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ОКРЕМІ АКТУАЛЬНІ ПИТАННЯ ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ВІДНОВЛЕННЯ ЗЕМЕЛЬ

Анотація. Внаслідок стрімкого погіршення протягом останніх десятиліть стану земель в Україні, значна частина останніх незалежно від їх цільового призначення вимагає проведення невідкладних заходів їх відновлення. Актуальність такого наукового дослідження зумовлена насамперед браком комплексного і всебічного аналізу правового забезпечення відновлення земель. Зважаючи на це, метою статті є дослідження нагальних проблем у сфері правового забезпечення відновлення земель та розробка обґрунтованих пропозицій щодо їх розв'язання. Методами дослідження є сукупність філософських, загальнонаукових і спеціально-правових методів. В основі методологічних підходів до дослідження питань правового забезпечення відновлення земель є філософська концепція біосфероцентризму. У статті здійснено комплексне дослідження актуальних теоретичних проблем правового забезпечення відновлення земель. Сформульовано дефініцію поняття «відновлення земель» як правової категорії, з'ясовано її сутність та особливості. Здійснено всебічний аналіз чинного законодавства в досліджуваній сфері. Охарактеризовано попередні й основні заходи відновлення земель. Установлено місце правових норм, що регулюють суспільні відносини у сфері відновлення земель, у системі земельного права. Запропоновано критерії розмежування охорони та відновлення земель. Обґрунтовано необхідність внесення змін до чинного земельного законодавства стосовно закріплення обов'язків власників і користувачів земельних ділянок щодо відновлення родючості ґрунтів, інших корисних властивостей і функцій земель. Зроблено пропозицію законодавчого посилення юридичної відповідальності в досліджуваній сфері. Проведене дослідження спрямоване на вдосконалення правового забезпечення відновлення земель, що забезпечить їх збереження як основного національного багатства

Ключові слова: охорона, заходи, землекористувач, ґрунти, родючість

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SOME CURRENT ISSUES OF LEGAL PROVISION OF RESTORATION OF LAND

Abstract. *Due to the rapid deterioration of the state of lands in Ukraine over the past decades, a significant part of the latter, regardless of their intended purpose, requires urgent measures to restore them. The relevance of such scientific research is primarily due to the lack of a complex and comprehensive analysis of the legal support of land restoration. In addition, without a thorough theoretical study of the problems of legal support for land restoration, it is impossible to make appropriate reasonable proposals to improve existing and develop new legislation in the study area. Research methods are a set of philosophical, general scientific and special legal methods. At the heart of methodological approaches to the study of legal issues of land restoration is the philosophical concept of biospherecentrism. The article provides a comprehensive study of current theoretical problems of legal support for land restoration. The definition of the concept of “restoration of land” as a legal category is formulated, its essence and features are clarified. Preliminary and main measures of land restoration are described. The place of legal norms regulating public relations in the field of land restoration in the system of land law has been established. Criteria of delimitation of protection and restoration of lands are proposed. The necessity of making changes to the current land legislation regarding fixing the obligations of owners and users of land plots to restore soil fertility, other useful properties and functions of land is substantiated. The proposal of legislative strengthening of legal liability in the studied sphere is made. The study aims to improve the legal provision of land restoration, which will ensure their preservation as a major national wealth*

Keywords: *protection, measures, land user, soils, fertility*

INTRODUCTION

In the conditions of the swift worsening of the state of the land resources in Ukraine of exigent decision one of the most thorny problems of the present requires is stopping of the further scale worsening of the state of lands and their restoration. The outlined problem updated that goes speech about lands of Ukraine, which pursuant to Constitution of Ukraine make basic national riches and are under the special protection of the state. They show by itself basis of sovereignty of the state and come forward basis of vital functions of all of living. Land executes different functions. How an object of menage, it comes forward the basic mean of production in a rural and forest economy, is a spatial base for placing of the buildings and structures. In addition, land is a basic natural object, and also serves as a spatial base for the location of other natural objects – forests, waters, bowels of the land, objects of the vegetable and animal world. The use of land (land plot) can take place on various legal titles, a prominent place among which is the right to lease land [1].

Restoration of the state of all lands of the country as the main national wealth, regardless of their purpose, is an important basis for its sustainable development, because ensuring the latter requires stability and the quality of land. In this way restoration of land, which is essential for the preservation of land as the main national wealth, for present and future generations, to ensure sustainable development of the country as a whole, environmental and food security. The provision of the latter is reflected in a number of modern studies [2-4].

Thus, saving of the state of land, which is able to provide the necessities of humanity both today, and in the future, can be attained due to realization of measures, directed on renewal of the high-quality state of land of the agricultural and forestry setting, and also other properties of land of separate categories. Basis of forming of public policy in the field of protection and restoration of land in Ukraine makes Association Agreement between the European Union and the European Atomic Energy Community and their member

states, of the one part, and Ukraine, of the other part. As rightly noted in scientific research, one of the ways to prevent legal defects in land and legal regulation in Ukraine at present and in the future is to ensure the adaptation of the national land legislation to the requirements of the EU [5]. The state accepted the row of position papers on which undertook certain obligations, in particular, about joining: a) to Scope convention of UNO about the change of climate (Convention on Climate Change, 1992) [6]; b) to Convention of UNO about a fight from desertification (United Nations Convention to Combat Desertification, UNCCD, 1994) [7]; c) to Convention of UNO about the guard of biological variety (Convention on Biological Diversity, 1992) [8]. Today basis of planning of measures of restoration of land in the state is made: Basic principles (strategy) of public ecological policy of Ukraine on a period to 2030 year [9], approved by Law of Ukraine from February, 28 in 2019 No. 2697-VIII, Conception of fight against degradation of land and desertification, approved by order of Cabinet of Ministers of Ukraine from October, 22 in 2014 No. 1024-p. [10], National plan of actions in relation to a fight against degradation of land and desertification, approved by order of Cabinet of Ministers of Ukraine from March, 30 in 2016 No. 271-p [11].

A large area of land, regardless of its purpose, requires urgent restoration measures. Legal norms aimed at restoring the state of land are enshrined in regulations of various legal force. At the same time, they, unfortunately, are mostly general or declarative in nature, devoid of any systematization. This leads to legal gaps and conflicts in the mechanism of legal regulation of public relations concerning the restoration of land as an important natural resource. In addition, the current land legislation does not clearly distinguish between the provisions for ensuring the restoration of land and the regulations for their protection. Public relations in the field of land restoration remain insufficiently regulated by the legal provisions of the legislation, which ultimately has a negative impact on judicial practice. The presence of these shortcomings in the legal provision of land restoration today has an extremely negative impact on the development of relevant legal relations and the state of the land as a whole. The state of the land is related to the climate, changes in the latter are largely due to the state of the land.

Most scientific labours of land-legal subject devoted research of questions of legal safeguard of land. The problems of restoration of land were examined in legal science of Ukraine only fragmentary or side. In particular theoretical problems in relation to the separate measures of restoration of land were probed at the level of dissertation researches. Speech goes about labours of P. Kulinich [12], M. Deynega [13] and A. Misinkevich [14].

The special attention is deserved by monographic research of P. Kulinich, in which a scientist is offer the ways of perfection of the legal adjusting of agricultural land-tenure in Ukraine in the context of priority of requirements in relation to restoration, guard and saving of land of the agricultural setting [15]. Ponderable payment in the study of theoretical-methodological and applied principles of legal regulation of the use, restoration and protection of soils is carried out N. Gavrysh [16]. Separate aspects of legal problem of restoration of soils are reflected in the monographic study of S. Khominets [17]. Certain aspects of innovative methods for restoring soil fertility were studied in the works of S. Arora, D. Sahni [18], M. Drosos and A. Piccolo [19].

The purpose of this article is to research of modern problems in the field of the legal providing of restoration of lands and offer ways to resolve them.

1. MATERIALS AND METHODS

The methodological framework of this study included a set of philosophical, general scientific and special methods of scientific knowledge, namely: dialectics, analysis and synthesis, modeling, historical and legal, formal logical, systemic and structural, comparative legal, formal legal.

The basis of methodological approaches to the study of legal support for restoration of land should be the idea of biospherocentrism. In the current significant deterioration of the state of land, which is extremely important in the relations of land use and restoration, there is a change in the anthropocentric paradigm of nature management to a biospherecentric paradigm of human-environment interaction. Biospherecentrism is interpreted in science as a new type of worldview, makes the interests of an individual and society as a whole dependent on the needs of the entire planet and all living things that are on it. In particular, in philosophy, anthropocentrism and biospherocentrism are considered as philosophical concepts that reflect a person's attitude to the world around him and his perception of himself in it. From the position of supporters of biospherocentrism, a person is an integral part of the biosphere and should not put himself, his needs and interests above the needs of all living organisms on the planet. In this case, we are talking about a whole set of ecosystems. Negative processes characteristic of the current state of land have an impact on social development, to a certain extent restraining it by destroying the results of human labor and a tangible slowdown

in the development of productive forces. Further uncontrolled and irresponsible use of natural resources without taking into account the needs and peculiarities of the existence of all life on the planet poses a serious threat to all mankind. Thus, both in the use of natural resources (including land) and in their restoration, it is necessary to adhere to the idea of biospherecentrism.

The general scientific dialectical method became the basis for the entire study, made it possible to consider the legal support of land restoration in conjunction with other legal phenomena, and the corresponding normative legal array – in the dynamics of its development. Using the formal-logical method, a number of legal constructions have been formulated, such as: “restoration of land”. Today the so-called synergetism of technical processes in crop rotation technologies as a preliminary measure of land restoration is reflected in the agricultural sphere. When disclosing the problems of legal support for land restoration, the anthropological methodological approach cannot be left out either, as the conducted scientific research is to some extent aimed at man, at realizing his rights and interests, because the state of land and ecological and food security impact on the life and health of the individual.

Formally, a legal one was needed in the process of establishing the content of individual prescriptions of land legislation in the field of ensuring of restoration of land. The systemic-structural method is the basis for the classification of land restoration and the adoption of certain measures. The modeling method was used in the design and modernization of legal norms proposed to amend the current land legislation, as well as in the processing of the draft Concept of the restoration of degraded, unproductive and technologically contaminated land and the draft law “On restoration of land”.

2. RESULTS AND DISCUSSION

2.1. *Defenition of “restoration of lands” as a legal category, its essence*

Above all things it is necessary to mark that the analysis of encyclopaedic and linguistic literary sources allows to draw a conclusion, that term “restoration” is used in the context of high-quality properties of land (in particular, fertility of soils), states of the broken land. In accordance with the large explanatory dictionary of the modern Ukrainian language to “restore” a term means to return a previous kind to anything to damaged, spoiled, blasted [20]. The new explanatory dictionary of the Ukrainian language contains analogical formulations of term “restoration” as returning of previous kind to anything to damaged, spoiled, blasted; adduction to the previous state; returning to old [21]. A word “reproduction” interpreted how to reproduce again that, to repeat, reproduce, copy [22]. In other encyclopaedic editions this term is interpreted as an update, recreation of old [20]; creation again that, reiteration [23].

Restoration is bringing the state over of lands from existent negative to inherent them to the primary high-quality state. Speech goes about certain positive changes, including to soil fertility, and also about restoration of executable lands functions in accordance with their having a special purpose setting. To reproduce lands as natural object it is impossible. It is known that the high-quality state of lands is characterized the aggregate of their both positive and negative properties. It is expedient to notice that terms “reproduction” and “restoration” are not identical. Terms resulted at the same time in the current landed legislation and in the most advanced studies of scientists, as a rule, equate, thus as in researches will present of legal doctrine, so in labours of research soil scientists.

It is necessary to underline that such natural object as lands in general are unreproduced, it is impossible anew to create them as a natural object, however they can be restored. However, to restore of lands, unlike some other natural resources, for example forest resources, inherent certain specific. It consists in that the state of lands is subject restoration (speech goes about restoration of their high-quality state, their soils, due state of the broken lands), and also functions which execute lands on their basic having a special purpose setting. In the wide understanding restoration is a removal of worsening of the state of land.

Therefore, it is expedient to consider restoration of lands as a legally provided system of measures aimed at restoring lands to their original quality condition, deteriorated due to anthropogenic or natural (natural) factors, lost ability to perform certain functions arising from their main purpose, proper condition of disturbed lands through their reclamation, conservation of degraded and unproductive lands, land reclamation of this natural object and other measures provided by law. We emphasize that in accordance with the recently adopted Law of Ukraine “On Making Alteration in Some Legislative Acts of Ukraine in Relation to Perfection of Control the System and Deregulation in the Field of Land Relations” from April, 28 in 2021 No. 1423-IX [24] conservation of lands includes not only termination of their economic use for the purpose of silting and afforestation, but also through renaturalization, that is transformation of lands degraded, unproductive, and also technogenic polluted into natural biogeocenoses.

2.2. Features of restoration of lands

Reproduction of natural objects finds its manifestation precisely through quantitative indicators, they cover the creation of natural objects. We are talking about the reconstruction of, say, objects of the plant world, including forests, as well as objects of the animal world. It is obvious that reclamation of disturbed lands, conservation of degraded and unproductive lands, land reclamation are legal measures for their restoration. As rightly noted in scientific papers, these measures are directly related to the quality of land. For agricultural and forestry lands, which perform the function of a means of production, the primary basis should be the restoration of their quality, in particular, soil fertility [25].

Restoration of lands combines both the restoration of their quality and the restoration of the previous condition of disturbed lands. After all, in the latter case there is a destruction of the upper layer of the land. It should be noted that land plots, the condition of which is recorded in the materials of the State Land Cadastre, are subject to restoration. The qualitative condition of lands is fixed in the materials of their inventory in the implementation of land management, in particular, by conducting an inventory, qualitative characteristics of land plots are established, contaminated and degraded land plots in need of conservation are identified. In addition, the qualitative condition is reflected in the materials of the normative monetary valuation of land.

The condition of the land plot is also indicated in the agrochemical passport of the field (land plot), which is, for example, obligatory when leasing agricultural land. Therefore, the quality of the land, recorded in the relevant documentation, and should be considered initial (from the moment of its transfer to ownership or provision for use). The initial, so to speak, zero state for each owner and land user may be different, but it is necessary to focus on the materials of the State Land Cadastre. Any changes in the condition of the land plot must be timely reflected in the documentation of the State Land Cadastre. It seems appropriate that, say, notaries, when certifying land contracts, require a certificate of the state of the land, so that the new owner of the land was aware of the existing state of the land at the time of alienation.

First of all, the restoration of lands damaged as a result of illegal actions that caused the deterioration of soil cover, led to unusable condition of lands due to negative impact on them, such as: contamination of lands with radioactive and chemical substances, waste, wastewater and others. However, in some cases, legitimate actions are also taken, necessitating the restoration of both agricultural and non-agricultural land.

Thus, the actions that led to a change in the structure of the terrain as a result of mining, exploration, construction and other works are legitimate, provided that there is a relevant working project of land management. It should be noted that by law mentioned Ukraine “About making alteration in some legislative acts of Ukraine in relation to perfection of control the system and deregulation in the field of land relations” from April, 28 in 2021 No. 1423-IX [24] relocation of soil cover (fertile soil layer) within the same land plot intended for personal farming, horticulture, construction and maintenance of a dwelling house, farm buildings and structures (homestead plot), individual country house construction and construction of individual garages, carried out without the development of a working project of land management.

2.3. Measures of restoration of lands

The need for land restoration is caused by various factors. First of all, the condition of lands is negatively affected by anthropogenic activities: (a) improper tillage, (b) violation of the organization of the territory, (c) deterioration of protective forest belts, (d) insufficient application of erosion measures, (e) deforestation, (f) destruction of slopes, (g) improper cultivation of slope lands, (h) neglect of reclamation measures, etc. At the same time, soil erosion can be caused by natural disasters. Especially these problems were exacerbated during the land and agrarian reform. A detailed study of individual important problems of their implementation was the subject of special scientific research [26]. Among the natural factors are most often: (a) terrain, (b) surface shape, (c) steepness and exposure of slopes, (d) erosion resistance of soils, (e) rainfall, (f) volumes of natural intakes, (g) the thickness of the snow, (h) the speed of its spring melting, etc.

It should be emphasized that among the legal measures of restoration of land there are previous and basic. Thus, the existence of preliminary land restoration measures is evidenced by the Land Code of Ukraine [27] obligations of owners and users of land to preserve the useful properties of land, at their own expense to restore the land in case of illegal change of its terrain, except for illegal change of terrain land (Articles 91, 96). In order to prevent the intensification of land degradation processes (including soils), mineral fertilizers are applied, soils are washed in cases of salinization, appropriate irrigation regimes are applied, etc. After all, as soil experts rightly emphasize, the legal regime of lands (including soils) is aimed at strict observance by owners and land users of scientifically sound technological regulations, high culture of behavior to prevent and/or eliminate the phenomena of soil degradation and possible environmental risks, associated with illegal, environmentally unsafe land use [28].

The previous measures to restore soil fertility also include the introduction of crop rotations, in the process of which the approved standards for the optimal ratio of crops in various natural and agricultural regions are taken into account. So, the main restoration measures are: conservation of degraded and unproductive lands, reclamation of disturbed lands, land reclamation. It is the implementation of these measures for land restoration that received proper legal support. However, there are other land restoration measures. Although, unfortunately, their implementation is not regulated by law today. Such measures primarily include phytoremediation – a method of biological neutralization of soil pollutants, which restores their fertility. Experts recommend considering it as one of the areas of reclamation [29]. When using this method, plant roots absorb organic pollutants, transforming them into environmentally friendly products. Bioremediation is also a measure of land restoration, which is divided into two types: biostimulation and bioaugmentation. Restoration of man-made contaminated lands can be carried out by cutting the soil layer, collecting pollutants, steam extraction, etc. Such a measure is the so-called detoxification, which can be used as a stand-alone measure or in the reclamation of disturbed lands. It should be emphasized that the implementation of these measures in the future should be enshrined in law.

2.4. Specificity of ensuring of restoration of lands in the countries of Western Europe

Increased attention to soil protection and restoration is due to the current state of soil resources, awareness of their role in providing food and fulfilling their environmental functions, population growth and declining agricultural land, projected climate change and exacerbation of the world's food problem. Soil protection agricultural technologies are currently being introduced in European countries to reduce chemical and mechanical stress on both the soil and the environment as a whole. First of all, these are zero and conservative systems of cultivation, which is carried out both with the support of state institutions and by providing appropriate subsidies, which, of course, contributes to the implementation of soil protection technologies. In some European countries, especially in Great Britain, Germany, France, Denmark conservative agriculture, which involves reducing the use of agrochemicals, is becoming increasingly popular.

It should be emphasized that the Annexes to the Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 “On Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage” address the removal, control and reduction of harmful substances so that contaminated soils, taking into account their current, established at the time of contamination or future use, do not pose a risk of adverse effects on human health in the long run [30].

In accordance with Annex II to the above-mentioned Directive 2004/35/CE, the restoration of the natural state is carried out by applying both initial and additional restoration. Thus, initial recovery means any restorative measure through which natural resources that have been damaged or damaged services are returned to their original state or close to the latter. Additional restoration, like any restorative measure applied to natural resources or services to correct that fact, means that the initial restoration does not end with the full return of natural resources or services to their previous state.

2.5. Legal aspects of restoration of lands

Land restoration includes various legal aspects. Thus, depending on its purpose, the restoration of soil fertility of agricultural lands, the productivity of forest lands, restoration in order to perform other functions (in the case of lands of other categories) are distinguished.

Restoration measures are carried out at the national, regional and local levels, carried out by owners and users, including tenants of land. According to the role of anthropogenic factors, natural and artificial land restoration should be distinguished. Thus, the reclamation of disturbed lands, their land reclamation provides their artificial restoration. Conservation of lands contributes to their natural restoration, resulting in the formation of fallow lands and self-restoration of land. According to the source of legal support, land restoration is carried out if there are grounds and in the manner prescribed by law (it is about their reclamation), and according to bylaws (it is about land conservation).

It is quite important that when implementing land restoration measures, especially soils, it is necessary to take into account the division of the territory of Ukraine into soil-ecological zones. In addition, it makes sense to talk about the restoration of not only the state of the land, but also land rights, in particular, the return of illegally occupied land (it is about the restoration in a broader sense). Thus, the return of illegally occupied land plots must be preceded by bringing them to the previous, usable condition by demolishing illegally constructed buildings and structures, restoring the disturbed relief of land plots, etc. (article 212 of the Land Code of Ukraine).

Today, as rightly noted in scientific papers, the return of illegally occupied land is an example of a measure to eliminate violations of land legislation [31]. Land restoration is an element of defence of rights to them. It should be emphasized that the above method of defence of violated rights is manifested through the reclamation of disturbed lands, conservation of degraded and unproductive lands, as well as the implementation of land reclamation and other measures to restore them.

It should be noted that the restoration of the state of the land plot, which existed before the violation of rights, is usually considered a substantive method of defence. However, examined it can be and as an obligation-legal method of defence of land. Thus, there are cases of loss of original quality, violation of the terrain due to the actions of the tenant. Therefore, in this case, the rights of the subjects who are in a contractual relationship (in particular, the owner of the land) are violated. In obedience to the decree of Cabinet of Ministers of Ukraine of “On Approval of the Typical Lease Contract of Land” [32] after the termination of the agreement the lessee must return to the landlord land (land) in a condition not worse than that in which he received it for rent. Therefore, in the presence of an agrochemical passport of the field (land) when the relevant obligation of the lessee is included in the text of the lease agreement as one of the conditions of the latter, it is a mandatory legal way to protect the rights of the land owner [33].

2.6. Criteria for distinguishing restoration and protection of lands

The question of the legal nature of land restoration is extremely relevant, to clarify which it is appropriate to pay attention to the analysis of the relationship between restoration and protection of land, because in scientific works restoration is often interpreted as an independent area of land protection.

The law considers the protection and restoration of land to be the responsibility of landowners and land users. Land protection measures are aimed at ensuring the rational use of land, preventing their clogging and pollution, guaranteeing a special regime of land use for environmental, health, recreational and historical and cultural purposes. Land protection measures are carried out both at the state level (these are the relevant management functions) and at the local level (when using land plots by their owners and users). We are talking about their rational use, fulfillment of obligations to comply with the requirements of environmental legislation, as well as the preservation of useful properties of the land.

Thus, land restoration has certain specifics. Its measures are carried out, when worsening of the high-quality state of land of the agricultural setting took a place already, in particular, to fertility of soils, violations of the previous state of lands in the case of change of their relief, and also if it be impossible implementation of the proper functions lands pursuant to their having a special purpose setting. Land restoration measures should be introduced not only in case they lose their original quality condition, but also the ability to perform appropriate functions, disturbance of land relief, and so on. Measures of protection of land on maintenance article 22 of the Law of Ukraine of “On Protection of Land” [34] more aimed at preventing the deterioration of the quality of agricultural land, reducing or losing fertility, as well as productivity of forestry land, to ensure the performance of non-agricultural land relevant functions.

At the same time, there is a kind of connection between land protection and restoration, because, due to certain measures for land protection (such as: the state complex system of observations; natural-agricultural, ecological-economic, anti-erosion and other types of zoning lands) are lands that have undergone changes in the structure of the terrain, are degraded, have low natural properties, are characterized by high erosion of soils, where the intensity of erosion processes and their dynamics. Land protection measures contribute to the establishment of their negative quality characteristics, topography, low soil fertility, which, of course, helps to more effective and timely restoration measures.

2.7. The place of legal norms regulating public relations in the field of land restoration in the system of land law

In connection with the above, the question of the legal nature of land restoration, establishing the place of legal norms governing public relations for land restoration in the system of land law of Ukraine remains extremely important. Legal norms are known to form the relevant branch of law through individual legal institutions. These rules are part of the field of law, but differ from other industry rules in some way. In the theory of law, it is generally accepted that the legal institution is a separate group of rules of law that regulates one or another type of homogeneous social relations.

Legal norms aimed at ensuring the restoration of land operate in case of deterioration or loss of quality of agricultural land, in particular, soil fertility, violation of the previous state of land in case of change of their relief, as well as inability to perform certain basic functions according to their purpose. We are talking, for example, about the reduction or loss of the original quality of land. For example, when grading soils, there is

a decrease in the assessment of soil quality due to the deterioration of their natural properties. Information on changes in soil properties must be included in the land cadastral documentation, in particular, in the Land Book, in the agrochemical passport of the field or land plot. In the latter case, certification is carried out in order to control changes in fertility, soil contamination with chemicals. If these indicators change in the direction of deteriorating soil quality, there is a need to restore their fertility.

Land protection and restoration measures are separated by a time frame. The first are aimed primarily at ensuring the rational, targeted use of land, preventing deterioration, pollution and littering, providing a special regime of land use for environmental, health, recreational and historical and cultural purposes. The obligations of land owners and users regarding land protection are referred to in the Land Code of Ukraine, which stipulates that these entities are obliged to comply with environmental legislation, increase soil fertility, preserve other useful properties of land, maintain erosion structures, networks of irrigation and drainage systems (Articles 91, 96). If the implementation of these protection measures did not give the expected result (that is protection measures were not effective or not implemented at all), and negative consequences for the condition of lands and reduction of soil quality (soil fertility) occurred, it is necessary to carry out restoration measures.

After the restoration of the quality of lands (including their soil fertility), the condition of disturbed lands, as well as the functions they perform for the main purpose, the lands again become the object of legal relations for their protection.

Legal norms regulating public relations in the field of restoration of land can be considered an independent legal institution, which is characterized by a special subject composition. It is characterized by specific concepts, legislative constructions, such as: disturbed lands; degraded lands; unproductive lands; man-made contaminated lands; land degradation; soil degradation; land plots with eroded, waterlogged, with high acidity or salinity soils; unfavorable water regime; waterlogged, over-drained lands; land conservation; reclamation of disturbed lands; land reclamation; plastering of soils; liming of soils, etc.

2.8. Features of legal relations in the field of restoration of lands

Public relations arising from the restoration of land should be considered an independent component of land relations, therefore, they are part of the subject of land law, as well as public relations related to the protection and use of land. However, these types of land relations are closely related. For example, the use of land in different legal titles involves both owners and users fulfilling a number of responsibilities for its protection and restoration. In the case of conservation of degraded, unproductive and man-made contaminated land plots, their owners and land users for a certain period lose the right to use them. After the conservation and restoration of such land plots, these entities regain the right to use them. It should be noted that certain measures for land protection allow to identify lands that need to take measures for their restoration, in particular, to identify the processes of land and soil degradation and the peculiarities of the manifestation of these processes. Yes, it is first of all about the state complex system of supervision; implementation of natural-agricultural, ecological-economic, anti-erosion and other types of zoning (zoning) of lands; implementation of rationing (article 22 of the Law of Ukraine "On Protection of Land" [34]). After appropriate restoration measures, these lands again need protection from the state, their owners and users.

Further development of land relations in the field of land restoration will depend on the land legal regulation of such relations. After all, we repeat, as of today, the legal norms governing public relations in this area, properly unsystematized, are contained in regulations of various legal force, and a certain part of them, which is in the legislation governing public relations for land protection, is characterized by conflict and the lack of effective support for the mechanism of their implementation.

It should be emphasized that legal relations in the field of land restoration belong to the legal relations of the active type. Thus, land conservation is preceded by active actions of the obligated person aimed at stopping their economic use (in particular, it is about the initiation of land conservation by land owners or land users). It seems impossible to carry out conservation of degraded and unproductive lands without ordering a project developed by the contractor for land management. Failure to use the land will not directly lead to the restoration of its quality at the appropriate level. In this case, there is a possibility of littering the land with harmful plants, which will lead to further deterioration of its quality. Conservation of land should be carried out, as already mentioned, only on the basis of the developed project. The need for active action is evidenced by the afforestation of such lands, and sowing them, in certain cases, with appropriate herbs. In addition, preserved land plots are subject to systematic monitoring. Both owners and users of land participate in the work of the commission for the survey of land in kind (on the ground) in order to make a proposal to the authorities to return them for use or extend their conservation.

2.9. Obligations of owners and users of land plots in the field of restoration of lands

The main legal relationship in the restoration of land should be considered a legal obligation, which is manifested in the active behavior of the obligated person in order to ensure the subjective rights of other entities. Above all things it is needed to underline that to the articles 90, 91, 95 and 96 the Land Code of Ukraine foresee common laws and duties of proprietors and users of lot lands, and only some of them belong to the rights and duties of subjects of legal relationships in relation to restoration of lands. Pursuant to the article of 91 of the Land Code of Ukraine, most of the responsibilities of landowners are aimed at ensuring the protection of the latter, to increase soil fertility and preserve other useful properties of land. Among the responsibilities of landowners in the field of land restoration under article 91 of the Code can also be distinguished: bringing the land to its previous state at its own expense in case of illegal change of its relief, except for such a change not by the owner of the land, when this procedure is carried out at the expense of the person who illegally changed the terrain. Land owners must restore land plots both their users during their operation. In this case, there is only one object of use, protection and restoration – land.

However, the current land legislation does not specify the obligation of landowners and users to restore lost soil fertility and other useful properties of land in the course of economic activity. After all, even with careful improvement of soil fertility and preservation of other useful properties of land, neither land owners nor land users are insured either by natural forces or by the actions of outsiders, resulting in deteriorating initial quality of land, arise and acquire spread processes of their degradation, disturbance of a relief. In this regard, the problem of restoring the condition of disturbed lands, their quality and ensuring that they perform their functions is acute. We consider it necessary to enshrine the obligation of owners and users in the article 91 and 96 the Land Code of Ukraine [25] to restore soil fertility and other useful properties of land, as well as to restore the land in the event of a change in its terrain. Unfortunately, today there is a certain lack of interest of landowners and users in the implementation of measures for the protection and restoration of land, which in some cases is mostly due to financial problems. We emphasize that the owners and users of land, which carry out their rational use, protection, increase soil fertility, in case of deterioration of land quality, loss of their relevant functions take timely measures to restore them, it is advisable to provide certain preferences and benefits (tax, credit and others). In this case, it is obviously a matter of ensuring the public interest. In contrast, for owners and land users, failure to take measures to restore degraded, contaminated and disturbed land should have negative consequences in the form of, for example, the imposition of fines. It is at the expense of such funds that it is expedient to provide appropriate benefits to land owners and land users who carry out proper land cultivation, increase soil fertility, preserve other useful properties of land, initiate and implement land restoration measures. The above will provide incentives for both the rational use of land, their protection, and the timely restoration of land. At the same time, given the dispersion of powers in the field of land restoration between the State Geocadaastre and the State Ecoinspection, it is advisable to create a separate body (state agency or civil service) to promote more effective activities in this area.

The need for restoration of land is closely linked to the application of legal liability measures in this area. Given the weak economic and legal mechanism, there is an urgent need to strengthen both administrative and criminal liability. In particular, it is expedient to supplement the Code of Ukraine on Administrative Offenses with a special article on liability for non-fulfillment by both the land owner and the land user of the obligation to timely start the procedure of conservation of degraded, unproductive and man-made contaminated lands. In addition, it is necessary to establish criminal liability for ignoring the restoration of the quality of degraded and unproductive lands (primarily by conserving them), the relief of disturbed lands by recultivating them in cases prescribed by law, if it has serious consequences for the environment and human health.

CONCLUSIONS

To restoration of lands and relevant legal requirements need to be systemic. It is necessary to ensure the effective implementation of the legislation on this procedure by amending existing legislation, adopting new regulations in this area in order to properly implement appropriate measures for land restoration through the responsibilities of owners, land users, other entities, through actions which there was a loss of the original quality of such areas, violation of their relief, while strengthening their responsibility in the field of land restoration, as well as the creation and functioning of an appropriate level of incentives for landowners and land users to timely land restoration in parallel with the actual receipt of funds from the state to land owners and users.

In conditions of significant deterioration of land, as the main national wealth, the rapid spread of degradation processes in the country there is an urgent need to develop and adopt the Concept of restoration of degraded, unproductive and man-made contaminated land. The purpose of this Concept is to outline priority

areas for ensuring the restoration of man-made contaminated, degraded and unproductive land. Its main tasks include: a) improving the legal framework for land restoration; b) elaboration of approaches to land restoration, promotion of processes of reduction of their degradation and desertification; c) definition of mechanisms and conditions of realization of this Concept; d) development of a plan of priority actions for the implementation of the provisions of this document; e) improvement of international cooperation in this field. On its basis should be adopted a separate special Law “On restoration of land”, which should establish a definition of “restoration of land”, its measures, and provide for the restoration of land of different categories.

Thus, the time has come for a significant renewal of the legal provision for land restoration, which is essential for the preservation of land as the main national wealth for present and future generations, to ensure environmental and food security, sustainable development of the country as a whole.

RECOMMENDATIONS

The study may be of interest to researchers of problems of land and agricultural law, practicing lawyers, politicians. The materials of this study can be used to prepare methodological recommendations, text-books on land law. Results of the conducted research can be used to improve the land legislation of Ukraine.

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Suggested Citation: Shulga, M.V. & Lisova, T.V. (2022). Some current issues of legal provision of restoration of land. *Journal of the National Academy of Legal Sciences of Ukraine*, 29(1), 116-126.

Submitted: 19.03.2022

Revised: 20.04.2022

Accepted: 21.05.2022