

## FEATURES OF THE JUDICIAL PROTECTION OF LAND RIGHTS

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The article is devoted to consideration of peculiarities of judicial protection of land rights. Particular attention is paid to the claim form of judicial protection of land rights. The author identified the features of this form of legal protection. Several types of claims for the protection of land rights have been investigated.

Статтю присвячено розгляду особливостей судового захисту прав на землю. Особлива увага приділена позовній формі судового захисту прав на землю. Автором визначено ознаки такої форми судового захисту. Досліджено окремі види позовів щодо захисту прав на землю.

Статья посвящена рассмотрению особенностей судебной защиты прав на землю. Особое внимание уделено исковой форме судебной защиты прав на землю. Автором определены признаки такой формы судебной защиты. Исследованы отдельные виды исков по защите прав на землю.

**Key words:** land rights, protection of land rights, judicial protection, mechanism of protection of rights, claim.

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**Formulation of the problem.** As it is known, the state recognizes person as the highest social value in society. At the same time, with the help of the competent authorities, it ensures the right of the person to judicial protection, obtaining qualified legal aid, and access to justice. In accordance with the Constitution of Ukraine, judicial protection is the main form of protection of rights to land. Everyone has the right to apply to the court for appealing against decisions, actions or inactivity of state authorities, local self-government bodies, officials and officers.

**The analysis of researches and publications.** The basis for analyzing the features of the judicial protection of land rights is the study of the works of specialists in the field of land law, namely, such as: V.I. Andreytsev, D.V. Busuyok, B.V. Erofejev, I.I. Karakash, M.V. Krasnov, L.V. Leyba, A.M. Miroshnychenko, V.I. Semchik, V.D. Sydor, M.V. Shulga and others.

**The purpose of this article** is to find out features of the judicial protection of land rights.

**Basic material presentation.** Due to the fact that the court has the status of an independent body that obeys only the law, endowed with constitutional guarantees of independence, transparency in the examination of cases, competition and detailed regulation of the process, and other democratic principles of legal proceedings, one can speak of the greatest objectivity and reasonableness of the court's decision.

In addition, the Resolution of the Plenum of the Supreme Court of Ukraine «On the Application of the Constitution of Ukraine in the Administration of Justice» of November 1, 1996 No. 9 [1, p. 91–94] stipulates that under the Constitution of Ukraine, every person is guaranteed the right to apply to the court for the protection of their constitutional rights and freedoms. The Constitution has the highest legal force, and its norms are rules of direct action. This obliges the courts, when considering specific cases, to be guided primarily by the norms of the Constitution of Ukraine.

The judicial protection of land rights is carried out in a special, detailed regulation of the law and has such a feature as the highest power of the jurisdiction body. Judicial activity from the standpoint of power content is characterized by a system of increased demands on the subjects of its implementation. The order of the formation and activity of courts, the guarantees of their independence, increased responsibility – indicate the implementation of judicial protection, not just within the power of authority [2, p. 91].

The state as an entity, obliged to provide protection of the benefits of citizens from encroachments, must compensate the citizen for the damage caused to him by the actions of the court acting on behalf of the state if the court decides the civil case incorrectly, and thus in violation of the citizen's right to judicial protection.

It should be noted that the exercising of any right is carried out by putting into effect the appropriate mechanism. The mechanism of judicial protection of land rights consists of several stages: 1) appeal to the court with a claim to protect the rights and interests that are being violated or disputed; 2) consideration of the case in court; 3) the adoption of a court decision; 4) implementation of actions to execute a court

decision in case of satisfaction of claims. Consequently, from the above it is seen that the mechanism of judicial protection of land rights consists of a series of consecutive actions defined by the procedural law, for launching of which it is necessary to appeal to the court with a statement of claim. Thus, the claim is a means of protecting land rights. "Subjective right granted to a person, but not secured from its violation by the necessary means of protection, is only a declarative right" [3, p. 96-97].

The claim form of protection is characterized by the following features: 1) the existence of a legal claim arising out of a violated or disputed right, which according to the law, should be considered in a certain order; 2) the existence of a dispute about the right; 3) the presence of two parties with opposite legal interests, which provided a wide opportunity to protect their rights and legal interests in the dispute; 4) the presence of a third, unbiased, independent of the parties, the person (body) whose task is to resolve the dispute, and 5) the competition and equal legal status of the competitors.

Depending on the form of judicial protection that the plaintiff needs, that is, depending on the type of decision the court wishes to obtain from the plaintiff, the claims are divided into three types: a) the award (executive); b) recognition (founders); c) on the change or termination of legal relations (conversion actions) [4, p. 66]. Claims in cases arising from land relations can be classified into the following groups: 1) recognition, award and transformation; 2) property and non-property; 3) land management.

Claims of recognition. According to the paragraph "a" Part 3 of Article 152 of the Land Code of Ukraine the recognition is one of the ways of protecting of land rights. Consequently, claims of recognition are aimed at confirming the presence or absence of land rights (claims of recognition of title to or use of land, claims of the invalidation of decisions of executive bodies or local authorities, state acts on ownership of land, etc.) [5, p. 64].

In claims for awarding, it is required to reinstate the situation that existed before the violation of right, and the cessation of actions that violate them. In fact, there are two requirements combined in this claim – the requirement to recognize the disputed right and the requirement to award the defendant to a certain action or withholding from the action (a claim for removal of obstacles in using the land plot, the return of the spontaneously occupied area, compensation for the losses incurred, etc.). Almost all disputes regarding adherence to the rules of good-neighborliness are claims for awarding in cases arising from land legal relations.

Claims for the return of a spontaneously occupied land plots are usually called as classical claims for awarding. Parts 1 and 3 of Article 212 of the Land Code of Ukraine contain the wording «the return of spontaneously occupied land plots». It creates the impression that in case of unauthorized occupation of someone else's land, the owner or user must apply method of protection against this violation, such as claiming from someone else's wrongful possession, that is, vindication. In judicial practice, such requirements are formulated as requirements "to return a land plot", "the seizure of a land plot from illegal possession", etc. [6, p. 29]. If there is a breach in actual occupation of land so courts usually satisfy such claims.

It is erroneous to assume that the unauthorized occupation of a land plot should be considered a deprivation of tenancy, against which it is worth applying vindication. The above is due to the fact that it is impossible to "deprive" of ownership of a land plot as a specific immovable property in the "actual" way – the right to own property can only be deprived of "legally", by removing the title as a whole. In cases of any unauthorized occupation, it is a question of creating obstacles to the use of a land plot, and against this violation the proper way of protection is the negatory claim [6, p. 29].

In the claim, the claims should be worded as "the exemption of the land plot", "elimination of violations of the boundaries of the land" and, finally, the most correct – the "elimination of obstacles in using the land", indicating a specific method, for example, demolition of a metal garage, etc. [6, p. 30]. In general, it should be clear from the claims that the defendant or the state executor must make a court action.

Conversional claims are aimed at changing or terminating the legal relationship by means of a judicial decision that carries out the legitimate and substantiated transforming powers of the plaintiff [7, p. 37-38]. In cases arising out of land relations, conversional are those claims, the subject of which is characterized by such methods of protection as the change or termination of disputed land relations, that is, their conversion. Although Article 152 of the Land Code of Ukraine does not indicate such methods of protection of rights to land plots, the Land Code of Ukraine provides them in other articles. In particular, according to Article 87 of the Land Code of Ukraine the right of joint partial ownership of a land plot arises up by a court decision. In addition, according to Articles 100, 102 of the Land Code of Ukraine, the land servitude is established by agreement between the owners of neighboring land plots on the basis of an agreement or a court decision, the validity of the land servitude shall be suspended in the event of a court decision to cancel the servitude of the land. In all these cases, a court decision either directly modifies or terminates land rights and obligations of the parties, or is a legal fact in the legal structure, which is the reason for the change or termination of these rights.

Property claims in cases arising out of land relations, in particular, are those that protect land rights that are subject to monetary valuation, non-property rights, respectively, which protect the rights that are not subject to such an assessment [5, p. 77]. Property claims, in particular, include claims for recognition of title to land, land parcels (shares), compensation for losses caused by seizure of land plots, deterioration of land quality, etc.

Non-proprietary ones are claims for the establishment of land servitude, determination of the procedure for the use of land plots, which belong to the right of joint ownership to several persons, to adhere to the rules of good-neighborliness.

Land management disputes. It should be noted that in the legal literature the right opinion was expressed that the land legislation of Ukraine regulates under certain conditions the right of the court to render land plots in the ownership or lease, to coordinate the location of objects, to resolve other issues that actually regulate social relations [8, p. 295]. These powers are not specific to the powers of the court. The decision of the courts in these cases is the basis for committing various actions in the field of land management. Thus, it is possible to allocate a separate group of claims in the composition of land claims, the consequences of which the court makes such decisions. In legal literature such claims are called land management. This group also includes claims for the division of land, the restoration of their boundaries [9, p. 69-70].

Consequently, in some categories of land disputes, the courts perform a complex administrative function on behalf of the state, taking measures to regulate land relations. The activity of the court with regard to land management claims is, in fact, a management activity in the field of land management. In turn, a court decision, as a result of the consideration of such a claim, is an act of administrative activity. Courts in such categories of cases make decisions which are the basis for activities in the field of land management of other bodies of state power, local self-government, legal entities or individuals [9, p. 70]. This is confirmed by the provisions of the Land Code of Ukraine, laws of Ukraine "On Land Management", "On Farmers" and some others. These legislative acts recognize a judicial decision as one of the grounds for land management, land allocation, the issuance of a document certifying ownership or the conclusion of a lease, drafting a land allocation project.

Analyzing court summaries, one can come to the conclusion that courts also perform administrative functions in deciding cases concerning appeals against decisions, actions or inactivity of executive bodies or local self-government bodies. Thus, according to paragraph 7 of the resolution of the Plenum of the Supreme Court of Ukraine "On the practice of using of the land legislation by courts in civil cases", dated April 16, 2004 (as amended on March 19, 2010) [10] when considering cases on claims to public authorities or local self-government bodies in the event of disagreement with decisions on issues related to land relations to their competence, the court, in the presence of the grounds for the satisfaction of the claim, recognizes the decision of such a body invalid and obliges it, depending on the nature of the dispute, to perform certain actions, (or not to make or stop them), in defense of the violated right, as required by law, or entitles the plaintiff to take certain actions to eliminate violations of his rights. The court resolves these issues in essence, if it complies with the law (for example, recognizes, according to part 3 of Article 1 of the Law of Ukraine of June 5, 2003 "On the procedure for the allocation of land plots to the owners of land shares (in shares)" the right to a land parcel (share) if the district (city) state administration has unreasonably refused to issue a document certifying the right to a land parcel (share). In other cases, the court cannot resolve issues that fall within the competence of executive bodies or local self-government bodies, in particular the transfer of land to permanent use, lease, conclusion or renewal of a land lease agreement, change of purpose of land, etc. So, one should agree with O. Snidevich, who allocates a separate group of claims – land management claims [5, p. 78].

**Conclusions.** Thus, all the above suggests that the specificity and peculiarities of claims in cases arising out of land legal relations, which are characteristic solely for land affairs and not inherent in other categories of cases. The land legislation of Ukraine provides, under certain conditions, the right of the court to render the land plots in the ownership or lease, to coordinate the location of the objects, to resolve other issues whose decisions actually regulate social relations. Such powers are generally not specific to the powers of the court. The decision of the courts in these cases is the basis for committing various actions in the field of land management. In addition, the following disputes relate solely to the jurisdiction of courts: ownership, use and disposal of land plots, owned by citizens, constitutes an essential part of the total number of disputes that are considered by courts. This is due to the legalization of the private property of the land in the legislation and the constitutional requirements that the property right is immutable.

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