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LAND LEGAL RELATIONS UNDER THE LEGISLATION OF POLAND AND UKRAINE: A COMPARATIVE LEGAL ANALYSIS

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Abstract. The article carries out a professional comparative legal analysis of the legislation of Ukraine and Poland in the field of land law regulation. Attention was primarily focused on the directions of development of land relations for completeness and a comprehensive presentation of the research, the concepts and terms most open to the understanding of the society were considered, in particular – «land legal relations», «land plot», «real estate», «land ownership», «land real estate», «real estate» and the general features and differences of these concepts in Ukrainian and Polish legislation are outlined. The article discloses the features of land management and cadastre in the system of land legal relations of both states, highlights the differences in the basic approaches of modern land management, in particular, the use of an innovative type of documentation for the Ukrainian legislator – a comprehensive spatial development plan. It has been studied that the cadastre system of Poland, unlike the cadastre system of Ukraine, is multifunctional and contains information about land plots and other real estate objects. It was found that land relations in Ukraine and Poland are regulated by a number of normative legal acts, while the essence of normative legal regulation is the division of land legal relations into relations of a public and private nature, which is a kind of standard of land relations regarding a land plot as a part of the earth surface and the corresponding natural resource.

It was also found that at the current stage of the development of land legal relations, the formation of the latest approaches in understanding the infrastructure of geospatial data is decisive for both states, which is a potentially new step in the development of land relations in a systemic relationship with other types of natural resources (water, forest, plant life, etc.).

Special attention is paid to the results of the study, based on the own analysis, a number of inherent and distinctive features of the legislation of Poland and Ukraine in the field of land law regulation have been singled out. It is noted that turning to the experience of other countries is a potentially important and promising direction in the development of modern Ukrainian legislation. Attention is focused on the importance of studying the experience of other countries, in particular Poland, which will contribute to the transformation of Ukrainian land legislation in the formation of norms that will contribute to the development of Ukrainian society.

Key words: land plot, land ownership, real estate, cadastre, land management, land protection.

Statement of the problem. The European vector in the development of Ukrainian society, despite the complexity of the situation in Ukraine, which is related to the state of war, cannot leave aside the scientific community in the formation of further steps in the development of Ukrainian land legislation. The most successful way to develop future legislative initiatives is to conduct comparative legal studies. This will make it possible to understand the legal regulation of land legal relations in different projections of individual states, therefore, in our opinion, the most successful in this is conducting a comprehensive comparative legal study of the legislation of Ukraine and Poland – countries that are the most comparable in their history and achievements.

Analysis of recent researches and publications. The problems of the development of land legal relations in Ukraine and Poland were considered in their works by Kempa O. (Kempa, 2017; 50-57), Kulinich P. (Kulinich, 2018; 62-67), Krasnova Yu.A. (Krasnova, 2021; 28-32), Bazunko O.A. (Bazunko, 2021; 28-32) and a number of other authors. At the same time, a complex comparative legal study of land legal relations according to the modern legislator of Ukraine and Poland was not the subject of a separate study.

The purpose of the article is to research the legislative concepts of the regulation of land legal relations according to the modern legislator of Poland and Ukraine and outline the trends of their development.

The main material. Legal regulation of certain spheres of social life in each country has its own characteristics. If we approach the understanding of the formation of land legal relations in Ukraine and Poland, it is first necessary to distinguish the components of this concept in the modern legislation of both states.

First of all, land legal relations according to the provisions of the Civil Code of Ukraine are relations of a private nature (Articles 373-374 Law No. 435-IV), which are built on "personal non-property and property relations, based on legal equality, free expression of will, property independence of their participants – individuals, legal entities and other participants of public law" (Articles 1-2 Law No. 435-IV). According to Article 2 of the Land Code of Ukraine «land relations are social relations regarding the ownership, use and disposal of land... subjects of land relations are citizens, legal entities, local self-government bodies and state authorities...objects of land relations are land within the territory of Ukraine, land plots and rights to them, including land shares (shares)» (Law No. 2768-III). In chapters 2 and 3 of the Land Code of Ukraine stipulates that the sphere of land relations is relations regarding the disposal of land, coordination of land management, resolution of land disputes, development of programs regarding the use, protection of land, etc.,

while the circle of authorized bodies of state power or local self-government is already detailed to the point of competence (Law No. 2768-III).

According to the provisions of the Civil Code of Poland dated April 23, 1964 relations regarding «immovable property – part of a land plot constituting a separate object of ownership (land), as well as buildings permanently connected to the land; agricultural real estate (agricultural land) that is used or can be used for the implementation of production activities in agriculture in the field of plant and animal husbandry, including horticulture, gardening and fishing» (Articles 46-46¹ Civil Code of April 23, 1964) – these are civil-law relations between individuals and legal entities. On the other hand, according to the Law of August 21, 1997 on real estate management, «land real estate» (Law of 21 August 1997) means «land with component parts, with the exception of buildings and premises, if they are separate items of property» (Part 1 Article 4 Law of 21 August 1997), and relations regarding «the allocation of land for the construction of public roads, the allocation of land for railway tracks and their construction and maintenance, the allocation of territory for airports and a number of other needs of society are relations of a public nature» (Part 4 Article 6 Law of 21 August 1997).

So, the essence of the legal regulation of land relations in Ukraine and Poland is its division into relations of a public and private nature, which is a kind of standard of land relations regarding a land plot as a part of the earth's surface and a corresponding natural resource.

Despite the fact that the legislative mechanism for the realization of the right to land plots and land management is defined in the legislation of the two states, however, there are different approaches to their implementation.

Fundamental in the development of land relations in Ukraine is «land management as a set of socio-economic and ecological measures aimed at the regulation of land relations and the rational organization of the territories of administrative-territorial units, economic entities, which are carried out under the influence of social-production relations and the development of productive forces» (Article 1 of the Law No.858-IV), «land protection, creation of a favorable ecological environment and improvement of natural landscapes» (Article 182 of the Law No. 2768-III). Land management documentation, which is developed in accordance with the Law of Ukraine «On Land Management» is the basis for establishing to land plots their «purpose, restrictions on use and restrictions (encumbrances), rights of other persons (land servitudes), preservation and improvement of soil fertility» (Article 1 of the Law No. 858-IV). The approach to understanding the purpose of land planning is revealed with the help of specific types of land planning documentation, namely «schemes, projects, working projects or technical documentation» (Law No.858-IV), for example, land planning projects on the arrangement of the territory for urban planning needs and on the arrangement of the territory of settlements, technical documentation on land management regarding the establishment of the boundaries of regime-forming objects of cultural heritage and regarding the reservation of territories and objects valuable for inheritance, and a number of others. Moreover, land management documentation is the basis for filling out the land cadastre in Ukraine with information.

It should be noted that cadastre management in Ukraine and Poland is not new. O. Kempa notes, «the cadastre in Poland ... its origins date back to the end of the 18th and the beginning of the 19th century ... the cadastral system consists of two components: drawing up maps and related documentation ... nowadays the cadastre in Poland is understood as an information system that provides collection, updating and joint use for the entire country of information about land plots, buildings and premises, their owners and other real estate subjects...» (Kempa, 2017; 51-52). Instead, the state land cadastre functions in Ukraine – «the only state geo-information system of information about lands located within the state border of Ukraine, their purpose, restrictions on their use, as well as data on the quantitative and qualitative characteristics of lands, their assessment, on the distribution of lands between owners and users, about reclamation networks and constituent parts of reclamation networks» (Law No. 3613-VI).

It should be noted that the transition to more complex digital technologies led to the transformation of land legal relations and changes in standards in the field of land management and cadastre. A number of innovative legislative acts adopted by the Ukrainian legislator, in particular the laws of Ukraine «On the State Land Cadastre» (Law No. 3613-VI)] and «On the National Infrastructure of Geospatial Data» (Law No. 554-IX) significantly updated the basic provisions on the management of the state land cadastre and deepened the understanding of the essence of the proposed model of the national infrastructure of geospatial data.

Thus, with the adoption in 2013 of the Law of Ukraine «On the State Land Cadastre» (Law No. 3613-VI)] land management documentation became the basis for the formation of the State Land Cadastre as «the only state geo-information system of information about lands located within the state border of Ukraine, their intended purpose, restrictions in their use, as well as data on the quantitative and qualitative characteristics of lands, their evaluation, on the distribution of lands between owners and users, on land reclamation networks and components of land reclamation networks» (Law No. 3613-VI).

Instead, the Law of Ukraine «On the National Infrastructure of Geospatial Data», approved in 2020, became the first step in the creation of a multifunctional system of geospatial data, the basic data of which are defined information about administrative and territorial units, including their boundaries, land plots, a digital model of the terrain and a number of others (Law No. 554-IX).

Thus, the transition to the formation of the latest approaches in understanding the infrastructure of geospatial data is potentially a new step in the development of land relations, but already in a systemic relationship with other types of natural resources (water, forest, plant life, etc.), and is the basis for finding opportunities for the implementation of the latest digital technologies for further development and integration into the global and European infrastructure of geospatial data.

Also positive are the changes introduced in the last decade to the land legislation of Ukraine regarding the provision of land management documentation and data of the State Land Cadastre of a public nature, however, currently, in connection with the war events, access to open data is disabled, the systems work in a limited mode.

Note that in 2020, a separate type of documentation was introduced into the Ukrainian legislative sphere, namely «land management documentation, which is also urban planning documentation – comprehensive plans for the spatial development of territories of territorial communities, general plans of settlements, detailed plans of territories» (Law No. 858-IV). The adopted changes were the first step in the synergy of the systems of Ukrainian land and urban planning law, but the legal reality was not ready for them. First of all, this is due to the lack of sufficient and complete mechanisms for the implementation of the provisions of legislative amendments, as required by the constitutional principle of the rule of law, specified in Article 19 of the Constitution of Ukraine, which stipulates that «state authorities and local self-government bodies, their officials shall be required to act only on the basis, within the limits of authority and in the manner provided for by the Constitution and laws of Ukraine» (Constitution of Ukraine dated June 28, 1996).

Moreover, granting a dual legal status to other types of urban planning documentation – general plans of settlements, detailed plans of territories cannot be considered a correct decision of the legislator either, as it introduces contradictions between the application of the norms of land and urban planning legislation in practice.

Thus, as law enforcement practice convincingly shows, legislative changes are an insufficient step in legal manifestation, the adoption of a legislative norm is not equated with its successful implementation in practice in the absence of a clear mechanism for its implementation.

Let us emphasize that in the legal field, the latest type of documentation is proposed – a comprehensive plan for the spatial development of the territories of territorial communities, borrowed from the experience of European states, in particular Poland.

Thus, according to Polish legislation, the Law of March 27, 2003 on Planning and Spatial Development – hereinafter referred to as the Law (Law of March 27, 2003) – is decisive in the field of land management, according to which the concept, implementation mechanisms and functional purpose of voivodeship spatial development plans, research into the conditions and directions of spatial development in the commune and local spatial development plans were formed. According to the general principle, the spatial development plan is «documentation, according to which the direction of development of the spatial planning of the voivodship, commune is formed» (section 3.1 of the Law of March 27, 2003) (according to the administrative and territorial system of Ukraine – region, city, village, village, community), in particular, territories that require a change in the use of agricultural and forestry land for non-agricultural and non-forestry purposes, directions for the formation of agricultural and forestry production space, determine the purpose of the land plot and the placement of targeted investment, ways and conditions for the development of the land plot, etc. (Article 4.1 of the Law of March 27, 2003), «the conclusions of the local spatial development plan establish the method of exercising ownership rights to real estate» (Article 6.1 of Law of March 27, 2003). According to Polish legislation, the drawing up of a spatial development plan is preceded by the adoption of a decision to «begin studying the conditions and directions of spatial development – research» (Article 9.1 of the Law of March 27, 2003), which is not an act of local legislation, but its results are mandatory when drawing up spatial development plans. Instead, the approved spatial development plan was given the status of «act of local law» (Part 8 of Article 14¹ of the Law of March 27, 2003). Also, the Law introduced the need to conduct a landscape audit, which is not provided for in Ukrainian legislation, the functional purpose of which is to determine the «location of priority landscapes; location and boundaries of: a) cultural parks, b) national parks, nature reserves, landscape parks, protected landscape zones» etc. (Part 3 Article 38a of the Law of March 27, 2003). Moreover, the construction of a spatial development plan involves consistency with the zoning plans of the voivodeship (region in the sense of the Ukrainian administrative and territorial system), its adaptation to the «voivodeship development strategy after its renewal, to the extent that the strategy renewal concerns the spatial situation of the voivodships» (Article 39a of the Law of March 27, 2003) and with the results of research in accordance with the Law of December 6, 2006 on the principles of development policy, prepared for the needs of the development strategy of the voivodship (Law of December 6, 2006).

Thus, the direction of the changes introduced by the Ukrainian legislator concerning the comprehensive plan of spatial development singles out a whole series of issues related to its implementation, and is the basis for further legal developments regarding the modeling of Ukrainian land law and urban planning law with the aim of bringing it closer to the law of the European Union at the level of laws existing in society.

It is appropriate to note that the regulatory legal base in the field of land relations regulation in Ukraine and Poland is built on «a single approach arising from the natural properties of land, in the formation of the basis of land law regulation according to the category of land – the main purposes» (Tsvigun, 2022; p. 42), as indicated by the Land Code of Ukraine (Law No. 2768-III), the Law of July 20, 2017 – Water Law (Law of July 20, 2017 – Water law), the Law of September 28, 1991 on Forests (Law of September 28, 1991) and other legal acts.

Regarding forms of land use, according to the legislation of Ukraine, three types of ownership are distinguished – private, state and communal. Derived rights to land include the right of permanent use, lease, easement, superficies, emphyteusis, and trust ownership. A similar approach is inherent in Polish legislation, as indicated by the provisions of the Civil Code of April 23, 1964 (Civil Code of April 23, 1964).

The acquisition of private property rights at the expense of state or communally owned land by the Ukrainian legislator is allowed within the limits of the norms of free privatization by decisions of land managers for farming, for personal peasant farming, for gardening, for the construction and maintenance of a residential building, farm buildings and structures (homestead) in villages; for individual cottage construction; for the construction of individual garages (Article 121 of the Land Code of Ukraine) (Law No. 2768-III). It is also established and clear that the acquisition of rights to land plots through the purchase of state or communal land or the use of other civil legal acts (inheritance, donation, purchase and sale) in accordance with the provisions of the Civil (Law No. 435-IV) and Land Codes of Ukraine (Law No. 2768-III),

the Law of Ukraine «On state registration of property rights to immovable property and their encumbrances» (Law No. 1952-IV). Note that in Ukrainian legislation, despite the introduced principle of a single legal share of a land plot and immovable property located on it, there remains, as P. Kulnych notes, «the main shortcoming of the national land registration system is its disunity, which is manifested in the fact that the registration of property rights and other rights to land is carried out by making entries in various state registers: the State Register of Rights to Immovable Property and the State Land Cadastre» (Kulinich, 2018; 63). In support of the expressed caveat, we also note that after distinguishing the inexpediency of registration in the State Register of property rights to immovable property and their encumbrances «property rights and their encumbrances to minerals, plants, as well as to small architectural forms, temporary, non-capital structures located on a land plot, the transfer of which is possible without their depreciation and change of purpose, as well as separately to buildings that are a part of the main thing...» (Part 4 of Article 5 of the Law No. 1952-IV), the legislator ignored, in our opinion, taking into account the provisions of Art. 181 of the Civil Code of Ukraine, where «immovable things (immovable property, real estate) include land plots, as well as objects located on the land plot, the movement of which is impossible without their depreciation and changing their purpose» (Law No. 435-IV), the legal status of land an area burdened with trees and other plants from the moment of planting or crops (perennial and non-perennial), which creates a significant layer of soil spores in practice.

Analyzing in comparison the legal regulation of land relations under the legislation of Ukraine and Poland, it will be appropriate to cite the concept of a land plot. Thus, according to Articles 79, 79¹ of the Land Code of Ukraine (Law No. 2768-III) «a plot of land is a part of the earth's surface with established boundaries, a certain location, with defined rights in relation to it...the right of ownership of a plot of land extends within its boundaries to the surface (soil) layer, as well as on water bodies, forests and perennial plantations located on it...». Instead, according to Article 48 of the Civil Code of Poland (Civil Code of 23 April 1964) – «the plot of land includes, in particular, buildings and other permanent devices attached to the ground, as well as trees and other plants from the moment of planting or sowing» (Civil Code of April 23, 1964). According to Article 4 of the Law of 21 August 1997 on real estate management, «land ownership – should be understood as land with component parts, with the exception of buildings and premises, if they are separate objects of ownership; land plot – it should be understood as an indivisible, continuous part of the land plot, which constitutes part or all of the land property; building plot – should be understood as a built-up plot of land whose size, geometric features, access to a public road and equipment of technical infrastructure devices allow the correct and rational use of buildings and equipment located on this plot» (Law of 21 August 1997). At the same time, the «sale or purchase of real estate» under Polish law means «commitment of legal actions, on the basis of which the ownership of real estate is transferred or the right to perpetual use of a plot of land is transferred or provided for perpetual use» (Article 4 of the Law of 21 August 1997).

Also, in Polish legislation, in contrast to Ukrainian legislation, the term real estate management is widely used in relation to land plots, a clear mechanism for the division of real estate is defined, according to which the separation for agricultural and forestry needs of «a land plot with an area of less than 0.3000 ha is allowed under the condition that the plot of land will be allocated for the expansion of neighboring property or the boundaries between neighboring objects will be regulated» (Article 93 of the Law of 21 August 1997).

Conclusion. Summarizing the above, it is possible to single out a number of inherent and distinctive features of the legislation of Poland and Ukraine in the field of land law regulation.

First of all, these are the relations regarding the geospatial natural object with the specified data in the cadastre system, at the same time, the capacity of cadastres is different in its functionality, secondly, the legal regime of other natural resources (water, forest, subsoil) is separated from land relations, unlike ground cover, thirdly, buildings and structures, trees and other plants are considered to belong to the land plot, however, there are differences in approaches to understanding the structure of the land plot encumbered with property (building, crop, etc.), fourthly, these are relations regulated by the norms of private and public law, the fifth is the relationship of the material world in relation to which rights and obligations arise.

Taking into account the above, it can be confidently stated that turning to the experience of other countries is a potentially important and promising direction in the development of modern legislation, will contribute to the transformation of Ukrainian land legislation and the formation of norms that will positively affect the development of Ukrainian society, will take into account a comprehensive approach in the spheres of their implementation and will be effective in social manifestation.

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PUBLIC CHALLENGES OF DIGITALISATION

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Abstract. The «information age» has changed profoundly the way we generate, store and exchange information, the way of interaction within and between individuals, institutions, societies and entities. The research aims to define frameworks of collection, usage, storage and distribution of information for better understanding legal and ethical responsibilities of states and citizens concerning application information technologies at social and political relationships. The research methodology comprises comparative case study of technology institutionalisation and its consequences for both developed and developing societies, namely, how the different societies may react to the impact of technology, what could the patterns of further relations between states, citizens and capitalist corporations be, defining prospects of the technocratic techno-science policies, multi-level governance and digital citizenship.

Key words: state security, information security policy, e-governance, smart citizenship, multi-level governance, populism.

Introduction. In the modern democracy, as the sovereign – possessor of the whole scope of power – is regarded to be a community of individuals possessing proper scope of legal capacity, theoretically granted with the equal shares of power embodied in the «voting right». In political sense, such communities compose entities, which are called «states». The equality of shareholders in such entities is ensured by the principle of «one vote per person», and that is one of fundamental and inalienable civil rights. Governance in the democratic societies is envisaged as a mechanism for maintaining the social structure and ensuring fundamental civil rights and interests of citizens. It's natural that within