

МАЙНОВІ ПОВНОВАЖЕННЯ УКРАЇНСЬКОГО НАРОДУ

Анотація. Українській державі сьогодні належить великий обсяг державної власності, що використовується або принаймні повинен використовуватися з суспільнокорисною метою. Тому основна мета роботи полягає у характеристиці майнових повноважень українського народу. Для більш детального розгляду питання використано позитивістсько-нормативістський, герменевтичний, формально-юридичний, порівняльно-правовий методи. В роботі розглянуто поняття «майно», «власність», «право власності», досліджено поняття та ознаки майнових повноваження Українського народу, а також виокремлено деякі з них. Це такі як: право власності на землю, право власності на надра, право власності на атмосферне повітря, право власності на водні ресурси, право власності на інші природні ресурси, право власності на природні ресурси континентального шельфу, право власності на природні ресурси виключної (морської) економічної зони. Виявлено, що майнові обов'язки є основою сучасного цивільного обігу. Встановлено, що право власності Українського народу та право державної чи комунальної власності не можна порівнювати.

Ключові слова: майно, власність, право власності, майнові повноваження, український народ.

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PROPERTY RIGHTS OF THE UKRAINIAN PEOPLE

Abstract. Now the Ukrainian government owns a large amount of the state property which is or at least should be used with a socially useful purpose. Therefore, the main purpose of the work is the characterization of the property powers of the Ukrainian people. For a more detailed consideration of the issue there are used positivist-normative, hermeneutic, formal-legal and comparative-legal methods. In the work there are considered the concepts of "property", "ownership" and "ownership right", investigated the concept and particularities of the property powers of the Ukrainian people and highlighted some of them. Such as the right of ownership of land, the right of ownership of subsoil, the right of ownership of air resources, the right of ownership of water resources, the right of ownership of natural resources of the continental shelf, the right of ownership of natural resources of exclusive (marine) economic zone. It is revealed that property duties are the basis of the modern civil turnover. It is established that the right of ownership of the Ukrainian people and the rights of state or municipal property may not be compared.

Key words: property, property, ownership, property rights, Ukrainian people.

INTRODUCTION

Today, in the process of reforming Ukraine and its establishing as a democratic and rule-of-law state, and Ukrainian people realizing their independence, one should recognize that the important element of its constitutional status is property powers. The regulatory act regulating property relationships and dedicated to legal equality, declaration of will, property independence of participants is the Civil Code of Ukraine [1]. The objects of the Civil Code include things (taking into account money and securities), property rights, results of work, services, information, results of intellectual (artistic) activity and other material (non-material) values.

The existence of property powers in the territory of Ukraine not only gives the possibility of exercising own right to own, use and dispose of the property belonging to the subject at his/her own discretion and in his/her own interests, and the need to realize own property duties in the context of non-violating legal norms established by law that regulate property relationships to the damage of other subjects or society, and the possibility of intrusion of the state in its property right.

Arising of any powers begins with the process of legitimization of the legal status of state authorities in 3 aspects (material and statutory, processual and dynamic and procedural). Along with powers the respective management paradigm appears and gets legalized, and this paradigm contains a number of management actions of statutory and functional nature – the respective order of exercising competence rights and obligations by the above-mentioned state authorities as well as fulfilling their functions, assuming liability for not fulfilling them or improper fulfillment and the like is deemed to be formed [2;3;4]. All this is accompanied by issuing the respective regulatory acts of norm-establishing and law-enforcement nature.

It shall also be noted that the problem described is extremely up – to – date, even though it is not elaborated theoretically well enough by Ukrainian scholars. The theoretical base of this work is as follows: the Civil Code of Ukraine [1], Legal encyclopedia [5], the Constitution of Ukraine [6], the Economic Code of Ukraine [7], the Land Code of Ukraine [8] and other domestic and foreign regulatory acts.

1. MATERIALS AND METHODS

At present the problem of property powers of Ukrainian people is not well-studied. As special scientific papers of complex conceptual and methodological nature dedicated to this problem are absent, therefore the methodological basis of this article is a number of philosophical, general scientific, special scientific methods and principles giving the possibility to cover the above-mentioned scientific problem comprehensively and understand notions, features and types of property powers of Ukrainian people, review property rights and obligations and make their comparative analysis comparing them with those existing in foreign countries. Among the methods and principles used the following shall be mentioned: the dialectical method, which was used for consistent, logical and clear statement of the scientific paper; the positivistic and normativistic

method, which helped to study legal formalization of property powers of Ukrainian people; the principle of interrelation of theory and practice was applied when advancing suggestions as for entering amendments into local laws of Ukraine; the hermeneutic method was applied for interpretation of such terms as the “property”, “ownership”, “ownership right”; the systemic method was applied for analysis of various types of property rights and obligations of Ukrainian people; analysis and synthesis while formulating definition for property powers of Ukrainian people; induction and deduction was used for making conclusions from the present scientific paper; the historical and legal method for studying the existing points of view in regard to the notions falling under the contemplated problem; the comparative and legal method was applied when comparing property powers of Ukrainian people 3 property powers existing in other countries; the formal and legal method was applied for defining elements of those legal phenomena, which were contemplated in this Article, and distinguishing their distinctive features and other.

Combining methods of formal logic with comparative and legal analysis and interpretation of legal norms allowed performing scientific analysis of current laws and make conclusions and formulate guidelines regarding non-compliance of the system of property relationships with the Constitution of Ukraine, the possibility and need of implementation of the constitutional model of fulfilling property duties of Ukrainian people into the legal system, formulate definitions of separate notions as legal categories.

2. RESULTS AND DISCUSSION

2.1. Study of such notions as the “property”, “ownership”, “ownership right”, “property powers of Ukrainian people”

The study of property powers of Ukrainian people shall begin from modern understanding of the notions of “property”, “ownership», “ownership right” and other contiguous notions.

Thus, Art. 190 of the Civil Code of Ukraine No 435-IV of January 16, 2003 states that “The property as a special object is a certain thing, a number of things, as well as property rights and duties. The property right is a non-consumable thing. Property rights shall be deemed as proprietary rights” [1]. In the six-volume *Legal Encyclopedia* it is said that “*The property (P.)* in civil law means – 1) a certain thing or a number of things, including money and securities. The term is used to define objects of the ownership right, the subject – matter of gift contracts, property lease agreements, loan agreements and the like 2) the array of things and property rights (rights of claim) of a certain person (asset). It is used in norms regarding protection of the property of the citizen, who was recognized as missing, as well as in norms regarding responsibility of legal entity. 3) The aggregate of rights and obligations of a certain person characterizing his/her property status. In this understanding the property consists of things and rights of claim belonging to a certain person and

defines property asset, as well as his/her debts constituting property liabilities. It is used in norms concerning inheritance, reorganization of legal entities as legal assigns receive not only rights, but obligations as well, thus universal legal succession is formed” [5, p. 551].

“*The ownership (O.)* means appurtenance of facilities and manufactured products to people, as well as certain individuals and legal entities. The structure of O. is manifested through such elements of it as possession, use and disposal of *property*. Economic relationships regulated by legal norms are realized as *legal relationships* and fall under such legal category as *the ownership right* in modern states. Certainly, the O. right and its forms shall be formalized in the constitutional order» [5, p. 492].

When studying the ownership right, first of all, it is necessary to draw attention to Art. 316 of the Civil Code of Ukraine No 435-IV of January 16, 2003, which, formulating the notion of the ownership right affirms that “the ownership right is the right of a person to a thing (property), which such person exercises in compliance with law voluntarily and nor depending on the will of any other persons”; and Art. 317 of the same Code, providing for the maintenance of the ownership right, affirms that the “Rights of possession, use and disposal of own property belong to the owner” [1].

From the notion and nature of the ownership right it proceeds that the ownership right (objectively) means the totality of legal norms and principles that regulate and social relations related to possession, use and disposal of the property by its owner at his/her own discretion and in his/her interests. Meanwhile, the ownership right (subjectively) means the type and measure of possible behavior of Ukrainian people, individuals and legal entities in respect to possession, use and disposal of the property belonging to the person guaranteed by regulatory acts.

In Part 1 Art. 13 objects of the ownership right of Ukrainian people are listed, and Part 1 Art. 14 of the Constitution of Ukraine acknowledge that land is the greatest national wealth, which is under special protection of the state. Along with that one can mention other Articles of the Constitution of Ukraine concerning the property, including property of Ukrainian people. First of all, these are: Art. 41, which states that “Every person has the right to own, use and dispose of his/her own property, results of his/her intellectual and creative activity”, and, furthermore, it establishes the procedure of acquiring, exercising, compulsory alienation of private ownership rights, use objects of rights of state and municipal property, confiscation of property, obligations arising from use of the property; Clause 36 Part 1 Art. 85, which includes approval of the list of objects of rights of state property not subject to privatization, determining legal grounds for seizure of objects of private ownership rights with powers of the Supreme Council of Ukraine; Clause 7 Part 1 Art. 92 envisages that the legal regime of property shall be defined by laws of Ukraine only; Clause 5 Part 1 Art. 116 imposes on the Cabinet of Ministers of Ukraine ensuring equal conditions of development for all forms of property; management of state property objects in compliance with law; Clause 3 Art. 138 states that the Autonomous Republic of

Crimea can exercise management of property; Part 1 Art. 142 regulates that the material and financial basis of local self-government is movable and immovable property, incomes of local budgets, other funds, land and other natural resources, which belong to territorial communities of villages, residential settlements, towns, districts of cities and objects of their common property managed by regional and oblast councils [6].

Along with that, Art. 318 of the Civil Code of Ukraine No 435-IV of January 16, 2003. Affirms that “Subjects of the ownership right are Ukrainian people and other participants of civil relationships...», and Art. 324 titled “The ownership right of Ukrainian people” actually dupes Parts 1 and 2 Art. 13 of the Constitution of Ukraine [1].

The Economic Code of Ukraine No 436-IV of January 16, 2003 in Part 2 Art. 5 states that “The constitutional framework of legal and economic order in Ukraine is maintained by: the ownership right of Ukrainian people of land, its subsoil, air resources, water and other natural resources located in the territory of Ukraine, natural resources of its continental shelf, exclusive (marine) economic zone exercised on behalf of Ukrainian people by government authorities and local self-government authorities within the limits, defined by the Constitution of Ukraine; the right of each citizen to use natural objects of the ownership right of people in compliance with law...». In Part 5 of Art. 24 dedicated to peculiar features of management of economic activity in the utilities sector of the economy it is stated that “Law can set ... additional requirements and guarantees of the ownership right of Ukrainian people and rights of municipal property at carrying out the bankruptcy procedure regarding business entities of the utilities sector of the economy”. In Art. 141 concerning peculiar features of the legal regime of state property in the economic field, it goes that the state, through the authorized government authorities, exercises rights of the owner in respect to objects of the ownership right of Ukrainian people mentioned in Part 1 Art. 148 of the Economic Code of Ukraine No 436-IV of January 16, 2003. Part 1 and 2 Art. 148 of the same Code actually dupe Part 1 and 2 Art. 13 of the Constitution of Ukraine, and Part 4 Art. 209 “Incapacity of the business entity” states that “As regards bankruptcy of state commercial enterprises, law envisages additional requirements and guarantees of the ownership right of Ukrainian people” [7].

Taking into account all the mentioned-above, one can affirm that property powers of Ukrainian people constitute the aggregate of their primary, fundamental rights and obligations assigned to them by law or existing objectively, and they shall be exercised with the purpose of ensuring possession, use and disposal of their property at their own discretion and in their interests.

From the above-mentioned definition the following elements of property powers of Ukrainian people can be singled out:

- the aggregate of rights and obligations of Ukrainian people or a certain part of them;

- the aggregate of their primary, fundamental rights and obligations, that is those, which extend to all social subjects with the ownership exercising the ownership right, and all objects of the ownership right of Ukrainian people;
- assigned to them by law or existing objectively;
- exercised with the purpose of ensuring possession, use and disposal of belonging to them;
- exercised actually at their own discretion and in their interests.

2.2. Property rights of Ukrainian people

The most important, systemic property right of Ukrainian people is their ownership right of land situated in the territory of Ukraine. Unfortunately, the Land Code of Ukraine No 2768-III of October 25, 2001 does not contain any regulations dedicated to the property right of Ukrainian people of land. This gives the grounds to affirm that it does not comply with the Constitution of Ukraine and other regulatory acts regulating the ownership right of Ukrainian people, envisaging, first of all, objects of rights to such property. However, Part 1 Art. 3 acknowledges that land relationships are regulated by the Constitution of Ukraine, the Land Code of Ukraine No 2768-III of October 25, 2001, and regulatory acts adopted in compliance with them [8].

Analysis of the Declaration of State Sovereignty of Ukraine No 55-XII of July 16, 1990, which is currently ineffective, Law of Ukraine On ownership No 697-XII of February 7, 1991, currently in effect, Law of the Ukrainian Soviet Socialist Republic On economic independence of the Ukrainian SSR No 142-XII of August 3, 1990, other regulatory acts in the part of property powers of Ukrainian people, came to the following: 1) the exclusive right of Ukrainian people to possess, use and dispose of the national wealth of Ukraine was acknowledged; 2) land, its subsoil, air resources, water and other natural resources located in the territory of Ukraine, natural resources of its continental shelf and exclusive (marine) economic zone, the entire economical and scientific and technical potential generated in the territory of Ukraine, major production means in the industry, construction, agriculture, transportation, communications, housing stock, buildings and structures, financial resources, scientific achievements, a part in the national wealth created thanks to efforts of Ukrainian people, specifically, in the national diamond and currency funds and the gold reserve, national, cultural and historical values, including those, which are currently outside its territory, were recognized as property of Ukrainian people; 3) land, its subsoil, air resources, water and other natural resources of its the continental shelf and exclusive (marine) economic zone were included into objects of rights of the exclusive property of Ukrainian people; 4) the procedure of exercising rights of exclusive property through Referendum by Ukrainian people was envisaged.

Studying the ownership right of Ukrainian people of land it is not possible not to mention provisions of Part 1 Art. 14 of the Constitution of Ukraine, which envisage

that land is the major national wealth, which is under special protection of the state; and this represents detailing of Part 1 Art. 13 of the Constitution of Ukraine. Besides, provisions stating that land is the major national wealth, which is under special protection of the state, are contained in Part 1 Art. 373 of the Civil Code of Ukraine No 435-IV of January 16, 2003 [1].

Taking into account that the Land Code of Ukraine No 2768-III of October 25, 2001 is not compliant with the Constitution of Ukraine and other regulatory acts regulating the ownership right of Ukrainian people, and relying on Art. Art. 13, 14 of the Constitution of Ukraine and Art. 73 of the Constitution of Ukraine, which declares that “the issue of changes in the territory of Ukraine shall be resolved though the All- Ukrainian Referendum only” [6], it seems expedient to make changes in the Land Code of Ukraine No 2768-III of October 25, 2001 adding a separate Article, which reads as follows:

“Land is the major national wealth, which is under special protection of the state.

Land is the exclusive property of Ukrainian people and can be provided for use only.

Any agreements or actions, which directly or indirectly infringe the ownership right of Ukrainian people of land, shall be invalid.

Ukrainian people have the right to resolve issues regarding the legal status of land, its use and protection through Referendum.

Ukrainian people exercise the ownership right of land through the Supreme Council of Ukraine, the Supreme Council of the Autonomous Republic of Crimea and local councils. Certain powers regarding disposal of land provided for by laws of Ukraine can be provided to the respective executive authorities”.

Another property right of Ukrainian people is their ownership right of subsoil in the territory of Ukraine. In contrast to the Land Code of Ukraine No 2768-III of October 25, 2001, the Code of Ukraine on subsoil No 132/94-BP of July 27, 1994 states that “Subsoil is the exclusive property of Ukrainian people and can be provided for use only. Any agreements or actions, which directly or indirectly infringe the ownership right of Ukrainian people of subsoil, shall be invalid. Ukrainian people exercise their ownership right of subsoil through the Supreme Council of Ukraine, the Supreme Council of the Autonomous Republic of Crimea and local councils. Certain powers regarding disposal of subsoil provided for by laws of Ukraine can be provided to the respective executive authorities”. The unobjectionable advantage of the Code Ukraine on subsoil No 132/94-BP of July 27, 1994 as compared with the Land Code of Ukraine No 2768-III of October 25, 2001 is the fact that it confirms the ownership right of Ukrainian people of subsoil, and Part 1 Art. 1 formulates the understanding of subsoil, more specifically – “Subsoil is the part of the Earth’s crust, which lies under the surface of terrain and bottoms of water basins, and it stretches to the depths accessible for geological survey and development” [9].

The constitutionally regulated property right of Ukrainian people is their ownership right of air resources located in the territory of Ukraine. In this regard Law of Ukraine On protection of air resources No 2707-XII of October 16, 1992 in Part 1 Art. 1 regulates that “air is the vital component of environment, which represents the natural mixture of gases outside of residential, industrial and other premises” [10].

Unfortunately, Law of Ukraine On protection of air resources No 2707-XII of October 16, 1992 does not contain norms, which would relate to the ownership right of Ukrainian people of air resources. In contrast to that, Law of Ukraine On protection of environment No 1264-XII of June 25, 1991 in Art. 4 titles “The ownership right of natural resources” in Part 1, 2 and 3 clearly says that “Natural resources of Ukraine are the property of Ukrainian people”.

On behalf of Ukrainian people rights of the owner are exercised by government authorities and local self-government authorities within the limits defined by the Constitution of Ukraine, this and other laws of Ukraine.

The citizens of Ukraine have the right to use natural resources of Ukraine in compliance with this and other laws” [11].

Property rights of Ukrainian people also include their the ownership right of water resources in the territory of Ukraine. The Water Code of Ukraine No 213/95-BP of June 6, 1995 in paragraph 1 of the Preamble states that “All waters (water objects) in the territory of Ukraine are the national treasure of Ukrainian people and one of the natural grounds for its economic development and social well-being”; and in Art. 6 titled “The ownership of waters (water objects)” it is said that “Waters (water objects) are the exclusive property of Ukrainian people and can be provided for use only.

Ukrainian people exercise their ownership right of waters (water objects) through the Supreme Council of Ukraine, the Supreme Council of the Autonomous Republic of Crimea and local councils.

Certain powers as regards disposal of waters (water objects) can be granted by the respective executive authorities and the Council of Ministers the Autonomous Republic of Crimea” [12].

This group also includes the ownership right of other natural resources in the territory of Ukraine. First of all, it refers to the forest fund, plants and animals, reserve fund, it shall be mentioned that the Forest Code of Ukraine No 3852-XII of January 21, 1994 in Part 1 and 2 Art. 7 states that “Forests as the object of the ownership right” and, respectively, establishes that “Forests, which are found in the territory of Ukraine, are objects of the ownership right of Ukrainian people”.

The rights of the owner of forests are exercised by government authorities and local self-government authorities on behalf of Ukrainian people and within the limits defined by the Constitution of Ukraine” [13].

Law of Ukraine “On the plant world” No 591-XIV of April 9, 1999 does not envisage the ownership right of Ukrainian people of the plant world, and in Art. 9

establishes the regime of common use of natural plant resources, according to which “In the order of common use of natural plant resources citizens can gather medicinal and technical raw materials, flowers, berries, fruits, mushrooms other food products for satisfaction of own needs, and also use these resources for recreational, cultural and educational purposes” [14].

In contrast to the previous legislative act of Law of Ukraine On the animal world No 2894-III of December 13, 2001 in Part 2, 3 and 4 Art. 5 “the ownership right of objects of the animal world”, respectively, states that “Objects of the animal world, which are naturally free and stay in the territory of Ukraine, its continental shelf and exclusive (marine) economic zone, are objects of the ownership right of Ukrainian people”.

Rights of the owner of objects of the animal world, which are the natural resource of common value, are exercised by government authorities and local self-government authorities on behalf of Ukrainian people and within the limits defined by the Constitution of Ukraine.

Every citizen has the right to use objects of the animal world – objects of the ownership right of Ukrainian people in compliance with this Law and other laws of Ukraine” [15].

Law of Ukraine On the natural reserve fund of Ukraine No 2456-XII of June 16, 1992 p. in Part 1 and 2 Art. 4 “Forms of the property in the territory and objects of the natural reserve fund” regulates that “Territories of natural reserves, preserved areas of biosphere reserves, land and other natural resources provided to the national natural parks, are the property of Ukrainian people”.

Regional landscape parks, buffer zone, zone of anthropogenic landscapes, regulated reserve regime of biosphere reserves, land and other natural resources, included but not provided to national natural parks, wildlife reserves, natural landmarks, reserved border lands, botanical gardens, dendrological parks, zoological gardens and parks – monuments of garden art, can be the property of Ukrainian people, and exist in other forms of property as envisaged by laws of Ukraine” [16].

The Mining Law of Ukraine No 1127-XIV of October 6, 1999 regulates in Part 1 Art. 6 that “Forms of the property in the mining industry” applies a quite odd provision according to which “Companies of the mining industry can exist in various forms of property, unless otherwise envisaged by laws of Ukraine” [17]. Because the fact that companies of the mining industry can exist in various form of property is already clear, and it would be more appropriate to set forth which forms exactly the property, which are objects (companies), depending of their nation-wide or local status, can exist. Moreover, it is not clear which laws exactly, and what else may be envisaged by laws of Ukraine and why Parts 2, 3 and 4 Art. 6 of The Mining Law of Ukraine No 1127-XIV of October 6, 1999 titled “Forms of the property in the mining industry” actually are dedicated to privatization of companies of the mining industry.

The ownership right of Ukrainian people of natural resources of the continental shelf are of the property nature, too. Along with that, Art. 1 of the Convention on the Continental Shelf of April 29, 1958, which came into effect on June 10, 1964, declares that in Articles of the Convention the term “the continental shelf” is used in respect to:

a) the surface and subsoil of the sea bed of underwater areas adjacent to the shore, but situated outside the area of the territorial sea up to the depth of 200 meters, or, above these limits, up to the place, in which the depth of waters allows extraction of natural resources of these areas;

b) the surface and subsoil of the similar underwater areas adjacent to shores of islands [18].

Unfortunately, the Convention on the Continental Shelf of April 29, 1958, which came into effect on June 10, 1964, does not contain regulations, which would regulate and protect the ownership right of people, particularly Ukrainian people.

Property powers of Ukrainian people include the ownership right of natural resources of exclusive (marine) economic zone. Art. 2 of Law of Ukraine On the exclusive (marine) economic zone of Ukraine No 162/95-BP of May 16, 1995 formulates definition of the exclusive (marine) economic zone of Ukraine, particularly, it states: “Sea areas adjacent to the territorial sea of Ukraine, including areas around islands belonging to it constitute the exclusive (marine) economic zone of Ukraine”.

The width of the exclusive (marine) economic zone is up to 200 nautical miles counted from the same base lines as the territorial sea of Ukraine” [19].

It also doesn't mention the ownership right of Ukrainian people of natural resources in the exclusive (marine) economic zone.

2.3. Property duties of Ukrainian people

It is doubtless that property powers include the duty of Ukrainian people according to which the ownership shall not be used so as to harm people and the society as envisaged by Part as envisaged by Part 3 Art. 13 of the Constitution of Ukraine. With that, the systemic and logic analysis of the above-mentioned part of Articles convinces that it actually mentions two duties. The first one is the most general rule of behavior, that is a duty –principle related to all the owners and subjects of the ownership right. Because the ownership obliges. It means that it shall be considered not only as the type and measure of the possible (the right or discretion of the subject), but also as the type and measure of objectively necessary (duty of the subject) behavior conditioned by the need to protect interests of other owners, and all social subjects as a whole.

Another duty – the ownership, which shall not be used so as to harm people and the society, is detailed in Part 7 Art. 41 of the Constitution of Ukraine, as it says that “The use of property shall not infringe rights, discretions and dignity of citizens, interests of the society, deteriorate the ecological situation and natural qualities of

land” [6]. It means that the ownership shall perform the stabilizing and progressive social function, i.e. it shall ensure conformity and development of public, state and private interests in the course of its realization. The owner is obliged to use his/her ownership not only in own interests; he shall be obliged to respect interests of other social subjects. That is why the Constitution of Ukraine provides for certain limitations on the ownership right.

Besides, the similar duties are stipulated in Constitutions of many foreign countries. Thus, the Constitution of the Republic of Moldova of July 29, 1994, which came into effect on August 27, 1994, in Section 1, Part 2 Art. 9 “Basic principles of property” states that the ownership cannot be used so as to infringe rights, discretions and dignity of man [20]. Paragraph 2 Art. 14 of the Basic Law of the Federal Republic of Germany of May 23, 1949 contains provisions according to which “The ownership obliges. Its use shall benefit general welfare” [21, p. 86]. Part 2 Art. 29 of the Constitution of Japan promulgated on November 3, 1946, which came into effect on May 3, 1947, regulates that the ownership right is defined by law so that it was not inconsistent with common welfare [22]. The Constitution of Greece, which came into effect on 11 June 1975, in Part 1 Art. 17 declares that the ownership is under protection of the state, however, the rights arising from it cannot be exercised so as to damage common interests [23].

CONCLUSIONS

The above-mentioned rights and duties testify that, first of all, Ukrainian people are independent and full subject of the ownership right of the above-mentioned objects. They shall, irrespective of other, have the possibility to exercise directly their competence in respect to possession, use and disposal of them. Government authorities and local self-government authorities just exercise rights of the owner on his/her behalf within the limits defined by the Constitution of Ukraine. But the fact that they exercise rights of the owner on his/her behalf means that they shall act exclusively in interests of Ukrainian people, for their well-being and welfare.

Besides, one shall pay attention to the fact that Part 1 Art. 13 of the Constitution of Ukraine envisages that not the state or territorial communities exercise rights of the owner, but only government authorities and local self-government, so, there is no replacement of the subject. This formulation detaches by the subject element the ownership right of Ukrainian people, from the ownership right of the state and territorial communities.

This gives the grounds to affirm the ownership right of Ukrainian people and the right of the state or municipal property shall not be identified, as otherwise the fundamental theory of the ownership right, according to which the ownership right is not limited to powers of the owner, is ignored. That is, the ownership right of Ukrainian people means that even if their powers will be limited, transferred or delegated to other subjects, the ownership right shall not be terminated on the condition of main-

taining the legal status of the owner. As soon as limitations on powers of the owner will be eliminated – this right shall be restored in full. And mentioning the property right of Ukrainian people in Section I “General provisions” of the Constitution of Ukraine preconditions the primary nature, consistence and integrity of this right.

Taking into account all the said above, there are sufficient grounds to affirm that in the Civil Code of Ukraine No 435-IV of January 16, 2003 it is expedient to: 1) restore the notion of national wealth as the exclusive ownership right of Ukrainian people; 2) envisage the unified list of objects, which are the property of Ukrainian people; 3) define meaning of each object for Ukrainian people and group them depending on that; 4) create the mechanism of exercising the ownership right of Ukrainian people. First of all, the latter means that: a) a clear definition of those objects of the ownership right of Ukrainian people, which are exercised in direct form, that is by performing independent actions by Ukrainian people related to realization of competence in respect to possession, use and disposal of natural resources. In the direct form of realization of competences by Ukrainian people, the owner shall be envisaged in Laws on the All-Ukrainian Referendum, public discussions, polls and other forms of direct democracy; b) a clear definition of those objects of the ownership right of Ukrainian people, which are exercised in the indirect form, that is by means of performing actions by government authorities and local self-government aimed at ensuring realization of competences of Ukrainian people in respect to possession, use and disposal of natural resources. With that, it is important that legislation contains an exact list of powers exercisable by government authorities and local self-government on behalf of Ukrainian people when disposing of natural resources belonging to them under the property right.

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Suggested Citation: Kolodiy A. (2018). Property rights of the Ukrainian people. *Journal of the National Academy of Legal Sciences of Ukraine*, 25(4), 48–60.

Submitted: 19/07/2018

Revised: 29/10/2018

Accepted: 17/12/2018