Land and Legal Relations Reconstruction in the De-Occupied Territories of Ukraine

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SUMMARY

The paper deals with the task of land and legal relations reconstruction in the de-occupied territories of Ukraine. Mechanisms of protection of the rights of landowners and land users (both physical and legal aspect) are studied and analyzed. An algorithm for the reconstruction of land and legal relations (in the transitional period) specifically in the de-occupied territories is proposed, and the need for reform of the administrative-territorial system in these territories with subsequent land inventory and updating of urban planning documentation is indicated.

Keywords: De-occupied territories, land relations, legal relations, reconstruction
Introduction

Today, our state is faced with the difficult task of fully reintegrating the territories that have been occupied by Russia for a long time, in particular the Donetsk and Luhansk regions and the Autonomous Republic of Crimea. To return the peaceful life in these regions, a number of stabilization measures are being developed. Of course, the first step is the military de-occupation of the territory, demining and restoration of basic infrastructure. Thereafter, it is necessary to restore the work of state authorities and the functioning of the economy, as well as to plan the comprehensive restoration of territories (Cabinet of Ministers of Ukraine, 2023).

Fulfillment of these tasks also requires the restoration of property relations in the de-occupied territories in accordance with Ukrainian legislation and using state cadastres and registers. The legislation provides that the state registration of ownership and other real rights to immovable property located in the occupied territories is carried out regardless of the location of such property in the conditions of martial law and within one month from the date of its termination or cancellation (Ministry of Justice of Ukraine, 2016). So state registration of property rights to such immovable property can be carried out anywhere on the territory of Ukraine. However, in reality, this option only existed until the full-scale invasion of February 24, 2022.

In the first months of the war, the state registers of Ministry of Justice of Ukraine and the State Land Cadastre did not function at all. Later they were opened only for the non-occupied territory of Ukraine. Accordingly, the occupied territories remained outside the legal field.

According to the clarification of the Ministry of Justice of Ukraine dated 03.11.2022, the state protects the right of ownership and does not recognize any acts (decisions, documents) issued by bodies and/or persons in the temporarily occupied territory, if these bodies or persons were created, elected or appointed in a manner not provided for by the legislation of Ukraine (Ministry of Justice of Ukraine, 2023). At the same time, people were actually forced to live under Russian legislation for a long time. Only a few really had the opportunity to duplicate and legalize property transactions on the territory of Ukraine. Situation, when all transactions carried out under Russian legislation during the nine years of occupation are recognized as invalid will only increase social tension and lead to the collapse of the work of state registration services and judicial bodies in the de-occupied territory.

Accordingly, the task arises: how to correctly carry out the reconstruction of land and legal relations in the de-occupied territories and legitimize the property rights of Ukrainian citizens certified by the occupation authorities?

Method and Theory

According to the Economic Development Strategy of the Donetsk and Luhansk regions for the period until 2030 (approved by the Cabinet of Ministers of Ukraine on August 18, 2021), restoration of the territorial integrity of the country as well as de-occupation and reintegration of temporarily occupied territories in Donetsk and Luhansk Regions is one of the key strategic tasks facing Ukraine (Cabinet of Ministers of Ukraine, 2021).

One of the effective ways to overcome the large-scale destruction of Donetsk and Luhansk regions’ economy as a result of Russia’s armed aggression is the development of the effective agro-industrial complex (firstly, segments of animal husbandry and irrigated agriculture) (Cabinet of Ministers of Ukraine, 2021). This requires the creation of an effective mechanism for the landowners’ and land users’ rights protection. The structure of the Donetsk region’ land fund (which totals 2.65 million hectares) is dominated by agricultural land. The territory of this region (together with the temporarily occupied territory) includes 2 million hectares of agricultural land, which is almost 5 percent of the agricultural land of Ukraine, of which 91 percent is highly fertile soil. The Luhansk region has almost the same indicators, while the majority of land, 73.3 percent, is used in agricultural production (Cabinet of Ministers of Ukraine, 2021).
It is noted that the demining of all agricultural territories of Donetsk and Luhansk regions can have a significant impact on economic development indicators. The return of 1 hectare of land to agricultural circulation will ensure the production of agricultural products in the amount of about 18,862 thousand hryvnias per hectare (in constant prices; without taking into account the additional positive effect from the restoration of irrigation systems in the territory of Donetsk and Luhansk regions and other measures to support the agriculture of the region). At the price of 2020, this is roughly 23-25 thousand hryvnias per hectare. The return of a significant part of the land to agricultural circulation will allow to significantly increase the sown areas and calculate a proportional increase in the production of agricultural products (Cabinet of Ministers of Ukraine, 2021).

Protection of landowners’ and land users’ rights has physical and legal aspects. The physical aspect is mainly related to the need for demining and is described in detail in the aforementioned Strategy for the Economic Development of Donetsk and Luhansk Regions. However, the legal aspect needs to be finalized.

Therefore, the physical protection of landowners’ and land users’ rights involves the implementation of the following measures: 1) survey of agricultural lands of the Donetsk and Luhansk regions, which were taken out of circulation due to mine pollution and the construction of fortifications; compilation of a list of agricultural plots where demining activities are appropriate and will ensure the return of land to agricultural circulation; 2) implementation of a set of measures for conducting an inventory of land plots, topographical and geodetic works; working out the issue of the purchase or exchange of land plots occupied by units of the Ministry of Defense, the Ministry of Internal Affairs, and the Security Service of Ukraine; 3) involvement of international organizations in demining in accordance with International Mine Action Standards and regulation of the legal framework (Cabinet of Ministers of Ukraine, 2021).

From a legal point of view, the protection of landowners’ and land users’ rights should be ensured at the expense of: 1) settlement of the issue of confiscated agricultural land plots; 2) exchange of agricultural plots of private ownership under the fortification structures of Donetsk and Luhansk regions for similar in area, fertility and location plots of communal ownership of communities; in the absence of equivalent plots – their purchase for public needs (into state or communal property) or sublease; 3) settlement with the participation of local self-government bodies of issues related to the taxation of agricultural lands, which were taken out of circulation due to mine pollution and the construction of fortifications; and settlement of the tax debt that arose as a result of the taxation of agricultural lands that cannot be used for purpose (Cabinet of Ministers of Ukraine, 2021).

A number of theoretical and practical aspects of reintegration using the example of the Crimean Peninsula are highlighted in the article by Yuriy Smelyanskyi, an expert on temporarily occupied territories of Ukraine (Smelyansky, 2023). For the correct formation of the reintegration policy of the Crimean Peninsula, he suggests developing several blocks of questions:

- socio-economic block;
- block of responsibility and restoration of justice;
- administrative-territorial and political-territorial block;
- humanitarian and educational block;
- natural and ecological block (Smelyansky, 2023).

According to Yu. Smelyanskyi, the strategy of reintegration of Ukrainian territories should take into account a number of risks:

- risk of lack of value benchmarks;
- the risk of socio-economic instability;
- the risk of environmental instability;
- the risk of a high degree of development of domestic conflicts;
- the risk of non-acceptance of the actions of the state authorities due to distrust of special services and law enforcement agencies (Smelyansky, 2023).
The author emphasizes that the lack of decisions on the part of the authorities or the implementation of erroneous decisions regarding the minimization of the risks listed above can lead to a mass refusal to enter the legislative field of Ukraine or refusal to implement the laws of Ukraine (Smelyansky, 2023).

In addition, the Representative Office of the President of Ukraine in the Autonomous Republic of Crimea developed and presented the Strategy for the Cognitive De-occupation of Crimea. This document outlines a complex of strategic, operational and tactical measures that must be planned and implemented to reshape the actual consciousness, social values, outlook and civic behavior of many residents of Crimea after the kinetic and/or diplomatic de-occupation of the peninsula, and, as a result, the full restoration of Ukrainian legislation and sovereignty over the territory of the peninsula. (Representative Office of the President of Ukraine in the Autonomous Republic of Crimea, 2023).

However, neither the Strategy for Economic Development of Donetsk and Luhansk regions for the period until 2030, nor the Strategy for the Cognitive De-occupation of Crimea, nor the work of Yu. Smelyansky describes in any way the algorithm for the reconstruction of land and legal relations specifically in the de-occupied territories. Such an algorithm is proposed by the authors and illustrated in Fig. 1.

![Algorithm for Reconstruction (Re-registration) of Land and Legal Relations in the De-occupied Territories of Ukraine](image)

The authors propose to immediately recognize as legitimate those transactions that were concluded (or duplicated) on the territory of Ukraine, according to the current legislation.

For the rest of the cases, the authors suggest applying the following re-registration mechanism. Deeds concluded under Russian legislation during the transition period (for example, within one year from the date of resumption of state registration services in the de-occupied territories) are subject to state registration in accordance with Ukrainian legislation. The registration case must remain open for a certain period of time, during which all applicants for one or another object of immovable property can apply to the notary and provide the relevant legal documents. A document issued a) according to Ukrainian legislation, b) earlier in time must have higher legal force. This procedure will make it possible to filter out cases where the property was transferred against the will of the owner.
At the same time, the reform of the administrative-territorial system should take place on the de-occupied lands (capable territorial communities should be formed and, preferably, their boundaries should be established). After that, it is advisable to conduct an inventory of land and update urban planning documentation. Such needs are met precisely by comprehensive plans for the spatial development of the territory of the territorial community, therefore it is advisable to give preference to this type of documentation.

Conclusions

Restoring the territorial integrity of the country and full reintegration of territories that were occupied by Russia for a long time, requires a number of stabilization measures, both physical and legal in nature. The protection of the rights of landowners and land users (physical aspect) is described in detail in the Economic Development Strategy of Donets and Luhansk regions. Legal aspects remain unfinished and debatable, therefore the authors of the publication studied the issue of reconstruction of land and legal relations in the de-occupied territories and legitimization of property rights of Ukrainian citizens. An algorithm for the reconstruction of land and legal relations (in the transitional period) specifically in the de-occupied territories is proposed, and the need for reform of the administrative-territorial system in these territories with subsequent land inventory and updating of urban planning documentation is indicated.

References


