

Legal aspects of protection of rights to land plots that were transferred to private ownership based on the provisions of Decree of the Cabinet of Ministers of Ukraine No. 15-92

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Abstract. Due to the lack of clear regulation of the procedure for registration of land ownership on various grounds of privatisation, the Decree of the Cabinet of Ministers of Ukraine of December 26, 1992, No. 15-92 “On privatisation of land plots” has become one of the most problematic legislative acts in Ukraine. That is why there was a need to distinguish between two procedures for the privatisation of land plots: according to the above-mentioned Decree and in accordance with the Land Code. The purpose of the study is to highlight the differences in the legal procedures for privatising land plots transferred to the ownership of citizens based on Decree No. 15-92 and in accordance with paragraph 5 of Article 17 of the Land Code of Ukraine of 1990 as amended on March 13, 1992, and later – Article 118 of the Land Code of Ukraine. The analysis of the practice of the Supreme Court on the application of Decree No. 15-92 and the Land Code of Ukraine in various versions, highlights the general trend in court decisions and describes individual cases that occurred in the judicial practice of higher instances. As a result of the study, it was established that the procedures for transferring land plots to the ownership of citizens based on Decree No. 15-92 and the Land Code of Ukraine differ. Privatisation based on Decree No. 15-92 is a specific simplified form of land transfer to ownership. It is noted that the legislation does not contain a clear regulation of the procedure for transferring land plots to private ownership, if privatisation was initiated based on the rules of Decree No. 15-92, there are a substantial number of legal disputes that are resolved in court. It is proved that the vast practice of the Supreme Court on privatisation issues is not always consistent, and legal conclusions are not systematised; simultaneously, the general trend towards resolving such legal disputes is consistent and understandable. Based on the conclusions of the Supreme Court, the procedure for privatisation under the rules of the Decree was systematised, the procedures for privatisation under the Decree and the Land Code of Ukraine were delineated, documents certifying the right of ownership were identified, and ways to confirm the existence of property rights/legitimate interests to land plots, the right of ownership/use to which arose in connection with the entry into force of Decree No. 15-92 were named. The practical importance of the results obtained lies in the possibility of using them to protect the rights of citizens to land plots, residential buildings and structures located on such plots in judicial and administrative procedures

Keywords: privatisation; protection of the right of ownership/use of land; legal positions of the Supreme Court; land relations; Land Code

Introduction

The Decree of the Cabinet of Ministers of Ukraine of December 26, 1992 No. 15-92 “On privatisation of land plots” (hereinafter – Decree No. 15-92) is one of the most problematic in application at present, which negatively affects land

relations in Ukraine. The existence of ambiguous procedures for land privatisation: 1) transfer of land to ownership under the provisions of the Decree; 2) privatisation of land that was transferred for use under previously existing legislation,

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and 3) the general procedure for gratuitous transfer of land to private ownership, creates problems both for citizens who used land plots since the mid-twentieth century and for local self-government bodies, which after the Decentralisation Reform received more powers to dispose of communal land. Common problems are: 1) lack of clear and detailed regulation of land ownership rights and 2) problems with changing the purpose of the land plot and its re-registration. However, the greatest difficulties arise due to the lack of a properly explained land privatisation procedure in each of the above cases (especially where it is necessary to distinguish between privatisation procedures according to Decree No. 15-92 (1992) and privatisation of the land plot that was previously provided for use). Moreover, this refers to ignorance both on the part of citizens and on the part of local self-government bodies as land managers. In this regard, it is necessary to create a clear and accessible information environment that will help all interested parties understand the procedures for land privatisation and the relationship between procedures.

This problem has its impact not only on the registration of land plots for the construction and maintenance of residential buildings and outbuildings but also on the protection of ownership of real estate located on a non-privatised land plot. Since, according to the rules of Decree No. 15-92, land plots that were already in the use of citizens and on which residential and non-residential buildings were usually placed (especially those that were built in the 1940s and 50s) were transferred to private ownership, the re-registration of rights to these objects under the current legislation arose as a serious challenge. The right of ownership of old, sometimes substantially damaged structures was and is often violated due to the fact that the land plot on which they are located is often transferred to private ownership not to the owners of these structures in the order of privatisation defined by paragraph 5 of Article 17 of the Land Code of Ukraine of 1990 as amended on March 13, 1992 (hereinafter also – LC of the Ukrainian SSR) (Land Code of Ukraine, 1990) or based on Article 118 of the current Land Code of Ukraine (hereinafter also referred to as the Civil Code of Ukraine) (Land Code of Ukraine, 2001), without considering the requirements of the Decree. This situation has a double negative impact: on the one hand, the owner of real estate on non-privatised land is deprived of the rights of the owner, and on the other, buildings and structures do not receive proper maintenance.

Public relations in the field of privatisation are regulated by the norms of both civil and administrative legislation. Important in this context is not only the choice of legal norms to be applied but also the appeal to the court whose jurisdiction the dispute about the law belongs to. In the vast majority of cases, disputes arising from the transfer of land plots to private ownership or use are civil law. The land transfer body acts not as a subject of power, but as a land manager. The same rule applies to those cases when the results of consideration of land disputes regarding the determination of the size of land plots that were transferred to citizens, but were not privatised by the latter, are challenged in court. Despite the general consistency of this position expressed by the legislator and supported by the legal positions of the Supreme Court, its practical implementation is quite difficult. In each subsequent case, there is a need for a detailed analysis of the legal personality of the land manager, establishing who such a person acts as in the privatisation relationship. In civil legal relations on privatisation,

the principle of equality of the parties is discussed, and in administrative relations – the principle of special permission and the limits of discretion. Relations of privatisation, despite their belonging to civil law, do not exclude the need to apply administrative norms. Given this, privatisation legal relations are twofold, which requires their examination from several angles.

Among the latest studies concerning the issue of legal regulation of privatisation processes, important scientific results are contained in the writings of N. Ilkiv and O. Ilkiv (2019). The authors investigated the legal regulation and potential ways to improve the process of gratuitous acquisition of land plots by Ukrainian citizens into private ownership. The study highlights the issue of guaranteeing the rights of Ukrainian citizens to free privatisation of such land plots by investigating and analysing various aspects of the legal regulation of this process. The paper identifies theoretical and applied approaches to determining the mechanism of gratuitous transfer of land plots of communal property to private ownership of Ukrainian citizens. The study analyses the legal nature of the powers of local self-government bodies in making a decision on granting permission for the development of a land management project and concludes that the body does not exercise discretionary powers, but only performs its tasks in the field of land relations, guided by the constitutional special licensing principle. Additionally N. Ilkiv and O. Ilkiv justified the necessity of mandatory amendments to the land legislation of Ukraine to ensure the right of citizens to free privatisation of land plots within the limits of the amounts and goals defined by the legislation.

The conclusions of N. Kovda and N. Zabarna (2020) are also similar in subject matter. The researchers identified the prospects for the implementation of land reform in the context of decentralisation, namely: (1) the return to local self-government bodies of the authority to manage the lands of local communities outside of settlements; (2) land plots that are transferred to the communal ownership of territorial communities and the right of state ownership will be transferred to communal ownership from the moment of state registration of the right of communal ownership to such land plots; (3) local self-government bodies from district state administrations will be transferred the authority to change the purpose of land plots of private ownership; (4) effective use of land by united territorial communities will provide additional revenues to local budgets; (5) open procedures and maximum transfer information in electronic form, in open access, elimination of corruption.

Issues of legal conflicts that arise in the field of land relations are discussed in detail in the collective study authored by I. Pyvovar *et al.* (2020). The paper is devoted to the issues of the inaction of the authorities in relations linked to the initiative of citizens to obtain permission to develop a land management project and transfer a land plot to ownership. The authors also consider issues of protecting the violated rights of citizens in the event of illegal inaction of state bodies. The study identifies the specific features of using the principle of tacit consent in land-permit relations, indicates possible ways to protect the rights of citizens in case of illegal inaction of the authorities, and establishes the nature of the discretionary powers of the competent authorities. Yu. Krasnova *et al.* (2020; 2022) analyse the legislation regulating land ownership in Ukraine and assess its development in this area.

As can be seen from the above, publications of recent years are devoted to improving land legislation to a greater extent, in particular, in the context of the Decentralisation Reform. However, the direct issues of the privatisation procedure, its types, and features under various versions of the Land Code of Ukraine did not become the subject of scientific interest.

In the proposed study, the authors attempt to highlight the differences in the legal procedures for privatising land plots transferred to the ownership of citizens based on Decree No. 15-92 and in accordance with paragraph 5 of Article 17 of the Civil Code of Ukraine (1990) as amended on March 13, 1992, and later – Article 118 of the Civil Code of Ukraine.

The proposed finding includes investigating the practice of the Supreme Court on the application of Decree No. 15-92 and the Civil Code of Ukraine in various versions, highlighting the general trend in court decisions and describing individual cases that took place in the judicial practice of higher instances.

The study was based on the analysis of scientific literature, legal sources, legislation, and documents related to the privatisation of land plots and the legal aspects of their protection. The results obtained are systematised, the legal positions of the Supreme Court and other sources are summarised, and trends in resolving legal disputes regarding the protection of rights to land plots transferred to private ownership are analysed.

Literature review

The issue concerning the application of the provisions of Decree No. 15-92 rarely becomes the subject of scientific interest. Given the complexity of the mechanisms of application of this normative document, its links with national policy in the field of land relations, legislative acts of the highest legal force, and the practice of Courts of various jurisdictions, the subject of further consideration should include a substantial array of scientific and regulatory sources. Further, such sources are conventionally divided into several groups according to their importance for the proposed study.

The first group consists of those publications that directly or indirectly address the issue of land privatisation based on Decree No. 15-92. Thus, H. Klimova (2019) mentions Decree 15-92 as one of the key documents that regulated the process of land privatisation in Ukraine. I. Salman (2009) analyses the main legal characteristics of land privatisation processes. By analysing the current legislation, the author identifies criteria for classifying various types of land privatisation, considering various entities that acquire ownership rights, procedures, methods, and other factors. Decree No. 15-92 is mentioned as a form of privatisation, but the essence of the process is not covered. A paper by H. Hrabar (2014) is devoted to relevant legal issues of the privatisation of land plots used by citizens in Ukraine. The researcher considers issues of legislative changes and proposals for improving legislation in this area. However, the publication under consideration is dated 2014, so it does not consider changes made to the current legislation and current judicial practice.

The next group of publications consists of studies devoted to legal procedures in relation to land. Important scientific conclusions in this area were made by O. Bondar (2018). The researcher examined the development of legal regulation of land ownership in Ukraine. The article examines the process of reforming property relations in Ukraine since 1991, in particular: the process of privatisation, the mechanism for acquiring ownership of real estate, registration

of ownership rights and other rights to real estate, and legal regulation of the land cadastre. The legal regulation of ownership of agricultural land in certain EU countries is covered. Using the forecasting method, the researcher formulated recommendations for improving the legal regulation of land ownership in Ukraine.

A separate group includes scientific achievements of lawyers who casually touch on privatisation procedures. This includes the writings of D. Fedchyshyn and I. Ignatenko (2018), within which the specific features of acquiring ownership rights to land plots and rights to use land plots in Ukraine by foreigners are covered. Yu. Krasnova *et al.* (2020, 2022) consider the process of development of legal regulation of land ownership in Ukraine. The study analyses the main stages and areas of development of this regulation, considering the legislative changes and reforms that have taken place in recent years. The main focus is on legislative acts and mechanisms that affect the provision of land ownership rights, the management and disposal of land resources in the country. D. Sannikov (2017) analyses ways to adapt national land legislation to the requirements of the European Union. Yu. Skliar *et al.* (2021) attempt to improve the methodological approach to determining the value of agricultural land as an element of enterprise potential based on the use of fuzzy logic methods. N. Bielousova (2023) analyses the issues of regulatory regulation of the procedure for allotment of land with a change in the intended purpose for industrial needs. Theoretical and methodological issues of the procedure for drawing up land management projects, which provide for changing the purpose of a land plot on industrial land, are highlighted. N. Bondarchuk and K. Storozhuk (2019) indicate the need for further regulation of a wide range of powers related to the regulation of land relations between local self-government bodies and individuals and legal entities. A. Boyko (2018), in turn, considers the need for clear legal regulation and internal administrative control over the functioning of state authorities and their “discretionary power” in the field of land relations.

The development of legal regulation of land ownership in Ukraine and the specific features of land reform are also singled out in a separate group. I. Kostyashkin *et al.* (2020), N. Bielousova (2023) conduct a scientific analysis of the current state of land market reform in Ukraine and compares it with the experience of developing legal regulation of the land market in Europe. M. Malashevskiy *et al.* (2018; 2020) consider trends in changes in the land fund in recent years. The researcher, in particular, analysed a number of regulatory documents to highlight the main problems of modern land use and listed a number of problems in the field of land relations during the land reform period. R. Tykhenko (2022) examines the main problems related to the reform of land relations and land use in Ukraine. The study focuses on identifying and analysing complex issues that arise in the process of changing legislation and introducing new land management mechanisms. The author examines in detail the problems of land rights, insufficient transparency of land transactions, incompleteness and inefficiency of the system of land use and registration of land rights. H. Klimova (2019) analysed the history of land reform in Ukraine, identified changes in the structure of ownership and land use, and also considered relevant issues of legislative support for land reform, its principles and prerequisites.

However, the issue of applying the Decree of the Cabinet of Ministers of Ukraine 15-92 is not discussed in detail in these articles, and the content of this document is not analysed. In addition, questions about the possibility of its effective application in practice and ways to solve problematic issues that citizens face when applying the provisions of the law on land privatisation under the rules of the Decree remain unanswered.

Regulatory and legal regulation of privatisation procedures under the Decree of the Cabinet of Ministers of Ukraine No. 15-92 and the Civil Code of Ukraine in various versions

H. Hrabar (2014) identifies types of gratuitous privatisation and provides their characteristics in terms of availability and general implementation procedure. The researcher notes that after the introduction of a private form of land ownership in 1992, Decree No. 15-92 was the first act that regulated relations on the privatisation of land plots. Notably, this conclusion of the researcher is not entirely correct, since the Civil Code of Ukraine (1990) as amended on March 13, 1992, contained Article 17, which regulates the transfer of land plots to private ownership by councils of people's deputies.

The same code, in its subsequent version (dated 15 January 1993), contained changes resulting from the adoption of the Decree in question. These changes concerned the suspension of Articles 17 and 23 of the above-mentioned code in relation to land owners defined by Article 1 of Decree No. 15-92 (unlike the general requirements for registration of the right to land, privatisation based on the Decree did not provide for obtaining a State Act (documents certifying the right of ownership/use of land plots obtained in accordance with the Decree will be discussed later).

With the adoption of the new Civil Code of Ukraine (2001), any mention of the Decree was excluded from the text of the codified act. The provisions of Article 118 of the Civil Code of Ukraine concerning the free privatisation of land that was in the use of citizens, and paragraph 7 of Section XX "Transitional provisions", according to which citizens who previously received ownership of land plots in the amounts provided for by previously existing legislation, retain the rights to these plots, were subject to application.

Since October 14, 2008, in the new version of the Civil Code of Ukraine (2001), the text of the code includes paragraph 2 of Paragraph 1 of Section XX "Transitional provisions", which established that land plots transferred to private ownership based on the provisions of Decree No. 15-92 are the basis for the production and issuance of state acts on the ownership of a land plot to these citizens or their heirs according to technical documentation on the preparation of documents certifying the right to a land plot. The provisions of the Code in this part are still in force today.

Main provisions of Decree No. 15-92 and its legal nature

H. Hrabar (2014) identifies 1) a simplified model of privatisation (based on Article 118 of the Civil Code of Ukraine) and 2) the privatisation of land plots under the statute of limitations (based on Article 119 of the Civil Code of Ukraine). The author considers the privatisation of a land plot based on a Decree as a specific procedure for privatisation based on Article 118 of the Civil Code of Ukraine. However, this statement, according to the authors of this study, cannot be accepted without reservations.

The transfer of land by Decree existed simultaneously with the transfer of land to private ownership in accordance with Article 17 of the Civil Code of Ukraine (1990) as amended on March 13, 1992, as a separate specific procedure. Article 17 provided for several options for land privatisation, namely: 1) transfer of the land plot from the reserve lands (paragraph 3 of Article 17); 2) transfer of ownership of the land plot that was previously provided to a citizen (paragraph 5 of Article 17); 3) transfer to the ownership of citizens of land plots owned or used by other citizens or legal entities (paragraph 8 of Article 17); and 4) transfer of the land plot to collective ownership of collective agricultural enterprises, agricultural cooperatives, agricultural joint-stock companies, including those created based on State farms and other state-owned agricultural enterprises (Part 9 of Article 17).

The decision of the Supreme Court in case No. 746/259/19 (2021) contains a broad explanation of the need to distinguish between the rules of articles of the Civil Code of Ukraine (as amended on March 13, 1992) and Decree No. 15-92 on regulating the transfer of land plots that were used by citizens to private ownership.

The Supreme Court was convinced that the rule of Paragraph 3 of the said Decree established a special rule for acquiring ownership of land plots transferred, in particular, for personal subsidiary farming in accordance with the procedure provided for in this normative legal act. Land plots based on the Civil Code of Ukraine in the mentioned version were transferred to ownership based on a citizen's application and materials confirming its size (land cadastral documentation, data from the Bureau of technical inventory, boards of companies and cooperatives, etc.). Councils of people's deputies considered these applications and materials within one month and made appropriate decisions (similarly: Supreme Court decision in case No. 938/528/20 (2019)). As to the Decree, the right of private ownership of citizens to the land plots transferred to them for the purposes provided for in Article 1 of the Decree was certified by the relevant Council of people's deputies, which was recorded in the land cadastral documents. As mentioned above, the requirement to obtain a state act to certify land ownership did not apply to privatisation by Decree (Resolution of the Supreme Court of Ukraine in case No. 6-31tss12, 2012). According to the conclusions of the Supreme Court, the moment of occurrence of ownership of a land plot under the rules of the Decree was associated with the introduction of a corresponding entry in land cadastral documents certified by the relevant Council of people's deputies (Resolution Supreme Court of Ukraine in case No. 156/370/16-ts, 2018; Resolution Supreme Court of Ukraine in case No. 635/2215/16-ts, 2018; Resolution Supreme Court of Ukraine in case No. 746/259/19, 2021). The above is also consistent with the court's position that "at the time of resolving the issue of transferring the land plot (by Decree – I. B.) ... the procedures and forms of the State Act were not approved, just as the regulatory act itself was not approved, which would regulate these legal relations..." (Resolution of the Grand Chamber of the Supreme Court in case 350/67/15-ts, 2019).

It is also worth mentioning the provision of the Law of Ukraine "On State Registration of Property Rights to Immovable Property and their Encumbrances" (2004), according to Part 4 of Article 3 of which rights to immovable property that arose before the entry into force of this law are recognised as valid in the absence of their state registration

provided for by this law, under the following conditions: if at the time of the emergence of rights and their encumbrances, legislation was in force that did not provide for mandatory registration of such rights. Clarification on this was also provided by the Supreme Court (Resolution of the Supreme Court of Ukraine in case No. 577/2977/15-ts, 2019).

Procedure for free privatisation of a land plot for the construction and maintenance of a residential building, outbuildings and structures based on the Civil Code of Ukraine

The procedure for privatising a land plot that was used by citizens without using the provisions of the Decree (that is, based on Paragraph 5 of Article 17 of the Civil Code of Ukraine of 1990 as amended on March 13, 1992, and later – Article 118 of the Civil Code of Ukraine as amended until January 01, 2013) was as follows: 1) a citizen's application with attached materials confirming the size of the land plot (land cadastral documentation, data from the Bureau of technical inventory, boards of companies and cooperatives, etc.); 2) determining the boundaries of the land plot in the field; 3) approval of the boundaries of the land plot with the owners or users of adjacent land plots; 4) obtaining a state act on land in accordance with the established procedure; 5) state registration of ownership of the land plot (Resolution of the Grand Chamber of the Supreme Court of Ukraine in case 350/67/15-TS, 2019; Resolution of the Supreme Court of Ukraine in case No. 722/694/18, 2021; Resolution of the Supreme Court in case No. 338/1112/19, 2021). Since the beginning of 2013, the state acts on land ownership have not been conducted, state acts have not been issued. Ownership of land plots is registered in the Register of rights to immovable property. Instead of state acts, the new owner must register his ownership right in the State Register of rights and obtain a certificate of ownership of the land plot to confirm the emergence of the right to a land plot.

Procedure for free privatisation of a land plot based on Decree No. 15-92

By Decree No. 15-92, it was decided that the village, settlement, and city councils of people's deputies should ensure the transfer during 1993 to the citizens of Ukraine in private ownership of land plots provided to them for personal subsidiary farming, construction and maintenance of residential buildings and outbuildings (household plot), gardening, cottage and garage construction, within the limits of the norms established by the Civil Code of Ukraine.

In paragraph 7 of Section XX "Transitional provisions" of the Civil Code of Ukraine, it is stipulated that citizens and legal entities that have received ownership, for temporary use, in particular, on lease terms, land plots in the amounts provided for by previously existing legislation, retain the rights to these plots.

The current civil code of Ukraine (starting from its version on 14.10.2008), in Paragraph 2 of Clause 1 of Section X "Transitional provisions" defines, that the decision to transfer land plots to private ownership of citizens of Ukraine free of charge, taken by local self-government bodies in accordance with the Decree, is the basis for making and issuing state acts on the ownership of a land plot to these citizens or their heirs, according to the technical documentation for drawing up documents certifying the right to a land plot. Legal conclusions in this regard are made in Resolution No. 350/67/15-ts (2019).

Order of the State Committee of Ukraine on Land Resources No. 10 "On the Approval of the Procedure for the Transfer of Land Plots into Private Ownership to Citizens of Ukraine" (1993) (hereinafter referred to as Order No. 10) provides that land plots transferred to private ownership in accordance with the provisions of the Decree are transferred free of charge to private ownership based on materials confirming their size (land cadastral documentation, data from the Bureau of technical inventory, boards of companies and cooperatives, etc.), and citizens' statements (conclusions to this are made in the Resolution of the Supreme Court of Ukraine in case No. 746/259/19, 2021).

From the analysis of the position of the Supreme Court and the provisions of these regulatory documents, it can be concluded that the procedure for privatisation based on the Decree provided for: 1) the application of a citizen for the transfer of a land plot to private ownership during the Decree; 2) the adoption by the relevant council of people's deputies (or other authorised body) of a decision on the transfer of a land plot to private ownership in accordance with the Decree with strengthening on the documents based on which it is possible to establish the boundaries of such plots: land cadastral documentation, data from the Bureau of technical inventory (including plans/outlines of land plots, plans of development blocks, etc); 3) production by land management organisations of technical documentation on land management in kind (in the field) and establishment of land plot boundaries in kind; 4) coordination of land plot boundaries with adjacent landowners and land users; 5) making an appropriate entry in land cadastral documents certified by the relevant council of people's deputies (Resolution of the Supreme Court of Ukraine in case No. 6-31tss12, 2012; Resolution of the Supreme Court of Ukraine in case No. 746/259/19, 2021); 6) a note in the passport or document that replaces it that the person has registered ownership of the land plot based on a Decree.

In Resolutions of the Supreme Court of Ukraine in cases No. 746/259/19 (2021) and No. 6-31tss12 (2012), the Supreme Court noted that the lack of evidence that the land cadastral documents contained a record of ownership of the disputed land plot that had been transferred indicated that the person had not acquired ownership of the disputed land plot in accordance with the procedure established by law, but had a legally protected interest in protecting the right to use it and completing the procedure for acquiring its ownership. Similar conclusions are also provided in the Resolution of the Supreme Court of Ukraine in case No. 593/1095/19 (2021).

It is interesting to note that in some cases the courts recognised the existence of a person, not a legitimate interest in obtaining ownership of land, but the very right of ownership of a land plot transferred based on a Decree. Moreover, this happened even in the case when the person performed only part of the necessary actions from the above list, namely, received the decision of the authorised body to transfer ownership of a land plot to a person based on the Decree of the Cabinet of ministers of Ukraine No. 15-92 without further establishing borders and making an entry in land cadastral documents. For example, in Decision of the Higher Specialised Court of Ukraine on Consideration of Civil and Criminal Cases in case No. 6-10228sb11 (2011) contains a conclusion that, if there is a decision of the authorised body to transfer ownership of a land plot to a person based on Decree No. 15-92, the fact that there is no such record in the land

cadastral documents cannot indicate that the plaintiff did not have ownership of the land plot, since such a right was certified by the decision itself (Resolutions of the Supreme Court of Ukraine in cases No. 159/3742/17, 2020; Resolution № 671/86/17-ts, 2018).

This conclusion of the courts, in general, is consistent with the current legal position of the Supreme Court, expressed in Resolutions of the Supreme Court of Ukraine in cases No. 593/1095/19 (2021) and No. 746/259/19 (2021). In these decisions, the court concluded that the effect of Decree No. 15-92 extended “to citizens who already had land plots in use, that is, the condition for acquiring ownership of land plots under the rules of Decree No. 15-92 is that such plots should have been provided to such persons for use earlier, the boundaries of such a land plot have already been established in kind, and there is a certain document on the right to such a plot” (under this “certain” document, the courts partly understand their own decision of the authorised body to transfer the land plot to private ownership). Paragraph 2 of the Final and Transitional provisions of the law of Ukraine “On the State Land Cadastre” (2011) defines that land plots, the right of ownership (use) to which arose before 2004, are considered formed regardless of the assignment of a cadastral number to them.

Confirmation of property rights to the land plot, and confirmation that the land plot was formed from the moment of making the decision of the authorised body “On the transfer of land plots to private ownership”, can also be confirmed by the fact that: a) the land plot was assigned a separate address; b) the person bears all expenses (including land tax) for the maintenance of the land plot; c) the right of ownership of a residential building and outbuildings on the land plot (if any) was disputed and not stopped by anyone; d) the allocation of land plots to ownership was conducted based on land and cadastral documentation, data from the Bureau of technical inventory, boards of companies and cooperatives, etc.

However, there is also the opposite situation: the courts refer to the norm of the Decree on the need to obtain a state act on the right of private ownership of land (after recording in land cadastral documents) and in this regard refuse to recognise the right of ownership of land (Resolutions of the Supreme Court of Ukraine in cases No. 635/7079/18, 2020; No. 635/2215/16-ts, 2020).

Conclusions

According to the conducted analysis, it is evident that the transfer of land plots to the ownership of citizens based on Decree No. 15-92 and in accordance with paragraph 5 of Article 17 of the Civil Code of Ukraine of 1990 as amended on March 13, 1992, and later – Article 118 of the Civil Code of Ukraine are different procedures. Privatisation based on

Decree No. 15-92 is a specific simplified form of land transfer to ownership. The legislation does not contain a clear regulation of the procedure for transferring land plots to private ownership, if privatisation was initiated based on the rules of Decree No. 15-92. In this regard, there are a substantial number of legal disputes that are resolved in court. The numerous practice of the Supreme Court allows correcting the situation, but it is not always consistent and legal conclusions are not systematised. Therewith, the general trend towards resolving such legal disputes is consistent and clear.

Based on the analysed conclusions of the Supreme Court, the authors of the study systematised the procedure for privatisation according to the rules of the Decree, delineated the procedures for privatisation according to the rules of the Decree and the Civil Code of Ukraine, identified documents certifying the right of ownership, and named ways to confirm the existence of property rights/legitimate interests to land plots, the right of ownership/use to which arose in connection with the entry into force of Decree No. 15-92.

The main originality of this study is the systematisation of the procedure for privatising land plots based on Decree No. 15-92 and distinguishing this procedure from privatisation in accordance with the Land Code of Ukraine. The legal positions of the Supreme Court were analysed and the necessary documents and methods of confirming ownership rights and legitimate interests in relation to land plots that were privatised in accordance with Decree No. 15-92 were determined. The study also pointed to problems related to the unclear regulation of the privatisation procedure under the Decree and the large number of legal disputes that are resolved in this area. This purpose of the study was to summarise and systematise relevant legal provisions to understand the process of land privatisation and increase legal clarity in this area.

As a prospect for further research, it is worth mentioning: 1) analysis of the procedure for transferring ownership of a land plot – both formed and not recognised as an object of ownership (unformed/non-privatised) in the order of inheritance; 2) determination of the specific features of registration of rights to a non-privatised land plot on which real estate is located, the ownership of which is not terminated; 3) determination of the boundaries of unformed land plots on which real estate is located based on state building codes; 4) differentiation of the grounds for acquiring ownership and use rights to land plots based on state building codes based on the rules of Decree No. 15-92.

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Conflict of interest

None.

References

- [1] Bielousova, N. (2023). Analysis of the legislation of Ukraine regulating the draft of the land survey project towards siting of a land plot with a change of its target for the industry land. *Airport Planning, Construction and Maintenance Journal*, 1, 6-13. doi: 10.32782/apcmj.2023.1.1.
- [2] Bondar, O. (2018). Public administration in the field of land use and protection and state land policy in Ukraine: Problems of correlation. *Baltic Journal of Economic Studies*, 4(3), 22-27. doi: 10.30525/2256-0742/2018-4-3-22-27.
- [3] Bondarchuk, N.V., & Storozhuk, K.I. (2019). Discretionary authorities in the context of the realization of land legal relations in Ukraine. *Comparative and Analytical Law*, 3, 115-117.
- [4] Boyko, A. (2018). *Theoretical bases and principles of the state policy in the land relations between Ukraine*. *Investments: Practice and Experience*, 16, 114-122.
- [5] Decision of the Higher Specialized Court of Ukraine on Consideration of Civil and Criminal Cases in the case No. 6-10228sb11. (2011, November). Retrieved from <https://reyestr.court.gov.ua/Review/19510988>.

- [6] Decree of the Cabinet of Ministers of Ukraine No. 15-92 “On the Privatization of Land Plots”. (1992, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/15-92#Text>.
- [7] Fedchyshyn, D., & Ignatenko, I. (2018). *Protection of land ownership of foreigners in Ukraine*. *Juridical Tribune*, 8(S). 27-38.
- [8] Hrabar, H.M. (2014). *Main legal issues of land privatization, which are used by citizens*. *Actual Problems of Improving of Current Legislation of Ukraine*, 36, 194-204.
- [9] Illkiv, N., & Illkiv, O. (2019). *The legal guarantees of the right to free-of-charge privatization of land plot of municipal property*. *Jurnalul Juridic Național: Teorie și Practică*, 3, 119-123.
- [10] Klimova, H.P. (2019). Land reform in Ukraine: Historical discourse. *Theoretical and practical problems of land reform in Ukraine: Collection of scientific works based on the materials of the round table* (pp. 174-178). Kharkiv: Scientific and Research Institute of Providing Legal Framework for the Innovative Development.
- [11] Kostyashkin, I.O., Chudyk-Bilousova, N.I., Taranenko, L.S., Andrushko, A.V., & Loginova, N.M. (2020). Land ownership in Ukraine: Reform issues. *Journal of Advanced Research in Law and Economics*, 50, 1175-1183. doi: 10.14505//jarle.v11.4(50).13.
- [12] Kovda, N., & Zabarna, N. (2020). Problems and prospects of implementing land reform in conditions of decentralization. *Derzhavne Upravlinnya: Udoslionalennya ta Rozvytok*, 11. doi: 10.32702/2307-2156-2020.11.100.
- [13] Krasnova, Yu., Golovko, L., Hunko, L., & Medynska, N. (2020). Development of legal regulation of land ownership in Ukraine. *Solid State Technology*, 63(2S), 4087-4094.
- [14] Krasnova, Yu., Golovko, L., Hunko, L., Medynska, N., & Sandeep Kumar Gupta, S.K. (2022). An assessment of the legal framework governing land ownership is evolving in Ukraine. *Materials Today: Proceedings*, 49(8), 3619-3623. doi: 10.1016/j.matpr.2021.08.159.
- [15] Kurylo, V., Pantalienenko, P., Bogdanets, V., & Ovcharuk, S. (2017). Land fragmentation in Ukraine: Agricultural land-use management and jurisprudence issues. *Problems and Perspectives in Management*, 15(2), 102-109. doi: 10.21511/ppm.15(2).2017.10.
- [16] Land Code of Ukraine. (1990, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/561-12#Text>.
- [17] Land Code of Ukraine. (2001, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2768-14#Text>.
- [18] Law of Ukraine No. 1952-IV “On State Registration of Property Rights to Immovable Property and Their Encumbrances”. (2004, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1952-15#Text>.
- [19] Law of Ukraine No. 3613-VI “On the State Land Cadastre”. (2011, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/3613-17#Text>.
- [20] Malashevskiy, M., Palamar, A., Malanchuk, M., & Bugaienko, O. (2020). The possibilities of sustainable land use formation in Ukraine. *Geodesy and Cartography*, 46(2), 83-88. doi: 10.3846/gac.2020.7480.
- [21] Malashevskiy, M., Palamar, A., Malanchuk, M., Bugaienko, O., & Tarnopolsky, E. (2018). The opportunities for use the peer land exchange during land management in Ukraine. *Geodesy and Cartography*, 44(4), 129-133. doi: 10.3846/gac.2018.5405.
- [22] Order of the State Committee of Ukraine on Land Resources No. 10 “On the Approval of the Procedure for the Transfer of Land Plots into Private Ownership to Citizens of Ukraine”. (1993, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0007-93#Text>.
- [23] Pyvovar, I., Kuzmenko, O., Liutikov, P., Liutikova, M., & Kuvakin, S. (2020). Inactivity of public authority as a subject of land dispute in administrative legal proceedings. *Revista de la Universidad del Zulia*, 11(31), 360-375. doi: 10.46925//rdluz.31.22.
- [24] Resolution of the Grand Chamber of the Supreme Court of Ukraine in case 350/67/15-ts. (2019, March). Retrieved from <https://reyestr.court.gov.ua/Review/80854756>.
- [25] Resolution of the Supreme Court in case No. 338/1112/19. (2021, October). Retrieved from <https://reyestr.court.gov.ua/Review/100214708>.
- [26] Resolution of the Supreme Court in case No. 369/4352/16-ts. (2019, June). Retrieved from <https://reyestr.court.gov.ua/Review/82826958>.
- [27] Resolution of the Supreme Court in case No. 635/2215/16-ts. (2018, July). Retrieved from <https://reyestr.court.gov.ua/Review/75370708>.
- [28] Resolution of the Supreme Court in case No. 938/528/20. (2019, September). Retrieved from <https://reyestr.court.gov.ua/Review/106354247>.
- [29] Resolution of the Supreme Court of Ukraine in case No. 156/370/16-ts. (2018, November). Retrieved from <https://reyestr.court.gov.ua/Review/77969049>.
- [30] Resolution of the Supreme Court of Ukraine in case No. 159/3742/17. (2020, April). Retrieved from <https://reyestr.court.gov.ua/Review/88749085>.
- [31] Resolution of the Supreme Court of Ukraine in case No. 577/2977/15-ts. (2019, July). Retrieved from <https://reyestr.court.gov.ua/Review/82938212>.
- [32] Resolution of the Supreme Court of Ukraine in case No. 593/1095/19. (2021, October). Retrieved from <https://reyestr.court.gov.ua/Review/100292254>.
- [33] Resolution of the Supreme Court of Ukraine in case No. 6-31tss12. (2012, May). Retrieved from <https://reyestr.court.gov.ua/Review/24528568>.
- [34] Resolution of the Supreme Court of Ukraine in case No. 635/7079/18. (2020, October). Retrieved from <https://reyestr.court.gov.ua/Review/92747231>.
- [35] Resolution of the Supreme Court of Ukraine in case No. 671/86/17. (2018, June). Retrieved from <https://reyestr.court.gov.ua/Review/76502735>.

- [36] Resolution of the Supreme Court of Ukraine in case No. 722/694/18. (2021, June). Retrieved from <https://reyestr.court.gov.ua/Review/97966592>.
- [37] Resolution of the Supreme Court of Ukraine in case No. 746/259/19. (2021, August). Retrieved from <https://reyestr.court.gov.ua/Review/98812754>.
- [38] Salman, I.Yu. (2009). [Legal aspects of privatization of land plots by citizens of Ukraine](#). *Bulletin of the Academy of the Customs Service of Ukraine. Series: Law*, 2, 127-130.
- [39] Sannikov, D.V. (2017). Problems of land legislation of Ukraine and European Union integration. *Journal of Legal, Ethical and Regulatory Issues*, 20(1). Retrieved from <https://www.abacademies.org/articles/problems-of-land-legislation-of-ukraine-and-european-union-integration-6714.html>.
- [40] Skliar, Yu., Bohinska, L., Kapinos, N., & Prokopenko, N. (2021). Improvement of land management in Ukraine. *Journal of Optimization in Industrial Engineering*, 14(S), 175-183. doi: 10.22094/joie.2020.677866.
- [41] Tykhenko, R. (2022). Problems of land relations reform and land management in Ukraine. *Theory and practice of modern science: Collection of scientific papers "Scientia" with Proceedings of the III International Scientific and Theoretical Conference* (Vol. 1; pp. 65-69). Kraków: European Scientific Platform. doi: 10.36074/scientia-01.04.2022.

Юридичні аспекти захисту прав на земельні ділянки, які передавалися в приватну власність на підставі положень Декрету Кабінету Міністрів України № 15-92

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Анотація. Через відсутність чіткого регулювання процедури оформлення права власності на землю за різними підставами приватизації, Декрет Кабінету Міністрів України від 26 грудня 1992 року № 15-92 «Про приватизацію земельних ділянок» став одним з найбільш проблемних законодавчих актів в Україні. Саме тому виникла потреба розмежувати дві процедури приватизації земельних ділянок: за названим декретом та відповідно до Земельного кодексу. Мета дослідження – висвітлити відмінності в юридичних процедурах приватизації земельних ділянок, що передані у власність громадян на підставі Декрету № 15-92 та в порядку пункту 5 статті 17 Земельного Кодексу України 1990 року в редакції від 13 березня 1992 року, а пізніше – статті 118 Земельного Кодексу України. Пропонована розвідка – аналіз практики Верховного Суду щодо застосування Декрету № 15-92 та Земельного Кодексу України в різних редакціях з виокремленням загальної тенденції в судових рішеннях та описом окремих випадків, які траплялися в судовій практиці вищих інстанцій. У результаті дослідження встановлено, що процедури передачі земельних ділянок у власність громадян на підставі Декрету № 15-92 та Земельного кодексу України мають відмінності. Приватизація на підставі Декрету № 15-92 є специфічною спрощеною формою передання землі у власність. Зазначено, що законодавство не містить чіткої регламентації порядку передачі земельних ділянок у приватну власність, якщо приватизація була розпочата на основі правил Декрету № 15-92, тому існує значна кількість юридичних спорів, які вирішуються в судовому порядку. Обґрунтовано, що численна практика Верховного Суду з питань приватизації не завжди послідовна, а правові висновки не систематизовані; водночас загальна тенденція щодо вирішення подібного роду судових спорів – узгоджена та зрозуміла. На основі висновків Верховного Суду систематизовано порядок приватизації за правилами Декрету, відмежовано процедури приватизації за Декретом та Земельним Кодексом України, визначено документи, які посвідчують право власності та названо способи підтвердження наявності майнових прав / законних інтересів на земельні ділянки, право власності / право користування на які виникло у зв'язку з уведенням у дію Декрету № 15-92. Практичне значення одержаних результатів полягає в можливості використати їх для захисту прав громадян на земельні ділянки, а також житлові будинки та споруди, розміщені на таких ділянках, у судовому та адміністративному порядкух

Ключові слова: приватизація; захист права власності / права користування на землю; правові позиції Верховного Суду; земельні відносини; Земельний кодекс