, financial and legal, environmental law, land law and others. Lately the spread of gaining position, according to which self-importance also provide that kind of responsibility, financial and legal, environmental law, land law and others.

Recently, becomes to be widespread the proposal according to which independent significance is also provided to such kinds of responsibility as financial-legal, environmental-legal, land-legal and some others.

With the adoption of the Commercial Code of Ukraine, as rightly noted by A. M. Miroshnichenko, appeared grounds to combine «new» types of responsibilities that have recently been allocated, called economic and legal responsibility².

In sectional legal literature the essence, for example, of financial responsibility sometimes perceive not in punishing the offender, but in the recovery of financial losses to the state. Compensation for damage realizes by the usage of special financial and legal sanctions under budget and tax laws. Thus the

в Україні: автореф. дис. ... канд. юрид. наук. – Київ, 2012. – С. 8.

² Мірошніченко А. М. Земельне право України: підручник. – К.: Алерта; КНТ; ЦУЛ, 2009. – С. 435.

supporters of the existence of such liability believe that it can be implemented through civil liability, that is, without the use of coercive measures, such as through voluntary compliance obligation to pay a penalty. An excellent feature of financial responsibility is in the universality of application specific sanctions depending on the protected financial relationship and goals of punishment for violations¹.

In modern land law doctrine there is no unanimity in understanding of the legal nature of the land and legal liability, and its signs and forms the outer manifestation. It almost creates the basis for the formation of different approaches to understanding and scientific definition of this type of responsibility.

In the literature there is no unity to determine the name of this type of responsibility. So, B. V. Erofeeva calls it as special kind of responsibility² and I. Pankratov – legal- land³.

Supporters of the special legal-land liability for offenses substantiate its existence by follow way: firstly, the earth being the object of nature has certain characteristics, different from other objects of the material world, so the usage of general civil liability is insufficient

to provide adequate legal regime of use and protection; secondly, the main purpose of legislative provisions and the practical application of the special land-legal measures is to restore the previous state in land relations; thirdly, special measures of responsibility manifested not only in the occurrence of adverse material consequences as reimbursement of expenses incurred by illegal use of land.

In modern conditions the legal basis for determining the liability of land-legal offences as a separate type of legal liability for violation of land laws rules consider the provisions of Articles 141; 143; 152; 212 Land Code of Ukraine, according to which land liability applies sanctions such as: the forced termination of land use; return squatted land, removing any violations of the rights of the owner of the land; restoration of land that existed before the violation of rights⁴.

Lively debate is ongoing, particularly regarding the allocation of specific sanctions that act as a form of external manifestation. Representatives of legal-land science to specific penalties inherent in land -legal responsibility, frequently offer to attribute forced termination or limitation of rights of violator to land usage. It seems that the problem of the existence of land- legal

¹ Шайдуллин Р. О. О сущности финансово-правовой ответственности и её месте в системе юридической ответственности / Р. О. Шайдуллин // Современное право. – 2013. – № 1. – С 64–66.

² Ерофеев Б. В. Земельное право: учебн. – 1999. – С. 362.

³ Земельное право: учебн. для вузов / авт. ред. С. А. Боголюбов. – М., 1999. – С. 188.

⁴ Балюк Г. І., Лисенко Я. О. Земельно-правова відповідальність: поняття, підстави, порядок притягнення / Земельне право України: підруч. / Г. І. Балюк, Т. О. Коваленко, В. В. Носік та ін.; за ред. В. В. Носіка. – К.: Видавничо-поліграфічний центр «Київський університет», 2008. – С. 312–316.

responsibility to a certain extent is contrived. Forced termination of land rights, depriving them or limit cannot be equated with responsibility. These are independent incentives that ensure the proper conduct of subjects of land rights and represent a specific type of

influence on these subjects, but not a specific liability.

Published: Проблеми правової відповідальності : моногр. / Ю. П. Битяк, Ю. Г. Барабаш, Л. М. Баранова та ін. ; за ред. В. Я. Тація, А. П. Гетьмана, В. І. Борисової. – Х. : Право, 2014. – С. 207–234