THE ROLE OF LAND MANAGEMENT IN THE COURSE OF LAND DISTRIBUTION OR REALLOTMENT

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Summary. The goals of the research are the analysis and understanding of the nature and consequences of land legislation legal collisions. The study is dedicated to the issues of land plot formation, and using the notions Owner and Owner (Disponent) from the perspective of the regulation of land plot disposal for land plots of various ownership forms.

Keywords: land management, legal collisions, land owner, land legislation, land reallocation

The analysis and understanding of the nature and consequences of legal collisions are the goals of the research. The next step after the revealing of legal inconformities is the development of suggestions on their removal by the optimization of legal acts.

According to Appendix 60 to the Resolution of the Cabinet of Ministers On the Approval of the Order of the State Land Cadastre № 1051 from October 17, 2012 [1], the classification of the types of functional designation suggests grouping the types of territories functional designation. The groups are the following:

1) Residential districts;
2) Territory of production facilities;
3) Agricultural territories;
4) Nature conservation and recreational territories.

The amended article 118 of Land Code [2] suggests that at the free of charge privatization of a land plot, the technical documentation on the setting or renewal of land plot boundaries is ordered by the individual without the authorization for development.

At the same time, Article 55 of the Law of Ukraine on Land Management [3] amended by the Law № 1423-IX [4] predefines the authorization of the abovementioned technical documentation at the transfer of the land plot in the private property, i.e. privatization, and use of the land plot.

In other words, the authorization of the development of technical documentation on the setting or renewal of land plot boundaries is necessary at the transfer of the land plot for use. In this case, there is another legal collision: this technical documentation has the same function as the land management project on the transfer of land plots.

The next issue of land relations is the regulation of the reasons for the development of the technical documentation on land management on division (merging) of land plots [5, 6]. Article 56 of the Law of Ukraine on Land Management [3] predefines that land management technical documentation on division and merging of land plots is developed based on the decision of the landowner with the consent of land plot mortgagee or user.

It is worth mentioning that the first option is considered to be logical and legally correct, however, the authors of the Law № 1423-IX [4] have introduced the notions of Owner and Owner (Disponent) to the text of the Law. In other words, in case the state or communal land plot is used by an individual or legal entity, it can be considered to have an owner (Disponent) and a user.

Thus, the analysis of the general logic of the Law № 1423-IX and the article 56 of the Law of Ukraine on Land Management, one can draw a conclusion that the first option addresses the private land plots, whereas the second one - state and communal land plots which are used by other entities [3, 4].

In the Law of Ukraine on the Alteration of Some Legal Acts of Ukraine on the Improvement of the Management System and Deregulation in the Field of Land Relations [4] from 28.04.2021 № 1423-IX, the notions of Owner and Owner (Disponent) are present at the same time, therefore, we can draw the conclusion that the authors of the law aimed at differentiating between the disposing of private and state or communal land plots.

The amended Article 186 of the Land Code of Ukraine [2] makes it clear that the difference of notions of Owner and Owner (Disponent) is legally established and is not a mistake or lapse. For example, both these notions are used in paragraph 5 of the article depending on the regulation of the approval of specific land management documentation.

Thus, the general logic of Law № 1423-IX suggests, that the authorization of the development of technical documentation on the setting or renewal of land plot boundaries is necessary at the transfer of the land plot for use. At the same time, there is another legal collision: this technical documentation has the same function as the land management project on the transfer of land plots.
As the result of the analysis of the amended article 56 of the Law of Ukraine on Land Management, one can draw a conclusion that the text of the article has two interpretations, the first option addresses private land plots, whereas the second - state and communal land plots which are used by other entities.

In addition to that, it has been revealed, that in the latest versions of legislation, the notions of Owner and Owner (Disponent) are present at the same time, therefore, we can draw the conclusion that the authors of the law aimed at differentiating between the disposing of private and state or communal land plots.

Conclusions. The legislation of Ukraine on land and land management is permanently under adjustment, alteration and improvement. Considering that most legislative acts are developed by different government bodies, there is a certain inconformity. In some cases, such inconformities lead to legal collision and free interpretation of legislation.

References: