

THE RIGHT OF PERMANENT USE OF A LAND PLOT OF CITIZENS AND THE LEGAL MODEL OF ITS PROTECTION IN COURT

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Abstract

The study is caused by the spread of land conflicts in society between territorial communities (local self-government bodies) as landowners and citizens as users of such lands on the right of permanent use, as well as ambiguous perception, interpretation and application of land legislation in the settlement of such conflicts. The purpose of the article is to formulate a legal model for resolving a dispute over the right of a land user to appeal to a court against a decision of a local self-government body to withdraw a land plot owned by him (land user) on the right of permanent use. The methodological basis of the article is a positivist approach, based on a critical analysis of the provisions of regulations and case law, as well as method of formal and legal analysis, the hermeneutic method, methods of comparison and contrast. The study distinguishes between the concept of termination of ownership of a land plot and the concept of termination of use (including permanent one) a land plot. It is proved that the legal basis for the termination of these types of rights is different, which significantly affects the further determination of the jurisdiction of the dispute. A model of resolved disputes over claims of power entities (landowners) regarding the withdrawal of a land plot, granted to a person for permanent use from state and communal lands, in the absence of a person's consent to such withdrawal, etc., is proposed.

Keywords: *agricultural land, administrative courts, administrative and economic jurisdiction, conflict in land relations, land plot, land disputes, right of permanent use by land.*

JEL Codes: *K11, K23, K41, Q15, R52.*

Introduction

Another stage of land reform in Ukraine which began in 2021 in connection with the opening of the land market (adoption of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land” No. 552-IX (VRU, 2020) which lifted the moratorium

on the alienation of agricultural land) led to the activation of owners of public land (including territorial communities, the state) in reviewing the grounds for providing citizens with land for permanent use, as well as rethinking the expediency and effectiveness of public land being used permanently by certain citizens.

Under the conditions of intensification of competition for the right to use the land of territorial communities, as well as for the purpose of implementation of the state and local programs of expansion of a network of highways, development of a household infrastructure for the population, the situation at which, on the one hand, local self-government bodies (city, village councils) on their own initiative make decisions on termination of the right of permanent use of land plots by citizens (including business entities) that have been in the use of such citizens for a long time on the basis of relevant state acts with simultaneous redemption of immovable property objects (if necessary and available) located on such plots became typical for almost all regions of Ukraine. On the other hand, citizens who are users of such land plots, disagreeing with the decisions of local self-government bodies to deprive them (citizens) of the legal right to permanent use of land plots, try to defend their expected and desired rights, interests in the relevant land. As a result of the confrontation between the parties, a conflict arises over the land, on the one hand, between the owner (territorial community) who wants to get the land back for further use for their own (public) purposes, and on the other hand, between the land user who tries to keep such land in use on the right of permanent use, which he was guided by planning his business activities for a long period, providing a private individual or collective interest.

Trying to defend their interest, each of the parties to the dispute legally appeals to a court. However, as the practice of resolving such disputes shows, there is an ambiguous position of courts in Ukraine, in particular in determining the jurisdiction of the dispute (on subject-matter and institutional grounds), as well as in resolving the issue of rightfulness of such legal action of citizens in order to protect the mentioned right. At the same time, the ambiguity of judicial practice is due to different approaches in resolving these disputes both within the courts of the same subject-matter jurisdiction and between courts of different subject-matter jurisdictions (commercial and administrative courts).

Although the scientific community has been quite active in land issues, publishing more and more relevant works, dynamic land legislation and jurisprudence require a rapid response to societal changes, and law enforcement agencies expect the reasoned practical recommendations and proposals for resolution of such land conflicts to be formed, which actually justifies the relevance of this study.

The purpose and objectives of the study.

The *purpose* of the article is to formulate a legal position on resolving a dispute over the right of a land user to appeal to a court against a decision of a local self-government body to withdraw a land plot owned by him (land user) on the right of permanent use.

Based on the purpose of the study, the main *tasks* that need to be addressed in this article are to define: 1) the legal relationship between the concepts of “termination of the right to land ownership” and “termination of the right to land use”; 2) jurisdiction of disputes over claims of power entities (landowners) regarding the withdrawal of land provided to a person for permanent use from state and communal lands, in the absence of the person's consent to such withdrawal; 3) whether the rules of alienation provided by the Law No. 1559 are applied to such objects as land or other objects of immovable property, which are in the person's right of use; 4) whether the decision of the local self-government body on withdrawal of a land plot on the ground of social needs is subject to appeal by the land user in court.

The *object* of the study is the cases of conflicts over the implementation and protection of the right to permanent use of a land plot; the *subject* of study is the norms of legal acts and judicial practice in resolving land disputes.

Research methods and materials

The methodological basis of the article is a positivist approach, based on a critical analysis of the provisions of regulations and case law. Formal and legal analysis helped to clarify the normative definition of concepts

and categories in the field of land relations; hermeneutic method allowed to interpret the provisions of land and procedural legislation; methods of comparison and contrast allowed to assess the consistency of the provisions of bylaws with the statutory provisions.

The normative and legal basis of the research tools consists of the sources of national legislation and acts of law enforcement.

The basic provisions of the legislative acts of four conditionally divided groups became the subject of the study:

1) *the provisions of the Land Code of Ukraine* (hereinafter – LCU): *part 2 of Article 95* (Violated rights of land users are subject to restoration in the manner prescribed by law); *Art. 140*, in which among the *grounds for termination of ownership* of a land plot there is the following one “(e) alienation of a land plot on the grounds of social necessity and for social needs”; *Art. 141*, which stipulates that the grounds for *termination of the right to use* a land plot are: “b) withdrawal of a land plot in the cases provided for by this Code”; *Art. 143*, which stipulates that “Compulsory termination of rights to a land plot is carried out *in court* in the case of:… d) compulsory alienation of a land plot on the grounds of social necessity”; *Art. 147*, which stipulates that “the grounds and procedure for compulsory alienation of land plots on the grounds of social necessity are determined by law”; *Art. 149*, which regulates the procedure for withdrawal of land plots from permanent use;

2) *the provisions of the Law of Ukraine “On Alienation of Land Plots and Other Objects of Immovable Property Located On Them in Private Ownership for the Social Needs and on the Grounds of Social Necessity”* of November 17, 2009, No. 1559-VI (hereinafter – the Law No. 1559): *preamble*, which emphasizes that this Law defines the legal, organizational and financial principles of regulation of social relations arising in the process of alienation of land, other objects of immovable property located on them, *which are owned* by natural persons or legal entities,

for the social needs and on the grounds of social necessity; *par. 4, 5 of part 1 of Art. 1*: “Alienation of land plots, other objects of immovable property located on them for the social needs and on the grounds of social necessity - the transfer of ownership of *land plots, other objects of immovable property*, which are located on them and owned by individuals or legal entities, for a fee in state or communal ownership through their *redemption or compulsory alienation* for the needs of the state, territorial community, society as a whole; compulsory alienation of land plots, other objects of immovable property located on them, on the grounds of social necessity, namely *transfer of ownership* of land plots, other objects of immovable property located on them, which are owned by individuals or legal entities, to the state or territorial community on the grounds of social necessity *by court decision*; *Art. 2*, which stipulates that this Law applies to public relations related to the purchase of land plots, other objects of immovable property located on them, *which are owned* by individuals or legal entities, for the social needs or associated with the compulsory alienation of these objects of immovable property on the grounds of social necessity, if such needs cannot be met through the use of state or communal lands; *part 2 of Art. 2*, which provides that this Law does not apply to public relations arising in particular in the case of the withdrawal (redemption) of land plots, other objects of immovable property located on them, which are *in the state and / or communal property*; *paragraphs 1 - 3 of part 3 of Art. 12*, which provide that *if* within one year from the date of the decision to purchase a land plot, other objects of immovable property located on it for social needs (except when compulsory alienation of these objects on the grounds of social necessity is possible), *sale and purchase agreement* (other transaction involving the transfer of ownership) with the owner of a land plot, other objects of immovable property located on it, *is not concluded, such a decision shall cease to be valid*. The decision to

purchase a land plot, other objects of immovable property located on it for social needs on grounds that allow the compulsory alienation of these objects on grounds of social need *shall cease to be valid if* within one year from the date of the decision the relevant *executive body or local self-government body has not applied to the court* for compulsory alienation of these objects or if the court decision to refuse to satisfy this claim has entered into force. The decision to purchase a land plot, other objects of immovable property located on it for construction, overhaul, reconstruction and maintenance of roads, bridges, overpasses and objects necessary for their operation *shall cease to be valid if* within three years from the date of the decision, the relevant executive body or local self-government body *has not applied to the court* for compulsory alienation of these objects or if the court decision to refuse to satisfy this claim has entered into force; *part one of Art. 13*, which enshrines the rule that the *owner* of a land plot, other objects of immovable property located on it, in respect of which the executive body or local self-government body has decided to purchase for social needs, *before the transfer of ownership* of such land plot, other objects of immovable property located on it to the state or territorial community *has the right to own, use and dispose these objects at his own discretion*, receive income and incur expenses related to the use of a land plot according to the intended purpose; *part 1 of Art. 16*, which stipulates that the executive body or local self-government body that made the decision to alienate a land plot, in case of failure to reach an agreement with the owner of the land plot, other objects of immovable property located on it concerning their redemption for social needs in accordance with section II of this Law *appeals to the administrative court* with a claim for compulsory alienation of these objects.

3) *The Code of Administrative Proceeding of Ukraine* (hereinafter - CAP). The fundamental provisions of this act in the study are: par. 8 of part 1 of Art. 19, which stipulates that “The jurisdiction of administrative courts extends to cases in public-law disputes, in particular: “8) disputes concerning *the*

withdrawal or compulsory alienation of property for social needs or on the grounds of social necessity”; Art. 267, which defines “Peculiarities of proceedings in cases of administrative claims for compulsory alienation of a land plot, other objects of immovable property located on it on grounds of social need are determined by the CAP.”

Analysis of Articles 19 and 267 of the CAP gives grounds to claim that the Code establishes *two separate procedures for administrative proceedings on this issue*: 1) *special procedure* – in disputes over the compulsory alienation of a land plot, other objects of immovable property located on it on the grounds of social necessity (is carried out in the administrative courts of appeal as courts of first instance, taking into account the provisions of Art. 267 of the CAP); 2) *general procedure* – in disputes concerning *the withdrawal of property (a land plot)* for social needs or on the grounds of social necessity (is carried out in the general order determined by the CAP, in accordance with the rules of simplified proceedings in particular).

4) *Commercial and Proceeding Code of Ukraine*. The subject of study and the normative basis for the study of this act was Art. 20 “Cases relating to the jurisdiction of commercial courts.” Par. 6 of part 1 of this Article stipulates that commercial courts consider cases in disputes arising in connection with the conduct of commercial activity (except for cases provided for in part 2 of this Article), and other cases specified by law, in particular: “6) cases in disputes concerning the right of ownership or other proprietary interests in property (movable and immovable, including land), registration or accounting of rights to property which (rights to which) are the subject of dispute, invalidation of acts violating such rights, *except* disputes to which a natural person who is not an entrepreneur is a party, and *disputes concerning the withdrawal of property for social needs or on the grounds of social necessity*, as well as cases in disputes over property subject to securing the obligation to which legal entities are parties and (or) natural persons – entrepreneurs.

The group of law enforcement acts to be identified and studied consisted of decisions of

local courts and the Supreme Court in the field of land relations.

Research results

Grammatical, systematic and logical ways of interpretation give grounds to understand the provisions of Law No. 1559 as the ones extending their effect to social relations that arise in the process with a characteristic inseparable connection of the following conditions: firstly, alienation (as a mode of action); secondly, land plots, other objects of immovable property located on them (subject); thirdly, which are in ownership (type of legal status of real right); fourthly, natural or legal persons (entities); fifthly, for social needs or on the grounds of social necessity (circumstances) (VRU, 2009).

The conclusions that this law applies to both land plots and other objects of immovable property located on them, as well as the fact that it applies to such objects that are exclusively in ownership are important and key for this reasoning.

This means that objects such as land or other objects of immovable property that are in the right of use (in particular, lease, permanent use) are not subject to the rules of alienation provided by the Law No. 1559, in particular on the termination of the right of use by withdrawal of a land plot on the grounds of social and other needs and, accordingly, such disputes are not subject to the procedure of judicial proceedings, defined by Art. 267 of the CAP.

Legal analysis and systematic interpretation of the provisions of the LCU allowed to obtain the following results.

Termination of land plot ownership on the grounds of social necessity and for social needs is carried out by alienation, which is carried out in accordance with the requirements of the Law No. 1559 (Articles 140, 147) (VRU, 2009).

Pursuant to the provisions of the legislation, the termination of the right to use a land plot is carried out on the grounds provided

for in Art. 141 of the Land Code of Ukraine, in particular in connection with the withdrawal of a land plot in cases provided by this Code (VRU, 2001). It should be noted that although Art. 142 of the LCU determines the procedure for voluntary waiver of the right to permanent use of a land plot (out-of-court procedure), and Art. 143 determines grounds for compulsory termination of rights to a land plot (court procedure), the analysis of Art. 143 of this Code indicates that there is no such legal basis as “compulsory withdrawal of a land plot”, which is often used by entities in law enforcement.

Instead, the mentioned above and the content of Art. 149 of the LCU allows to state that land plots provided for permanent use from state and communal lands can be withdrawn for social and other needs both voluntarily (with the written consent of land users, without going to court) and in court (in this case, the law does not define such procedure as a compulsory one).

It should be noted that on the one hand, the law does not determine the procedure for withdrawal of land from citizens on the right of permanent use, including the cases of lack of consent of land users to such withdrawal, on the other hand, the similarity of these relations with relations concerning alienation of land plots allowed power entities to form a well-established practice of resolving this issue.

Thus, the procedure of withdrawal of a land plot from permanent use contains a number of independent stages, namely:

- 1) decision making on withdrawal of a land plot by the local self-government body (decision on the intention to withdraw a land plot, which is considered by the act of the beginning of the withdraw procedure);

- 2) informing and obtaining the consent of the subject for permanent land use;

- 3) taking measures to compensate for losses to a land user;

- 4) appealing of the body that made the decision to withdraw a land plot to the court to resolve the issue of its withdrawal and termination of the right of permanent land use

(the stage takes place in the absence of consent of a land user);

5) making a decision on termination of the right to use a land plot or its part and registration of such termination.

Based on the provision of the first part of Art. 149 of the Land Code of Ukraine, the decision of a state authority or local self-government body to withdraw a land plot should be considered a document confirming the intention to withdraw a land plot from the land user (VRU, 2001). This decision initiates the procedure of withdrawal of a land plot, including for public needs; such a decision should be considered as a confirmation of the intention of the territorial community (state) represented by the relevant authorities as the owner of the land to withdraw a land plot, in particular for public needs. It is considered that in the decision initiating the procedure of withdrawal of a land plot, and not the decision to terminate the right of permanent use of a land plot boundaries, area and other identification characteristics of the land plot to be withdrawn; social needs for which this plot should be withdrawn, as well as other conditions of such withdrawal (including the procedure for compensation for damages caused by withdrawal, etc.) should definitely be specified. The need to indicate all these data in the decision is caused by the fact that a land user, to whom the government will subsequently apply for consent to such withdrawal, must be aware of all the circumstances, to which he agrees.

It should be noted that if the land user agrees to a land plot withdrawal, the subjects of appeal, guided by the provisions of the LCU decide to terminate the right of permanent use of land plot, which serves as a basis for further registration of such land.

Appeal to the court for protection of land rights.

As it was already noted above, in the absence of the land user's consent to the land plot withdrawal, the issue is resolved in the court.

At the same time, the content of the provisions of Art. 149 of the LCU allows one to state that the law provides appeal to the court regarding withdrawal of a land plot both for *the*

social needs (social necessity) and other needs. Obviously, the provisions of procedural law in this case allow one to differentiate the subject-matter jurisdiction of this category of disputes: in the case of appeal of an authorized body (a local self-government body, public authority) to the court on a dispute based on *social needs or social necessity*, such a dispute refers to public-law disputes and is under the jurisdiction of administrative courts; in case of appeal of the authorized body (local self-government body, public authority) to the court regarding a dispute on the grounds of *other needs* refers to private-law disputes and is the jurisdiction of economic courts.

It should be noted that for this category of disputes the legislation does not define the concept of categories “public needs” and “other needs”, as well as the procedure or method of determining such needs by local self-government bodies. Regarding the concept of “public need”, such a concept is provided in the Law No 1559 and in the Law of Ukraine “On Complex Reconstruction of Quarters (Neighbourhoods) of Obsolete Housing Stock” No. 525-V (VRU, 2006). And if the latter provides that such a need is the need of the territorial community to ensure citizens with housing stocks and social facilities, which is satisfied with a comprehensive reconstruction of quarters (neighbourhoods) (VRU, 2006), then Art. 7 of the Law No 1559 determines a broader and more detailed list of needs that fall under the concept of “social” ones. At the same time, it should be noted that in accordance with the provisions of Art. 2 of the Law “On Expropriation of Land for Public Needs”, its effect does not apply to public relations arising from the withdrawal (purchase) of land, other real estate objects located on them, which are in state and / or communal ownership (VRU, 2006). It should be pointed out that in contrast to the provisions of Art. 32-1 of the Law of Ukraine “On Land Lease”, the content of which provides that the land of state and communal property can be withdrawn from temporary use for public needs, which are specified in Art. 7 of the Law No 1559 (VRU, 1998), the provisions of Art. 149 of the LCU do not have a corresponding reservation. In

such a situation, the courts in the process of considering disputes concerning the withdrawal of land plots for permanent use for the purposes of such withdrawal apply by analogy the provisions of the Law No 1559 (VRU, 2001).

This practice is due to the fact that by its legal nature, public relations for the alienation (withdrawal) of a land plot from ownership and public relations concerning its withdrawal from use (including permanent one) are similar in most cases. When considering disputes concerning the forcible withdrawal of a land plot from permanent use, it is the responsibility of public authorities and local self-government bodies to prove public needs for such withdrawal.

Thus, the legal analysis of the regulations of land and procedural legislation gives grounds to claim that disputes over claims of power entities (landowners) regarding the withdrawal of a land plot granted to a person for permanent use from state and communal property, without consent of a person to such withdrawal, are subject to decision in courts of different jurisdictions (depending on the reasons for such withdrawal), namely:

disputes on the grounds of social needs are to be resolved in courts of administrative jurisdiction;

disputes on the grounds of other needs are to be resolved in courts of economic jurisdiction.

At the same time, such cases are subject to consideration in administrative courts in the general order determined by the CAP, in particular, according to the rules of simplified proceedings.

Regarding the question of whether a land user has the right to appeal to a court against a decision of a local self-government body to withdraw a land plot that he owns on the right of permanent use, the following should be noted.

Formal and legal analysis of the above-mentioned normative legal acts provided an opportunity to formulate a preliminary

conclusion that for a citizen (business entity), to whom a land plot was transferred for *permanent use* from *state and communal property*, today the legislation has already created a proper and a sufficient mechanism for the legal protection of this right, imposing a corresponding duty (protection) on a power entity (landowner), even without the need to go to court.

Thus, the existing mechanism stipulates that in case of disagreement of a person, in particular with a local government body on the withdrawal of a land plot from such a person for permanent use, the law establishes the obligation to authorize (approve) an appropriate initiative of the power entity only by the court. And although the law does not directly define the subject of appeal to the court on the issue (land user or landowner), however, the legislator provided a rule (part 2 of Art. 149 of the Land Code of Ukraine), which, on the one hand, limited (warned) a power entity (landowner) in the possibility of unjustified deprivation of land user of the right to permanent use of land, on the other hand, guaranteed the “permanent” land user the opportunity to defend their interests and protect their right to land use in court when considering a case initiated by the authority (landowner) (VRU, 2001).

It should be noted that considering the decision of the local self-government body on the withdrawal of a land plot by the document that certifies (publishes) only the intention to terminate the right of a person to permanent use of a land plot as the main and ultimate goal of the procedure, and which does not cause legal consequences, and serves only as a reason for deciding out of court or in court, a land user has no grounds for appeal.

Despite the fact that in Art. 149 of the LCU there are no relevant provisions, but applying the analogy, as in the case of compulsory alienation of a land plot or its compulsory withdrawal from temporary use for public needs, in case of withdrawal of a land plot from permanent use to the plaintiff (power entity), it is necessary to prove needs

for such withdrawal, as well as to take into account the fact that without the termination of the right of permanent use to meet these needs is impossible. This is due to the fact that if it is possible to achieve a public need without withdrawal of a land plot, its compulsory withdrawal would violate the principle of proportionality and would be contrary to Art. 1 of the First Protocol to the Convention (Council of Europe, 1951).

In this case, the distinction between the concepts of “*withdrawal of a land plot*” and “*termination of the right of permanent use*” and their legally defined relationship (the dependence of the decision to terminate the right of permanent use on the decision to withdraw a land plot, the order of their adoption) give reasons to state that the grounds for termination of the right of permanent use of a land plot (in the absence of agreement between the parties to the dispute) is a decision on withdrawal of a land plot, authorized by the court. Consequently, a decision to terminate the right to permanent use of a land plot, rendered on the basis of and in accordance with a court decision, should be recognized as lawful and formally such that it is not subject to appeal by a person in court. Similarly, in the case of out-of-court approval of such withdrawal, the basis for making the relevant decision is a document signed by a land user with a notarized signature confirming the consent to withdraw a land plot.

Therefore, a person does not need to go to court to appeal the final decision of the authoritative landowner, which causes legal consequences for such a person, namely the termination of the right of permanent use of a land plot.

Thus, we believe that the decision of the local self-government body to withdraw a land plot *for social needs* is not subject to appeal by a land user in court, because, firstly, such a decision does not cause legal consequences for the person (such a decision of the power entity does not deprives the person of the right to permanent use of a land plot, but is only the beginning of the procedure of a land plot withdrawal, in particular, the stage of agreement with the land user; the contested decision is not binding for the plaintiff-land

user, and the issue of lawfulness of the decision is determined by administrative court during the consideration of the case on the claim of the local self-government body on the withdrawal of a land plot); secondly, formally such a decision undergoes a mandatory authorization procedure both with the consent of the land user (out of court) and in court (without the consent of a land user).

As follows from the provisions of part 2 of Art. 95 of the LCU, the rights of land users, including the right to permanent use of land, are subject to protection and restoration, but only in case of violation (in this case by the local self-government body – a landowner) in particular by means of making a decision that causes or has already caused for the subject (citizen) the occurrence of legal consequences regarding the scope of the right of permanent use of a land plot (VRU, 2001).

In the studied situation, the decision of the local self-government body on the withdrawal of a land plot from permanent use does not cause and cannot cause legal consequences regarding the scope of the right of permanent use of a land plot.

It also should be noted that the Grand Chamber of the Supreme Court in considering cases on claims of land users (citizens, business entities) with requirements for recognition as illegal and cancellation of decisions of power entities (including local self-government bodies), in particular on termination of the right to permanent use of land, expressed legal position (from 14.11.2018 No. 807/73/15; from 30.01.2019 No.740/711/17; from 05.11.2019 No.906/392/18), according to which such cases are subject to consideration in economic courts, because in determining the subject jurisdiction courts should proceed from the essence of the right and / or interest for which the person appealed, stated requirements, the nature of the disputed legal relationship, the content and legal nature of the circumstances of the case; and such a right in such legal relations is the right of permanent land use and the dispute itself is due to violation of land user rights to immovable property, namely a land plot by a legal act of individual action of the defendant, and the claim is aimed at restoring

the right to this property in the manner specified by the plaintiff (SC, 2018; SC, 2019a; SC, 2019b).

Conclusions

Summarizing the results of the study allows us to draw the following conclusions:

1) in Ukraine, the legislation distinguishes the concept of *termination of ownership* of a land plot, which is carried out in particular on the basis of alienation (including compulsory one) for social needs and on the grounds of social necessity in accordance with Law No. 1559, and the concept of *termination of use* (including permanent one) a land plot, which is carried out in particular on the basis of its withdrawal in cases provided by the Land Code of Ukraine. Thus, the legal basis for the termination of these types of rights is different, which significantly affects the further determination of the jurisdiction of the dispute;

2) disputes over *claims of power entities* (landowners) regarding the withdrawal of a land plot, granted to a person for permanent use from state and communal lands, in the absence of a person's consent to such withdrawal, shall be resolved in courts of different jurisdictions (depending on the grounds for such withdrawal), namely: in courts of administrative jurisdiction disputes on the grounds of social needs are subject to resolution; in courts of economic jurisdiction disputes on the grounds of other (non-social) needs are subject to resolution;

3) procedural administrative legislation distinguishes, firstly, the *proceedings* for administrative cases in disputes over claims of power entities for the forcible *alienation of a land plot*, other real estate located on it, on the grounds of social necessity (carried out in a special procedure, namely in the appellate administrative courts as courts of first instance, taking into account the provisions of Art. 267 of the Code of Administrative Procedure), and secondly, *the proceedings* on administrative cases in disputes over claims of power entities

to *withdraw property (a land plot)* for social needs or on the grounds of social necessity (carried out in the general order according to the Code of Administrative Procedure in particular in accordance with the rules of simplified proceedings);

4) statement of local self-government bodies in the decision to terminate the right to use the land plot for such a purpose as public and other needs and further appeal to the court does not mean the adoption of such a decision on the basis of Law No.1559;

5) the rules of alienation provided by Law No. 1559 cannot be applied to such objects as land or other immovable property owned by a person, including in the case of termination of the right of use by withdrawal of a land plot on the grounds of social and other needs;

6) the decision of local self-government bodies on withdrawal of a land plot is not binding for land user (plaintiff), and the question of the legality of such a decision is decided by the court during the case on the claim of the local self-government body on withdrawal of a land plot.

The decision of the local self-government body to withdraw a land plot on the grounds of social needs is not subject to appeal by the land user to the court, because independently (without further authorization procedure) such decision does not cause and cannot cause legal consequences for the land user regarding the scope of the right of permanent use of a land plot.

In addition, we should note that at the time of conducting this scientific research and submitting the article to the editorial office, the Supreme Court did not have an unambiguous legal position on this issue. At the time of publication of this article, the Administrative Court of Cassation within the Supreme Court expressed an up-to-date position on this issue in the decision of February 3, 2021 in case No. 817/1911/17 (published on November 9, 2021) (SC, 2021a). At the same time, it should be said that the general position of the court coincides with our conclusions in this article. However,

it is necessary to warn about the existence of a discussion on this issue, because one judge submitted a “separate opinion” dated November 10, 2021 (SC, 2021b), in which he

expressed a different position on this issue. Therefore, our research can serve as material for solving scientific and practical land disputes in the future.

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