

---

**M. Shulha**, Doctor of Law, Professor, Head of the department of land and agrarian law Yaroslav Mudryi National Law University, Corresponding member of NALS of Ukraine



---

**I. Ihnatenko**, PhD in law, assistant at the Department of Land and Agrarian Law Yaroslav Mudryi National Law University



UDC 349.41

---

## THE LEGAL BASIS OF EXPANDING THE POWER OF LOCAL COUNCILS IN THE SPHERE OF LAND RELATIONS

---

All the innovations that occur at the legislative level require study and analysis to ensure the correct implementation of the relevant provisions in practice, especially given the ambiguity of the legal practice that has developed in the land legislation. Now, there are many frequent cases when the same legal rules are applied differently in consideration of similar issues. This, in turn, encourages specialists to search for optimal solutions for solving contentious issues

with the further distribution of proved options. The most problematic issue under present conditions is the realization of powers of local government in land management.

The theoretical basis of this research consists of works of legal scholars: V. I. Andreytsev, V. P. Balezin, Y. O. Vovk, B. V. Erofeev, I. I. Karakash, N. V. Krasnov, P. F. Kulinich, A. M. Miroshnychenko, V. V. Nosik, Y. S. Shemshuchenko and others.

The purpose of the article is a comprehensive analysis of the legislation on the expansion of the powers of local government in land relations.

It is known that the 90-ies were marked with the launch of the land reform, which is associated with the adoption of the Resolution of Supreme Soviet of USSR «On land reform» on 18.12.1990. The exclusive state ownership of land has played the role of foundation of the land order in the state for more than half a century. Then, the differentiation of public land ownership has been proposed. Municipal and private property were declared along with state ownership of land. Moreover, all these forms of land ownership were declared equal by the law. In the future, land (land plots) was pronounced as real estate and was included in the civil circulation according to the Civil Code of Ukraine. However, the Constitution of Ukraine (Art. 13) declared the land as an object of the right of property of the Ukrainian people. Bodies of state power and bodies of local self-government within the limits determined by this Constitution exercise ownership rights on behalf of the Ukrainian people.

In Ukraine, the land reform in settlements has not been completed yet. The implementation of land-reform measures should transform the land within cities and villages into the basic resource of the sustainable social and economic development of local communities.

It should be noted that it is necessary to clarify some fundamental provisions of legislation of Ukraine, which define the powers of local authorities in the

sphere of land relations. Such a need is caused by the adoption of the Land Code of Ukraine on 25.10.2001, so as adoption of a number of regulations on its development.

According to art. 5; 10 of the Law of Ukraine «On local government in Ukraine» village, town and city councils are recognized as local authorities representing the respective municipalities and carrying out on their behalf and in their interest functions and powers of local government according to the Constitution of Ukraine and laws of Ukraine.

The competence of local governments is not any question of public life, but only questions of local importance. The list of such issues is defined in the Constitution of Ukraine and the Law of Ukraine «On local government in Ukraine». In particular, according to the law local issues include regulation of land relations by village, city councils.

Land issues are solved exclusively by the relevant local council at its plenary sessions. According to Article 46 of the Law of Ukraine «On local government in Ukraine» village, town, city, city district (if established), district, regional council carries out its work sessions. Paragraph 34 of Article 26 of abovementioned law establishes that the decisions on the regulation of land relations are appointed exclusively in plenary sessions of village, town or city council.

According to Article 59 of the Law of Ukraine «On local government in Ukraine» a Council within its authority adopts regulations and other acts in the form of solutions. It is known that there are normative acts that establish, modify

or suspend legal norms, which are local in nature, related to a wide range of people and used repeatedly. Non-normative acts also include specific regulations addressed to a single subject or a legal person characterized as one of a single use. This conclusion is consistent with the legal positions of the Constitutional Court of Ukraine, summarized in the judgment on December 27, 2001 № 20-рп / 2001 (the first paragraph, i. 6 of the reasoning part) and of 23 June 1997 № 2 (Paragraph four of p. 1 of the reasoning part)<sup>1</sup>.

The local council has no right to make a decision on the transfer to any other local authority (or the executive authority, municipal enterprise, organization) of their powers to regulate land relations. This requirement is enshrined in Article 19 of the Constitution of Ukraine – Bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine. In addition, one should keep in mind that no law provides the right of local councils to transfer their exclusive powers to another body.

Thus, according to Art. 26 of the Law of Ukraine «On Local Government in Ukraine» the right to resolve issues on the regulation of land relations belongs to the exclusive competence of village,

town and city councils. Article 33 of this Law defines in more detail the powers of village, town and city councils of both their own and delegated by executive bodies. They include the preparation and submission to the Council of proposals for withdrawal (redemption) and providing for building on or other uses for lands owned by local communities; for the establishment of land tax rates; monitoring the observance of land legislation, land use and protection; registration of land use and lease agreements for land.

Article 12 of the Land Code of Ukraine defines the powers of village, town and city councils in the sphere of land relations more clearly, namely: a) disposal of lands of local communities; b) transfer of municipal land to property of citizens and legal entities in accordance with this Code; c) provision of land in the land use of municipal property; d) withdrawal of land plots municipal property; e) purchase of land for public needs of the local communities of villages, towns and cities; f) land management organization; g) coordination of activities of local land resources; h) monitoring the use and protection of lands of municipal property, land and compliance with environmental legislation; i) preparation of conclusions on withdrawal (redemption) and the provision of land; j) establishing and changing the boundaries of districts in cities with district division; k) informing the public about withdrawal (redemption) of land plots; l) submitting proposals to the district council on establishing and changing boundaries of villages, towns and

<sup>1</sup> Рішення Конституційного Суду України від 16.04.2009 р. № 7-рп/2009 // База даних «Законодавство України»/ВР України. URL: <http://zakon2.rada.gov.ua/laws/show/v007p710-09/conv>.

cities; m) resolving land disputes; n) other issues in the sphere of land relations according to the law. The following powers gain wider detailization in other norms of the Land Code of Ukraine and some other laws of Ukraine.

The Constitutional Court of Ukraine on this issue underlines that powers specified in paragraphs «a», «b», «c», «d» of the article (Art. 12 LC Ukraine) are referred to the term «other issues of local importance» (Art. 143 of the Constitution of Ukraine) and therefore the village, town and city councils act as agents of authorities that implement regulatory and other functions<sup>1</sup>.

A systematic analysis of the Law of Ukraine «On local government in Ukraine» (namely Article 10, Articles 16, 17, 18, 25, 26, etc.) shows that local governments in matters of local importance assigned by the Constitution of Ukraine and laws of Ukraine, act as public authorities that perform power management functions, including normative, coordinating, licensing, registration, prescribing. As subjects of power, local governments have the final say within the law issues in land relations.

Modern Ukraine is in the process of the administrative reform of decentralization. Establishment of such a rule was caused by a number of economic and political conditions for the establishment of stable and effective system of public administration in Ukraine as a whole and

at all levels of administrative and territorial structure of the state.

The essence of the decentralization is the transfer of significant powers and budgets of state agencies to local governments. The process of decentralization of power has not gone round the regulation of division of powers on land issues, in particular relations of possession, use and disposition of land.

According to the Concept of reforming the local government and territorial organization of power in Ukraine<sup>2</sup> administrative reform of decentralization of power, including in the sphere of land relations, is provided by: 1) determining of reasonable territorial basis for the activities of local authorities and executive bodies that can provide availability and quality of public services provided by such authorities and necessary for this resource base; 2) the creation of appropriate material, financial and organizational conditions for providing by local authorities their own and delegated powers; 3) separation of powers in the system of local authorities and executive bodies at various levels of administrative and territorial structure on the principle of subsidiarity; 4) separation of powers between the executive bodies and local authorities on the basis of decentralization of power; 5) implementation of the mechanism of state control over the

---

<sup>1</sup> Рішення Конституційного Суду України від 1.04.2010 р. № 10-рп/2010 // База даних «Законодавство України»/ВР України. URL: <http://zakon3.rada.gov.ua/laws/show/v010p710-10>.

<sup>2</sup> Про схвалення Концепції реформування місцевого самоврядування та територіальної організації влади в Україні : Розпорядження Кабінету Міністрів України від 01.04.2014 р. № 333-р. // База даних «Законодавство України» / В Р У к р а ї н и . U R L : <http://zakon2.rada.gov.ua/laws/show/333-2014-p>.

compliance of the Constitution and laws of Ukraine, decisions of local governments and provision of quality public services; 6) maximum involvement of people in decision-making, promoting forms of direct democracy; 7) improvement of the mechanism of coordination of local authorities.

In the process of local government reform for regulation of land relations in Ukraine public authorities and local governments are given a number of powers and they must provide services that ensure the appropriate regulation of land relations in the following areas: land ownership; relations regarding legal land rights derived from ownership; legal relations arising in connection with the rights of public land; relations in the sphere of use and protection of lands; legal security of land etc.

A process of changing the government, redistribution of functions of state and local governments by granting the local governments' greater importance and more powers comparing to previous years is based on this reform.

The process of transfer of power to the local level and implementation of the wide structure of executive power at the local level are provided. Several draft laws are registered in the parliament today. According to them powers of local government can be significantly expanded in the future including the sphere of land relations.

For example, today the local councils cannot manage lands outside the settlements. This creates barriers for the development of rural and urban areas. Regulations on limitation of jurisdiction

of local governments regarding disposal of lands only within settlements reduces the financial basis of local government, which was a precondition for decentralization reform and legislative consolidation.

Thus, paragraph 213 of the Action Plan for the implementation of Program of the Cabinet of Ministers of Ukraine and the Strategy of Sustainable Development «Ukraine – 2020» in 2015<sup>1</sup>, extends the list of land relations that are managed by the local authorities. It provides the legal regulation of issues relating to the transfer to municipal property of state-owned land located outside settlements except those on which objects of state property were built.

Today there is a draft of the Law of attributing state owned lands outside the settlements to municipal property of combined local communities<sup>2</sup>. It offers to transfer all state-owned lands which located outside settlements to municipal property of local communities of villages, towns, cities, united under the Law of Ukraine «On voluntary amalga-

<sup>1</sup> Про затвердження плану заходів з виконання Програми діяльності Кабінету Міністрів України та Стратегії сталого розвитку «Україна – 2020» в 2015 році: Розпорядження Кабінету Міністрів України від 04.03.2015 р. №213-р. // База даних «Законодавство України»/ВР України. URL: <http://zakon5.rada.gov.ua/laws/show/213-2015-p#n9>.

<sup>2</sup> Про віднесення земель державної власності за межами населених пунктів до комунальної власності об'єднаних територіальних громад: Проект Закону від 24.11.2015 р. №3510 // База даних «Законодавство України»/ВР України. URL: [http://w1.cl.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=57179](http://w1.cl.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57179).

mation of local communities», except: 1) lands of defense; 2) lands of exclusion and unconditional (obligatory) resettlement, contaminated by the Chernobyl catastrophe; 3) land plots related to the buildings, structures and other immovable property of the state; 4) land plots which are in permanent use of state authorities, public enterprises, institutions and organizations of the National Academy of Sciences of Ukraine, state specialized academies etc. It is assumed that limits of the united territorial community should be determined by the approved projects of areas of village, town and city councils. If the territorial boundaries of the community not established by these projects, they are determined according to the boundaries adjoining communities.

If it is impossible to find out the real limit of the united territorial community, they are determined by the decisions of adjoining village, town and city councils based on the project land planning to clarify the boundaries of their territories or by court order. In the same way, the problem is solved if there is a dispute between several local authorities on the limits of the united territorial community.

In order to continue implementation of the principles of the reform based on the Action Plan and the Concept of reforming of the State Service of Ukraine on geodesy, cartography and cadastre the draft Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine about delegation of authority to local governments in the order state-owned lands and the strengthening of state con-

trol of use and protection of lands»<sup>1</sup> has been developed. The adoption of this law will allow to consolidate regulatory provisions on decentralization of powers in the sphere of land relations.

It proposes to amend Art. 12 of Land Code of Ukraine. If it is adopted, village, town and city councils will receive the following powers: disposal of lands of state and municipal property in the area of village, town or city council according to the laws; transfer of land plots of state and municipal property to the ownership of citizens and legal entities in accordance with the of Land Code of Ukraine; provision of land for the use from state and municipal property once again according to the of Land Code of Ukraine; withdrawal of land plots from state and municipal property and so on.

It should be noted that from the 01.03.2016 Article 12 of Land Code Ukraine began to operate in the new edition. Amendments to it were made by the Law of Ukraine «On Amendments to some Legislative Acts of Ukraine about expanding the powers of local governments and optimization of administrative services»<sup>2</sup>. The mentioned a legislative

<sup>1</sup> Про внесення змін до деяких законодавчих актів України щодо делегування повноважень органам місцевого самоврядування з розпорядження землями державної власності і посилення державного контролю за використанням та охороною земель: проект Закону України URL: <http://land.gov.ua/info/doopratsovanyi-proekt-zakonu-ukrainy-provnesennia-zmin-do-deiakykh-zakonodavchykh-aktiv-ukrainy-shchodo-delehuvannia-povnovazhen-orhanam-mistsevoho-samovriaduvannia-z-rozporiadzhennia-zemlia/>.

<sup>2</sup> Про внесення змін до деяких законодавчих актів України щодо розширення повно-

act has supplemented Art. 12 of Land Code Ukraine by Part 2 in which consolidation of powers of village, town and city councils in land relations in villages, towns and cities was provided. The provision of information from the state land cadastre and other issues in the sphere of land relations were assigned to them.

A number of laws on amendments to some legislative acts of Ukraine related to the expanding the powers of local government in the sphere of land relations were adopted on the basis of the Concept of reforming and plans.

Currently, the Law of Ukraine «On State Land Cadastre» was amended by expanding of powers of local governments. Such amendments provide that the provision of information from the State Land Cadastre can also be made by administrators of the centers of administrative services by the procedure established by the Law of Ukraine «On Administrative Services», or by authorized officials of executive bodies of local governments that have successfully completed training in the sphere of land relations and correspond to appropriate qualifying requirements. Training of the person in the sphere of land relations is provided free of charge by the state cadastral registrar in the term not more than one month. The state cadastral registrar gives to the person an

appropriate certificate on the results of a successful training.

The local state administration, village, town, city council determine the possibility of realization of their powers in the sphere of information from the State Land Cadastre. However, they take into account the possibility of organizational and technical support of its implementation.

Consequently, the laws on amendments to some legislative acts of Ukraine on implementation of the Concept of reformation and plans on expanding of the powers of local governments in the sphere of land relations initiated decentralization of power in the sphere of land relations.

At present the powers of local governments in land relations has been greatly expanded on the legislative level. Nevertheless, these changes only initiate the implementation of the Concept of reform. They need to be continued and implemented by consolidating and amending the current legislation. According to the concept reformation of management in the sphere of land relations the main authorities of management and provision of services in the sphere of land relations should become local governments, and by the state authorities will remain functions on generalization, monitoring of compliance with the law in the exercise of their powers by local authorities.

важень органів місцевого самоврядування та оптимізації надання адміністративних послуг: Закон України від 10.12.2015 р. № 888-VIII // База даних «Законодавство України» / ВР України. URL: <http://zakon3.rada.gov.ua/laws/show/888-19>.

*Published: Теорія і практика правознавства: електрон. наук. фак. вид. / Нац. юрид. ун-т ім. Ярослава Мудрого. – Електрон. текст. дані. – 2016. – № 2. – Режим доступу: <http://tlaw.nlu.edu.ua/article/view/83986/82252>.*

NATIONAL ACADEMY OF LEGAL SCIENCES OF UKRAINE

# YEARBOOK OF UKRAINIAN LAW

*Collection of scientific papers*

*Founded in 2008*

**№ 9/2017**



Recommended for publication by the Presidium  
of the National Academy of Legal Sciences of Ukraine  
(Resolution №99/5 on 02.12.2016)

**Yearbook of Ukrainian law** : Coll. of scientific papers / responsible for the issue O. V. Petryshyn. – Kharkiv : Law, 2017. – № 9. – 330 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 2016, 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, O. V. Petryshyn, Yu. V. Baulin, Yu. P. Bytiak, V. I. Borysov, A. P. Hetman, V. D. Honcharenko, V. A. Zhuravel, O. D. Krupchan, V. V. Komarov, N. S. Kuznietsova, V. M. Lytvyn, V. K. Mamutov, V. T. Nor, O. P. Orliuk, V. G. Pylypchuk, P. M. Rabinovych, S. G. Seriogina, 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. 707-79-89.

**Pysarenko N.**

Impact of the resolution of the European court of human rights  
on formation of the position regarding the application of the separate  
provisions of the legislation on administrative offences..... 126

**CIVIL-LEGAL SCIENCES**

**Kuznetsova N.**

Invalid transactions and their legal consequences  
according to the legislation of Ukraine ..... 132

**Maydanyk R.**

Relations of property foundations of engaging in commercial  
activity in Ukrainian law..... 144

**Kohanovska O.**

Value of precedents in the sphere of the right of intellectual property  
in the USA and practitioners of court in Ukraine: certain aspects ..... 166

**Spasybo-Fatyeyeva I.**

Regarding the legal entities of public and private law ..... 176

**Kharytonov Ye., Kharytonova O.**

Adaptation of law of Ukraine to the EU law in the context  
of European traditions of private law ..... 186

**Yarotskiy V.**

Realities and prospects of title insurance implementation  
in the domestic insurance services market..... 196

**Kot O.**

Derivative suit as an instrument to protect corporate rights..... 205

**ENVIRONMENTAL, ECONOMIC AND AGRICULTURAL LAW**

**Getman A., Zuiiev V.**

Formation of ecological and legal science: resource aspect  
and its integration problems ..... 211

**Andreitsev V.**

Current challenges of adapting environmental legislation  
of Ukraine to laws of the EU ..... 227

**Nosik V.**

Problems of exercise of the constitutional right to a safe  
and healthy environment in Ukraine..... 247

**Stativka A.**

Legal framework of state support  
of agriculture as a means of ensuring food security ..... 256

**Shulha M., Ihnatenko I.**

The legal basis of expanding the power of local councils  
in the sphere of land relations..... 263