

CHARACTERISTICS OF PARTICIPANTS IN PUBLIC ADMINISTRATION RELATIONS IN THE SPHERE OF LAND USE OF STATE AND MUNICIPAL OWNERSHIP IN UKRAINE ON THE BASIS OF UKRAINIAN LEGISLATION

Valentyna Nezhevelo

Ph.D. in Law Sciences

Senior Lecturer for the Department of Private and Social Law

Sumy National Agrarian University,

160 Herasyma Kondratieva Str., Sumy, Ukraine, 40000

<https://orcid.org/0000-0003-4596-4818>

valentina_tsurkan.27@ukr.net

Abstract. The reform of land legal relations in Ukraine, the need for real implementation of the association agreement between Ukraine and the EU and the achievement of the Sustainable Development Goals proclaimed by the UN General Assembly resolution, as well as military actions caused by the aggressor state in the territory of Ukraine, have sharply raised the issue of relevance of improving public administration in the field of land use of state and municipal property in Ukraine, especially concerning the determination of the proper circle of participants in the relations of public administration, which also contributes to the transparent, effective functioning of the governmental bodies, as well as the quality exercise of the rights and legitimate interests of other subjects, with a clear mechanism for bringing guilty parties to justice for improper actions regarding land resources. Consequently, according to the author's views, it is necessary to improve the characteristics of the subjects of Public Administration in the domain of state and municipal property use in the territory of Ukraine, which are specified as the availability of public powers (including delegated), the performance of organizational and administrative, service, control, and supervisory functions in the sector of management, exploitation and protection of land; a coordinated and efficiently organized system in the area of utilization of state and municipal property; the implementation of public values in land legal relations, transparency; the practice of competence in the field of use of state and communal lands only on the basis, within the scope of the powers and in the manner provided for by the Constitution and laws of Ukraine; bearing responsibility for illegal actions, inactivity in the sphere of utilization of state, communally owned lands.

Keywords: public administration, land, land relations, authorities, subject of administrative services, Ukraine.

INTRODUCTION

One of the main elements in the mechanism of Public Administration in the sector of land use of state and municipal ownership forms are the subjects of such administration.

However, the issue of participants (subjects) of Public Administration in the sphere of land utilization of state and municipal property on the territory of Ukraine, in the theory of Ukrainian doctrine and law, has been studied fragmentary, so this problem is to be scrutinized. Moreover, profound research, including the ongoing land reform in Ukraine, the emergence of United territorial communities and other innovations caused by the processes of decentralization in the state is needed.

The analysis of scholarly works indicates the lack of a universal approach to the concept and types of subjects of Public Administration. Ukrainian legislation also lacks a clear concept of a subject of Public Administration. Only the concepts of subject of power, subject of providing administrative services, state authority, and local self-government body are applied.

Thus, to solve the problem outlined, the author scrutinizes the implementation of the classification of subjects of Public Administration by competence and the presence of discretionary powers in the use of state and municipal property lands.

MATERIALS AND METHODS

In accordance with Clause 7, Part 1, Article 4 of the Code of Administrative Procedure of Ukraine, the subject of authority is a body of state power (incorporating those without the status of a legal entity), a body of local self-government, their certifying officer or official, or another subject who exercises public-authority management functions on the basis of legislation, including the performance of delegated powers or the provision of administrative services (Verkhovna Rada of Ukraine, 2017).

According to Clause 3 of Article 1 of the law of Ukraine “On administrative services”, the subject of providing administrative services is an executive authority, another state body, an authority the ARC, a local self-government body, their certifying officers, a state registrar, a subject of state registration authorized in line with the law to provide administrative services (Verkhovna Rada of Ukraine, 2013).

The terms “state body” and “state authority” are applied in Articles 5, 6, and 59 of the Constitution of Ukraine. The concept of “state authority” is absent in the legislation. Article 1 of the law of Ukraine “On prevention of corruption” defines a “state body”: a state authority, comprising a collegial state body, another subject of public law, regardless of the status of a legal entity, which, according to the law, is granted the authority to perform power management functions on behalf of the state, whose jurisdiction extends to the entire territory of Ukraine or to a separate administrative-territorial unit (Verkhovna Rada of Ukraine, 2014).

In the Law of Ukraine “On the protection of Economic Competition”, “authority” refers to ministries and other central executive authorities, the Verkhovna Rada of the ARC and executive authorities of the ARC, state bodies that regulate the activities of natural monopolies, capital markets and organized commodity markets, state privatization bodies, the National Council of Ukraine on television and radio broadcasting, local executive authorities (Verkhovna Rada of Ukraine, 2001).

Thus, the concepts of “state authority”, “state body”, and “authority” according to Ukrainian legislation are identical.

The concept of “subject of power” includes both the state authority and the subject of providing administrative services.

Proceeding from the author’s view of Public Administration as the duties of professional managers (civil servants, servants of the local institutions of self-government, and self-regulated bodies) relevant to the introduction of legislative governmental prescriptions and decisions, local self-government authorities, the introduction of national policy in land relations, the arrangement of the work of the management apparatus, as well as with the provision of administrative services, it is advisable to form the following subject structure of Public Administration in the field of land use of state and municipal property: state authorities (notably, executive ones), local institutions of self-government, certifying officers, and officials, self-regulated bodies, and other subjects with delegated public authority.

Thus, in general, we can distinguish three points of view regarding the structure of Public Administration entities: narrow, wide, and ultra-wide.

According to the first concept, the subjects of Public Administration involve executive authorities, local self-government bodies, the president of Ukraine and the Presidential Administration of Ukraine.

According to the wide concept, subjects of Public Administration are “a system of state bodies, primarily executive authorities, local self-government bodies, and other entities that, in order to realize public interest in accordance with a law or administrative contract, are given delegated powers in all areas of society’s functioning” (Dzafarova, 2018).

According to the ultra-wide concept, the subjects of Public Administration include not only state authorities; authorities of the ARC; local self-government bodies; certifying officers and officials; other subjects in the exercise of the power management on the basis of legislation, in particular for exercising of delegated powers, but also the Verkhovna Rada of Ukraine; the Accounts Chamber of Ukraine; the Commissioner of the Verkhovna Rada of Ukraine for Human Rights; the president of Ukraine and the Office of the president of Ukraine; the National Security and Defense Council of Ukraine; the representative of the president of Ukraine in the ARC; prosecutor’s offices; the Constitutional Court of Ukraine and courts of general jurisdiction; the National School of judges the high Qualification Commission of judges of Ukraine; bodies of judicial self-government; the state judicial administration of Ukraine; the High Council of justice; bodies of state power that are not part of the system of executive authorities (national commissions for the regulation of natural monopolies and the security service of Ukraine); subjects of public authority with a special status (for example, the National Bank of Ukraine); diplomatic missions and consular offices of Ukraine, Permanent Missions of Ukraine to international organizations; local institutions of self-government; legal entities of Public Law that were not granted the status of a public authority, as well as legal entities of private law; individuals; legal entities and collective entities that do not have the status of a legal entity other subjects of Public Authority-consulates, diplomatic missions, missions.

However, such an ultra-wide understanding of the subjects of Public Administration does not reflect the duties that these persons should perform in the sphere of using state and municipal property lands. In this case, it is unclear how Public Administration is separated from state policy in the realm of land relations.

The narrow concept reflects the concept of a state authority enshrined in the legislation. However, this position is also controversial, since it identifies state administration and public administration.

The application of a wide concept of the structure of subjects of Public Administration in the sector of use of state and municipal property lands corresponds to Articles 4, 5 of the Code of Administrative Procedure, since the actions and omissions of not only state authorities, local self-government, but also certifying officers or officials, other subjects are subject to appeal when they perform public-power management functions, delegated powers, administrative services – that is, it is logical that they are subjects of Public Administration. In line with Article 1174 of the Civil Code of Ukraine, the damage caused by physical or legal entity illegal decisions, actions or omissions of certifying officers or officials of the state authority, the authority of the ARC or the local self-government body are compensated by the state, the ARC or the local institutions of self-government, regardless of the fault of this person (Verkhovna Rada of Ukraine, 2003 a).

RESULTS AND DISCUSSION

One of the tasks of proper public administration is to ensure the possibility of appealing against illegal actions, inaction of subjects of such administration in using communal and state-owned land, and compensation for losses caused. The mechanism operates only in the case of a unified approach to the circle of subjects of Public Administration, both in land, administrative, civil legislation, and in procedural legislation. Therefore, it is logical to include in the framework of subjects of Public Administration not only state authorities, but also certifying officers, and officials.

The need to level corruption risks in public administration in the exploitation of state and municipal property lands also requires the inclusion of certifying officers and officials in the scope of such entities.

For instance, the Land Code of Ukraine, the laws of Ukraine “On land management”, “On state control over the use and protection of land”, “On amendments to certain legislative acts of Ukraine regarding land use planning” provides for a free procedure for changing the purpose of land plots. The gratuitous nature of such a procedure, failure to take into account a significant increase in the value of a land plot caused by the change in the intended aim, together with possible dishonesty of local government certifying officers, create prerequisites for the introduction of corruption practices. The motivation for such decisions is not the need for the development of territorial communities, but the illegal benefit of certifying officers of local self-government bodies (for example, heads of departments of State architectural and construction control of local institutions of self-government).

Significant corruption risks are also associated by abuse of the rights of permanent use of land plots of state and municipal ownership. In line with the State Service of Ukraine for Geodesy, Land Management and Cadastre, more than 757 thousand hectares of agricultural land are on the right of permanent use by enterprises, institutions and organizations of state and municipal ownership (National Agency on Corruption prevention, 2021). In order to obtain illegal benefits, certifying officers of state and municipal enterprises circumvent legislative restrictions on the disposal of land plots of state and municipal ownership by concluding agreements on joint activities for processing a land plot with a certain business entity, for construction on a land plot.

It should also be pointed out that there are no legally defined criteria for distinguishing the concepts of certifying officers and officials in the field of land use. In general, certifying officers and officials are referred to in Article 1174 of the Civil Code of Ukraine, Article 4 of the Code of Administrative Procedure of Ukraine. However, it is unclear how these concepts relate to each other. A comprehensive analysis of the provisions of the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine, and the law of Ukraine "On civil service" also does not provide an understanding of the content of the terms "certifying officer" and "official".

In the Criminal Code of Ukraine, the term "official" is used, in the Criminal Procedure Code both "certifying officer" and "official" are mentioned, in the law of Ukraine "On civil service" - only "certifying officer" is applied, and in the law of Ukraine "On prevention of corruption" both "certifying officer" and "official" are used. Meanwhile, the Tax Code of Ukraine identifies the terms "certifying officer" and "official".

The analysis of these normative legal acts indicates the following normative features of a "certifying officer". This official is the head of the civil service in a state body; this person works in local institutions of self-government and possesses the respective official powers to execute organizational, administrative, and advisory functions and receives wages from the local budget.

Investigators enjoy the status of an "official" (articles 146, 148, 149, 191, 206 of the Criminal Procedure Code of Ukraine).

Analysis of the provisions of the Criminal Code of Ukraine allows us to conclude that the content of "official" in comparison with "certifying officer" is broader. In particular, an official is a representative of the government or local institutions of self-government, who permanently or temporarily holds positions in state authorities, local self-government bodies, enterprises, institutions or organizations related to the performance of organizational and administrative or administrative-economic activities, or performs such duties under special powers that a person is endowed with an authorized state authority, a local self-government body, a central public administration body with a special status, an authorized body or an authorized official of an enterprise, institution, organization, and the court or law (Verkhovna Rada of Ukraine, 2003b). Additionally, officials of foreign states (persons holding positions in the legislative, executive or judicial body of a foreign state, involving jurors and other persons carrying out state functions for a foreign state, namely, for a state body or state enterprise), foreign arbitrators, persons authorized to resolve civil, trade or labor disputes in foreign states in an alternative judicial manner, officials of international organizations (employees of global organizations or other persons authorized by such an organization to act on its behalf), as well as members of international parliamentary assemblies, of which Ukraine is a member, and judges and officials of international courts. A person is recognized as an official even when he or she performs organizational, administrative or economic duties temporarily or under special powers, provided that they are assigned by a competent body or a competent official.

Based on the understanding of organizational, administrative and economic responsibilities, "officials" are heads of ministries, services, inspections, central executive authorities with special status, business entities of all forms of ownership, institutions and organizations, their deputies, heads of structural divisions (branches, departments, sites, etc.), their deputies, persons who manage work areas (masters, foremen, etc.).

However, it should be noted that the understanding of an “official” in criminal legal relations cannot be automatically transferred to public administration relations.

In addition, the presence of public organizations, self-regulatory organizations with delegated powers in the use of state and municipal property lands indicates the expediency of an expanded interpretation of the “official”.

In view of the explanations of the Ministry of Justice of Ukraine No. 610-0-2-13/7.2 dated October 18, 2013, when determining the content of the concepts of “certifying officer” and “official”, the provisions of the relevant special legislation should be taken into account.

The analysis of scientific Ukrainian literature indicates a doctrinal distinction between the concepts of “certifying officer” and “official”, based on a functional approach. According to this approach, these persons differ in the objects and scope of power. Certifying officers exercise internal management in relation to subordinates, and service personnel perform external management functions. At the same time, a number of scientists suggest either excluding one of the terms from the legislation, or normatively differentiating such concepts not according to industry, but according to a universal principle that is common for all branches of law.

Whereas both the Civil Code of Ukraine and the Code of Administrative Procedure of Ukraine use the notions “certifying officer” and “official” and judicial practice has confirmed the effectiveness of such a regulatory structure, it is advisable to specify the relationship of these concepts with each other when regulating relations of land use.

According to the aforementioned approach, a certifying (state) officer is endowed with the so-called linear nature of power, which is manifested in the availability of the ability to perform managerial duties in relation to subordinate persons (a key feature). As for officials (state), they are endowed with the functional nature of power, the essence of which is manifested in the applicability of powers to exercise administrative influence on other subjects within the limits of their official powers.

However, this approach does not fully comply with modern legislation, because in criminal law, officials can also have linear powers. Also, certifying officers and officials of private business entities with delegated public authority remain out of sight.

The need to separate “certifying officers” and “officials” in the topic under study is really due to the different nature of the activities performed. However, such functions need to be specified. An official has certain powers specified in the legislation; he has the right to give mandatory instructions and apply administrative coercive measures (Skubak, 2014). That is, the concept of an official is wider in comparison with a certifying officer. An official is a person of the state authority, local institutions of self-government, enterprise, authority, organization of all forms of ownership with delegated powers. An official, unlike a certifying officer, is empowered to exercise discretionary powers.

The proposed correlation between the concepts of “certifying officer” and “official” will level out conflicts of interest in public administration in the use of state and municipal property lands. When drawing up land management documentation by land management engineers, a conflict of interest may arise. The anti-corruption legislation does not apply to certified land management engineers. Such persons carry out independent professional activities as part of legal entities and/or as individual entrepreneurs. Thus, applying the status of an official and anti-corruption legislation to a land management engineer will ensure its objectivity and impartiality, and will level out corruption risks.

CONCLUSIONS

Based on the components and classifications of Public Administration in the sphere of land use of state and municipal property (implementation of the respective state policy, topographic, geodesic and cartographic activities, land management, exploitation and protection of state and municipal land ownership, supervision, management, and control of state and municipal property; provision of the administrative services; administration in a community, village, city, and councils; district, city, and regional state administrations; central executive authority on land resources in the field of land relations and the respective territorial authorities) and formulated in the scientific doctrine of the signs of subjects of public administration, it is advisable to specify the features of such subjects in the area of application of state and municipal property lands.

Thus, the specificity of public administration subjects in the domain of use of state and municipal property are the availability of public power (including delegated) powers, the performance of organizational and administrative, service, control and supervisory duties in management, exploitation and protection of land; inclusion in a coordinated and functionally arranged respective system; the implementation of public values in land legal relations, transparency; the enforcement of competence in state and municipal property lands only within the scope of powers and in the method specified by the Constitution and laws of Ukraine; responsibility for illegal actions and omissions in the sector of application of state and municipal land ownership.

It is advisable first of all to identify subjects of Public Administration with general competence, which comprise, notably, the Cabinet of Ministers of Ukraine, the Ministry of Economy of Ukraine, the Ministry of Development of Communities and Territories of Ukraine, because these subjects significantly influence the regulation and control in the sphere of land relations.

The task of the Cabinet of Ministers of Ukraine is providing state administration in the field of protection and rational exploitation of land, its subsurface, resources, water resources, flora and fauna, and other natural resources. The Cabinet of Ministers of Ukraine also carries out natural and agricultural zoning.

The Ministry of Economy of Ukraine and other central executive authorities, defines and implements the state policy in the scope of providing administrative services in general, including providing administrative services in the domain of land use. The Ministry of development of communities and territories of Ukraine is engaged in the improvement of settlements; determining the procedure for developing planning schemes for individual parts of the territory of Ukraine. That is, the Ministry, together with the State Service of Ukraine for Geodesy Cartography and Cadastre, provides the technical component of putting land plots into circulation. The digital component of providing administrative services is ensured by Ministry of digital transformation of Ukraine.

In addition, functions of the general control and supervision in the main areas of activity are currently carried out by the Antimonopoly committee of Ukraine, State inspection of architecture and urban planning, and State environmental Inspectorate of Ukraine. General security is provided by the National Police, the Security Service of Ukraine, and the state Bureau of Investigation of Ukraine. The National Agency for the Prevention of corruption and the National Anti-Corruption Bureau are engaged in anti-corruption activities in the use of state and municipal property lands.

Subjects of Public Administration of general competence in the field under study provide a comprehensive component of administration together with subjects of Public Administration of special competence, whose research is carried out in the following divisions of this work.

It should be noted that from a theoretical and practical point of view, it is advisable to classify such subjects of Public Administration in Ukraine according to their competence and the presence of discretionary powers in the use of state and municipal property lands.

Classification of subjects of Public Administration in the sphere of exploitation of state and municipal property lands by general or special competence allows to distinguish their powers, exclude their duplication and determine which areas of public administration are not distributed among such subjects.

A clear definition of the range of subjects of Public Administration with discretionary powers, indicating the specific grounds for the emergence of discretionary powers in land relations, is required.

The allocation of subjects of public administration with discretionary powers is aimed at unifying judicial practice on the choice of appropriate methods of protection in administrative proceedings. After all, the presence of the aforementioned powers among the subjects of public administration excludes the possibility of choosing such a method of protection as an obligation to perform certain actions when resolving disputed relations in court. The responsibility to transfer a land plot of communal or state property for permanent use, a local self-government body to conclude a lease agreement, is sometimes inappropriate means of protection, since a direct instruction of the court to perform such actions is an interference in the activities of an independent local institutions of self-government. Discretion allows the subject of power to make a particular decision based on their inner conviction, or on the basis of voting.

However, the national Ukrainian judicial practice in these aspects differs, which also creates obstacles to the proper protection of the rights and interests of participants in land relations.

This study makes it possible to assert that the complex features of subjects of Public Administration of state and municipal property are the presence of public authority (including delegated) powers, the fulfilment of organizational and administrative, service, control and supervisory activities in management, use and protection of land; a coordinated and functionally organized system of state and municipal property lands; the implementation of public values in land legal relations, transparency; the exercise of competence in the sphere of utilization of state and municipal property lands within the scope of powers and in the manner provided for the Constitution and laws of Ukraine; liability for illegal actions, omissions in the area of exploitation of state and municipal property lands.

Thus, it is possible to carry out a specific conclusion that in view of the practicality of the issue, the general characteristics of subjects of public administration in the field of land use of state and municipal property, and considering the correlation of the concepts of “certifying officer” and “official” among persons authorized for public administration of land legal relations in Ukraine, it is appropriate to apply in the current Ukrainian regulatory legal acts a single balanced concept of “official” to facilitate the perception of participants in land legal relations of the respective subject.

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