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ON THE LEGAL CONSEQUENCES OF WRONGFUL USAGE OF LAND

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Summary

The article deals with the concept of “state registration in land relations” and analyzes the legal consequences of wrongful usage of land plots before their registration and the rights on them. The urgency of the research issues related to the definition of the legal nature of the state registration in the sphere of land relations and the legal consequences of land use stakeholders to state registration of land rights if they have the decisions of the authorized bodies on the transfer of ownership or lease of such land. The author concludes that the existence of solutions of the authorized body on the transfer of land ownership or providing it to the use of a particular person does not give her the right to start the operation of the land to the state registration of rights to it.

Key words: state registration of land plot, state registration of rights on land plot, formation of a land plot, unauthorized occupation of land plot, unauthorized usage of land plot.

Аннотация

В статье раскрывается содержание понятия «государственная регистрация в сфере земельных отношений» и анализируются правовые последствия неправомерного использования земельных участков до осуществления их государственной регистрации и прав на них. Обоснована актуальность исследования проблем, касающихся определения правовой природы государственной регистрации в сфере земельных отношений и правовых последствий использования земельных участков заинтересованными лицами до государственной регистрации земельных прав при наличии у них решений уполномоченных органов о передаче в собственность или предоставлении в пользование этих земельных участков. Автор приходит к выводу, что наличие решения уполномоченного органа о передаче земельного участка в собственность или предоставлении ее в пользование конкретному лицу не дает ему права приступать к эксплуатации этого земельного участка до проведения государственной регистрации прав на него.

Ключевые слова: государственная регистрация земельного участка, государственная регистрация прав на земельный участок, формирование земельного участка, самовольное занятие земельного участка, самовольное использование земельного участка.

Statement of a problem. Among the violations of land legislation significant share is unauthorized occupation of land plots. Law of Ukraine “On state control over the land usage and protection of land” (art. 1) defines this offense as any action that indicate the actual usage of land plot without the relevant decision of the executive authority or local government about the transfer of ownership or renting (rent) or no committed transaction on such land, except for actions under the law is legitimate. So from the sense of these norm implies that the unauthorized occupation land plot directly related to the actual usage of this land plot without the proper legal basis, that is in the absence of a decision of the authorized body or committed transaction, such as a contract of sale land plot land lease, etc.

Grounds for arising land rights of citizens and legal entities defined land

legislation. Thus, art. 116 of Land Code of Ukraine, which is entitled “Foundations for the obtaining of the rights on land from the land in state and municipal property” found that the obtaining of the rights by citizens and legal entities shall be effected by transmission of land plots in the ownership or usage them in the decision of executive power bodies or local authorities within their powers defined by this Code or by auction results. However art. 125 of Land Code of Ukraine links the appearance of the right of ownership on the land plot, the right to permanent usage and lease rights with the state registration of these rights.

In connection with the foregoing needs analysis problem which concerns the legal nature of state registration of land relations and legal consequences of land plots usage by interested persons before state registration of land rights



if they have decisions of the competent authorities on the transfer of ownership or renting of land plots.

The purpose of the article. The purpose of this article is to outline the meaning of the term “state registration in land relations” and analysis of the legal consequences of unlawful use of land plots to carry out their registration and the rights to them.

The main material. Should be noted that the legal regulation of relations connected with the appearance of land rights, has its history.

Previously existing land legislation appearance of subjective rights for land bound primarily with obtaining by interested party documents which certify the right (public acts on the permanent use, etc.). So, Land Code of USSR (1970) established the inadmissibility of the usage of land plot given to the establishment of appropriate land surveying by the boundaries of the land in kind (on the terrain) and issue a document certifying the right to use land (art. 22). Article 22 Land Code of Ukrainian SSR of December 18, 1990 also prohibits to start using given land (including under lease) before establishing the boundaries of the land plot in kind (on the terrain) and obtaining a document certifying the ownership or usage of land plot.

The right of ownership or right of permanent usage of land entitled by state regulations that were issued and registered village, district and city councils (art. 23). A similar rule was confirmed by Land Code of Ukraine and amended in 1992 and 2001. With the adoption of the Law of Ukraine from 05.03.2009 version of art. 125 current Land Code of Ukraine, entitled “The appearance of the right for the land plot”, was changed. According to this norm the right of ownership of the land, and the right of permanent usage and the lease of land plot arising from the state registration of rights. So the state registration of land rights of the person concerned having subjective rights and responsibilities for specific land plot. From that moment the person acquires the status of a legal land owner or user. Thus the state registration of land rights serves as such element in a legal, whose presence suggests the usage of land plot by interested person legitimate.

State registration is usually viewed in two ways: as a specific activity

authorized state bodies and as a result of such activities. However, it should be borne in mind that the state registration as a specific activity is not always ends with state registration as a result because a result of this activity can sometimes be a refusal in state registration [1, p. 107].

When it comes to state registration as an activity of state and its specialized agencies, it is clear that it is process of handling applications of interested persons on entering data, such as real estate properties in the state register. As is known, this aspect of state registration as an activity should be determined by the relevant purposes and content. It is, in particular, the immediate purposes for which such activities are directed in each case. The content of the same process of state registration serves establishing by the registration authorized body proper grounds for inclusion in the register required information [1, p. 108–109].

Domestic scientists usually regarded state registration as activity, the essence of which is the entry of information into the state register of special procedures and provides data validation (P.Y. Slobodyanyuk, D.P. Bondarenko, K.P. Peychev).

Sometimes state registration as an activity is considered as legally defined, multifunctional, volitional activity of subjects of land registration relationship that aims to make the legislation provided for the data in properly designated to do so by the authorized official documents state subjects in the prescribed procedure in order of occurrence, modification or termination of rights to land in appropriate of interested persons who initiate it [2, p. 23–24].

From the dictionary sources implies that the state registration – a written record or otherwise fixation of facts, events, information or certain material objects for the purpose of state control, authentication and grant them legal (legitimate) status. In this case, refers to one of the possible results of interaction registering authority and the applicant [3, p. 162]. This approach actually found its consolidation in the current legislation. Thus, in formulating a definition of state registration the land plot such as the Law of Ukraine “On State Land Cadastre” (art. 1) provides that the state registration of land plot making it to the State Land Cadastre provided information about

the formation of land plot and giving it cadastral number.

The existing land and civil legislation distinguishes between state registration of land plots (art. 202 Land Code of Ukraine) and state registration of real estate rights (art. 182 Civil Code of Ukraine). In the latter case refers to the state registration of ownership and other rights in immovable property, the burden of these rights, their occurrence transition and termination. To immovable things (immovable property, real estate) art. 181 Civil Code of Ukraine considers land and facilities located on the land plot whose movement is impossible without their impairment and changes their destination. Civil legislation provides that the state registration of rights to property is public and is carried out by the authority that is required to provide information about registration and registered rights in the manner prescribed by law.

Special Law of Ukraine “On State Registration of Rights to Real Estate and Their Encumbrances” (the Law from 11.02.2010) finds that in the state register registers rights and burdening on: land plots; enterprises as the only property complexes; houses; building; edifices (separate parts of them) and so on.

So case in point is actually about the dual nature of state registration of real property – land plots, in the State Register of Rights on Immovable Property and in the State Land Cadastre, but in a public register registers subjective rights of person to a land plot or encumbrance of this right, and the State Land Cadastre – the land plot as an object of property rights, rights of use or limited rights [6, p. 68–69].

It is known that appearance of the rights to a land plot Land Code of Ukraine (art. 125) connects with the state registration of rights (not a land plot), registered in the manner prescribed by the Law of Ukraine “On State Registration of Rights to Real Estate and Their Burdens”. So registration of the land plot in the State Land Cadastre does not entail the appearance of land rights in the subject, so he cannot proceed to the operation of land plot, on which there was a state registration.

It should be noted that along with the appearance of the right on the land plot Land Code of Ukraine (art. 126) distinguishes registration of real rights on the land plot. This norm is established that



the ownership, use the land plot issued under the Law of Ukraine “On State Registration of Rights to Real Estate and Their Encumbrances”.

To be logically consistent, it must be admitted that the registration of real rights to a land plot must necessarily precede the formation of the land plot as a specific subject of such rights.

The procedure for the formation land plot as an object of civil rights established by Art. 79 of Land Code of Ukraine. According to this norm formation of land plot is to determine the land plot as an object of civil rights. It involves the definition of areas, boundaries and entering the necessary information about it to the State Land Cadastre.

Formation of land plots for projects carried out by land management for allotment of land plots. Formation of the land plots by dividing and combining previously established land plots owned or used without changing their purpose is made for technical documentation on land plots management on division and unification of land plots. Passing in kind (on the terrain) formed the boundaries of the land plot before its state registration is documentation of land management, which gave rise to its formation.

The law provides that the land plot may be the subject of civil rights exclusively since its formation (except sublease, an easement on separate parts of a land plot) and state registration of ownership on it.

It should be noted that in the legal doctrine the forming of the land plot usually regarded as the commission of administrative and land management actions concerning the delimitation of the earth's surface of some parts boundary markers, marking its location and determining the content of such rights to the earth's surface (in fact, determination of the legal regime of land plot).

According to p. 4. art. 791 Land Code of Ukraine land plot is considered formed after giving it the cadastral number. Cadastral number of the land plot Law of Ukraine “On State Land Cadastre” (art. 1) considers individual considers that is not repeated throughout Ukraine, sequence of numbers and characters, which is assigned to a land plot and saved for her for the lifetime.

Contents of the civil registration the land plot and a list of information about

its formation, which is submitted to the State Land Cadastre disclosed in the art. 24 Law of Ukraine “On State Land Cadastre”. In support of state registration land plot issued Extract from the State Land Cadastre.

In the modern land-legal literature is made reasonable conclusion that the state registration of the land plot – the result of interaction an authorized state registration authority and the interested person, which manifests itself in making the state system of information provided by the law of the formation the land plot giving it the cadastral number and issuing excerpts from the State Land cadastre [4, p. 43].

Parallel functioning of state registration of land plots and rights to them causes necessitate resolving the issue of whether would be lawful usage of the land plots which are already formed by interested person in whose name framed this land plot.

To be logically consistent, should come to the conclusion that only with the state registration of rights to the land plot usage by interested person becomes legitimate, that is legitimate. In all other cases, that is until the state registration of rights to a land plot to use the land plot interested person has no right. So in the absence of executed in the prescribed manner of property rights or another statutory land rights have improper use of land plots. The essence of the offense usually sees in unauthorized occupation of a person someone else's land plots and using them without a legitimate reason. One way of unauthorized occupation of land plots considered acquiring them without the permission of the authorized bodies to make decisions on allocation of land plots [5, p. 424–425].

Based on the content of art. 1 of the Law of Ukraine “On state control over land use and protection”, the presence of a decision of the authorized body on specific transfer of land ownership or providing it for usage (rent) removes the issue of unauthorized occupation of the land plot. However, in this case actualized the issue of the legal nature of the improper use of land, that is, whether that use is lawful.

It should be noted that effective land legislation Ukraine sets legality of the use of the land plot dependent on a number of legally significant actions of the competent authorities, namely the adoption of a decision by the authorized body for

consent interested person to develop the project of land management for allotment of land plot; decision on approval of that authority developed and coordinated the project of land management and the transfer of land ownership or providing it for use; establishment of the boundaries of the land plot in kind (on the terrain); state registration of the land of subjective rights that have already arisen.

As is known, the adoption of a decision by the authorized body for consent to develop the land management project and to provide specific land plot from state or municipal property, for example, use – two interrelated actions which are the implementation of the owner (or authorized body) eligibility on disposal of this plot, that is, determine the legal fate of land. Character of the action, which relates to the state registration of land rights is completely different. To the right of disposal of land by its owner last actions have no directly relationship. Also should keep in mind that these actions are implemented at all other bodies. In this regard, the fundamental point of view it would be wrong to recognize unauthorized occupation of the land plot on the sole ground that there was no state registration of land rights on a particular the land plot, to provide any particular person has taken appropriate action. However, one can hardly recognize the use of land plot for state registration of rights to it legitimate.

Today, based on the content of the current land legislation, state registration of land rights serves actually defining element of design of these rights.

Under registration of right to land in the literature are sometimes invited to consider legally defined, volitional activity of subjects of registration of land rights by issuing and receiving legally significant and title documents of ownership, the right to use land and other rights arising out of the installation encumbrances or restrictions; their registration and notarization in cases established by law [7, p. 8]. The approach to the definition of this legal category seems fundamentally correct and justified. But today, according to the changes made to the art. 125 Land Code of Ukraine, decorated considered only registered rights on land plot.

It is interesting to emphasize that the Law of Ukraine “On State Registration of Rights to Real Estate and Their Encumbrances” provides



priority registered real rights and their encumbrances over unregistered in the event of a dispute regarding real property (p. 7 art. 3). The above provision indicates the possible existence of unregistered, that is “unformed” land rights that are recognized as legitimate. In land-legal literature on the subject sometimes states that this provision is contrary to the principles of dispute as in this norm focuses on the advantages of one over the other right. Meanwhile, in the determination of the dispute shall prevail over the other proof given that no evidence for a court has no predetermined priority [8, p. 49].

The literature draws attention to the fact that the registration of land rights has as its main objective the onset of certain legal consequences – namely, state-sanctioned establishment as an official person, legal entity corresponding land rights [9, p. 49].

As for the registration of rights to land as part of the registration rights should be noted that they (the law) are the indirect object of registration. If during registration understand the registration of land rights, then, as rightly emphasized in literature before the time of the registration by a person *de jure* does not exist subjective rights on land. So to be registered must be objective reality, not right [9, p. 28–30].

The current legislation as opposed to pre-existing basis for state registration not accept documents, but the subjective land rights.

Emphasize that illegal use of land plot possible by specific person without an adequate solution of state authority or local authority of the transfer in ownership or in use (rent) and the presence of such a decision. In both cases, the usage of the land is not valid because it carried no legal basis. But the nature of this usage is not identical in these cases.

In the absence of appropriate personalized solution state authority or local authorities on of the land plot which is determined by the legal fate, any actions that indicate the actual acquisition and use of this land plot constitute an offense which in essence is the unauthorized occupation of land area. In the second case, when a person has a “hands on” appropriate competent authority decision to transfer her ownership or in use (rent) a specific land plot and begin to use it ahead of time, that is the of state registration of

rights takes place unauthorized use of the land plot.

These offenses are different in nature. First infringes on the rights above the land owner and can simultaneously violate the rights of legitimate land user, the second gives himself above all the order of occurrence of subjective rights established by law. In the first case a person carries (takes) land plot actually takes possession of it for the purposes of further unauthorized use. Here there is hampering the implementation of its own powers of the owner on a particular land plot. It is, for example, to prevent access to the owner to his plot and others. This understanding unauthorized occupation of land plot consistent with the etymology of the concept of “unauthorized” (the one that is made without authorization, illegally) [10, p. 1287]. The second refers to the actual action potential carrier of Land Rights violates the established order of first appearance of these rights, willfully begin to use the land. These offenses should differentiate for various reasons. Their commitment would lead to different legal consequences for those responsible.

Unauthorized occupation of land plots as a separate offense land to some extent complicated in its content. It can act as separate land violations of material nature and at the same time as the land offense environmental focus. To own land property offenses character specific feature is that its object is the specific land, which, according to art. 79 Land Code of Ukraine should understand the earth’s surface with established boundaries, certain location, defined rights on it. When refers to the such unauthorized occupation of land plots, which has as its object the land as a natural object, an element of the environment, the top layer of the earth’s surface, performing economic, the settlement, environmental, and other life-supporting functions, it can be attributed to the land of offenses environmental focus. The commission of such an offense necessarily associated with harm to earth.

However, one should note that unauthorized occupation of the land plot which, being the object of state, municipal or private property provided for use at the same time not only violates the rights of the owner of this plot, but also rights of those, who use it.

In terms of the value of the priority aspects of land-legal doctrine comes from the need to incorporate primarily that unauthorized occupation of land plot violates the right of ownership, and in some cases – both and land use.

So, seems possible to conclude that the proposed law definition of unauthorized occupation of land plot is unlikely to meet the needs of the land law. It cannot be considered universal, which can be used as land law and criminal, administrative, civil, economic and other fields of law.

It should focus on the fact that art. 1 of the Law of Ukraine “On state control over land use and protection” emphasizes the actual using of land plot. As well known, the use is an integral component of content ownership. With regard to the implementation land plot powers for its use is the removal of its beneficial properties and satisfy any actual user interests. Such an actual use as a basis for unauthorized occupation of land plot is illegal because is carried out without appropriate legal basis. As rightly emphasize A.M. Miroshnichenko and R.I. Marusenko, it is by its nature preclude normal use the land plot by others (it is the rightful owners and land users). Unauthorized occupation of land plot – is not so much its capture and creates more or less interference owner or other legal holder to use this land [11, p. 516]. It barriers in using the land plot created by a third party, violate the rights of the owner of land and other legal holder. So the essence of the illegal occupation of land plot is to oppose the use of specific land plot by others.

Conclusions. The presence of the authorized body decision on the transfer of land plot ownership or providing it to use by a specific person does not give her the right to start operation by the land plot before the state registration of rights to it. Actions on the use of the land plot mentioned person before state registration of land rights would be unlawful. It seems that in this case we can talk about the violation of the order of the right to the land or its unauthorized use. Those responsible for such illegal using land plot should be held accountable, for example, administrative proceedings, to be established by law.

So, the proposed definition by legislator of unauthorized occupation of land plot, even at first glance, is quite



controversial. Its incompleteness creates some inconvenience in enforcement practice. Therefore, analyzing the meaning of shortcomings of contest referred to should pay special attention to possible solutions.

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ТРЕБОВАНИЯ К КАЧЕСТВУ АДМИНИСТРАТИВНЫХ УСЛУГ

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Summary

The problem questions of providing quality administrative services are considered in work. The separate attention is paid to development of institute of public services in the countries of Europe. The existing national legislation in the sphere of administrative services in a section of the main requirements to their quality and procedure of its assessment is analyzed. The conclusion that it is necessary to develop standards of administrative services by which the minimum requirements to quality of services would be established is drawn. Ukrainian legislation doesn't give to this question of due attention. It is noted that providing effective control of quality is possible only with use of mechanisms of public monitoring.

Key words: administrative service, quality of administrative service, standard of administrative service, information and technological card of administrative service, civic monitoring.

Аннотация

В работе рассматриваются проблемные вопросы предоставления качественных административных услуг. Отдельное внимание уделено развитию института публичных услуг в странах Европы. Проанализировано действующее национальное законодательство в сфере административных услуг в разрезе основных требований к их качеству и процедуре его оценки. Сделан вывод о необходимости разработки стандартов административных услуг, которыми устанавливались бы минимальные требования к качеству услуг, поскольку действующие украинское законодательство не уделяет этому вопросу должного внимания. Отмечено, что обеспечение эффективного контроля качества возможно лишь с применением механизмов общественного мониторинга.

Ключевые слова: административная услуга, качество государственной услуги, стандарт государственной услуги, информационная и технологическая карта административной услуги, общественный мониторинг.

Постановка проблемы. Развитие Украины как правового демократического государства требует радикального изменения приоритетов в отношениях между властью и частными (физическими и юридическими) лицами. Это означает, что правовой режим таких взаимоотношений должен основываться на безусловном признании приоритета прав человека, его законных интересов, правомерности своих требований и ожиданий от деятельности государственных органов и органов местного самоуправления, их должностных лиц. Для того чтобы подчеркнуть существование обязанностей государства перед рядовыми гражданами, группой украинских административистов была предложена такая новация в перечне функций органов исполнительной власти, как предоставление административных услуг. Несмотря на проводимую в последнее время реформу системы административных услуг (принятие Закона Украины «Об адми-

нистративных услугах» (далее – Закон [1], создание единого государственного веб-портала административных услуг, улучшение организации предоставления административных услуг через центры предоставления административных услуг и так далее), говорить о создании качественной и действующей системы административных услуг преждевременно. Социологические исследования по уровню удовлетворенности населения административными услугами показывают, что больше трети населения плохо оценивает качество предоставляемых административных услуг. В целом такое отношение общества к административным услугам объясняется отсутствием общих и единых для всего государства (государственных органов, органов местного самоуправления, предприятий, учреждений, организаций, граждан и их объединений) представлений о качественной составляющей административной услуги, как всего процесса ее предоставления, так