

УПРАВЛІННЯ ЗЕМЕЛЬНИМИ РЕСУРСАМИ ТА ЗЕМЛЕУСТРІЙ

UDC 332.32

THEORETICAL AND METHODOLOGICAL PRINCIPLES OF LAND MANAGEMENT PROCESS

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It is substantiated that the basis of the theory of land management is its functions: provision of all interested persons with objective information on the regulation of relations and elaboration of rules for the coordination of state, public and private land interests in the system of land resources management and land use.

Keywords. *Land management, land management process, land management project, land management procedures, land management activities.*

The issue of land management science as a component of general economic science Tretiak A.M. has been investigating since 2002, and the systematic results of research have been described in many scientific sources [1]. Generalization of the considered by A.M. Tretiak theories of land management shows that its essence is interpreted ambiguously and its occurrence is accompanied by diverse content of land management actions, which are manifested in various spheres: legal, socio-economic, engineering, environmental, organizational and economic, and others [2].

He states that “on this occasion, in 1930, Professor K.N. Sazonov wrote:” ... each author treats the land system from his special point of view; it is therefore quite natural that the lawyer sees in the land management the predominantly law-making act, an economist - an economic act that socially grows in a more or less complex economic phenomenon, the technician considers land management as an action aimed at changing (transforming) land use, the politician sees in the land management its social essence and conse-

quences, etc.” [2, p.255]. S.A. Udachin believed that “land management is a triangular prism in which technology and law are refracted through the economy.”

In the article “Theoretical concepts “land management process”, “land management procedure” and their relationship” we substantiated the notion of land management process as a set of land-use activities undertaken, if, in one application, one proceeding is carried out, and the land management procedural legal relations that arise during the land-use proceedings, and the proposed conceptual model of land management process on the present stage of development of land management in Ukraine [3]. Therefore, the task of substantiating the components of land management process arose.

The purpose of the article is to substantiate the theoretical and methodological principles of land management process.

Presentation of the main research material.

As one of the peculiarities of land management at the present stage Nosik V.V. highlights the legislative consolidation of the priority of environmental and landscape approaches to the implementation of activities related to land management activities. He sees that land management should be carried out comprehensively with the implementation of such functions of state and self-regulatory regulation of land relations, such as planning of territories, maintenance of state land cadastre, registration of rights to land, since land management cannot be carried out without the availability of appropriate planning documentation [4]. At the same time, in his opinion, the planning of the territory cannot be completed without land management.

Tretiak A.M. believes that the land system includes, in addition to the set

of socio-economic and environmental measures contained in the law “On Land Management”, **organizational, legal and engineering-technical actions** aimed at regulating land relations and rational organization of the territory for rational use and protection of land [2]. Under the rational use of land, in today’s conditions of development of land relations in Ukraine it is necessary to understand the most effective, in terms of meeting the needs of society, variant of its target and functional use, organized, in turn, most effective for specific conditions of space and time in a manner in accordance with objectively existing principles of the interaction of society and nature [5]. Within the framework of the interaction of “society-nature”, the following aspects of the essence of rational land use are distinguished [2, p.303]:

- Natural-biological, related to the study of the functioning of land as a component of the natural complex and the environment for plants and living organisms;

- socio-economic, reflecting the impact of social processes and policies of the state, public, including land relations on the use of land, which explains the economic side of the use of land as a resource;

- technological, connected with the study of the technical effect on the earth, technology of use, communication of rational use of land resources with scientific and technological progress;

- legal, related to the study of the role and significance of the influence of law, the legal activity of the state through the land management, regulation, administration, stimulation, taxation, etc., on the organization and implementation of rational use and protection of land.

Accordingly, **land management science** should be understood as a com-

prehensive branch of economic and legal science, based on the legislation of Ukraine on land relations and rights to the regime of land and natural resources, rational organization of the territory of administrative-territorial units, economic entities carried out under the influence of the public-productive relations and the development of productive forces, studies and analyses the structure of land management bodies, land management procedures and practices, makes forecasts of development and proposals on the implementation of scientific conclusions in the legislation on land management and land management, as well as exploring the history of land management and links with other sectors of the economy, environment, law.

It follows that *the theory of land management* is a sub-sector of land management science. Although one should pay attention to the fact that such a division of information is conditional and subject to the doctrine of the theory of state and law: industry, subdivision, institute, norm. Any branch of economic or legal science can only be arbitrarily considered independent, since all information is interconnected, and many studies today are aimed at an analysis of intersectoral space, where significant gaps and collisions are created precisely because of such a division. Quite often, scientists make significant mistakes if they are based only on economic laws or legislation and follow their directions.

Therefore, we believe that land management science is associated with a neo-institutional economic theory, the basis of which is the theory of property, the theory of transactions and the theory of deals. Therefore, it is often difficult to distinguish between which sector of the economy or law one or another block of information belongs, especially in the

case of integrated industries to which land management and civil processes belong. It is clear that after considering the case by the court the decision on the validity or illegality of the actions of the land surveyor will have an impact on the theory of land management process, but the very procedure for considering this category of cases cannot be identified with the land management process.

The current condition of land management science indicates the presence of many unsolved issues of theoretical and methodological nature. Among them understanding of the essence of the land management process and its place in the system of Ukrainian law is distinguished by its tendency to “chronize”.

In particular, one can distinguish the following approaches to understanding the essence of land management process:

- land management process - is the executive and administrative activities of public administration bodies;
- Land management process - is the activity of bringing to administrative responsibility and application of measures of administrative coercion for violation of land legislation;
- land management process - is part of a wider category - land management procedures;
- land management process - the procedure for exercising the powers of executive authorities to deal with complaints from private individuals (ie so-called quasi-divisive administrative process);
- land management process - the procedure for reviewing cases in administrative courts (i.e., administrative justice).

Thus, in general, the process is inseparable from the procedure: the process is a movement, modification of the phenomenon, and the procedure is

the concrete materially defined stages, phases, elements of this movement. That is why, obviously, the process and procedure are perceived in the world almost as synonymous concepts. Yes, MV Zwick notes that, for example, in France, instead of the Code of Criminal Procedure, in 1808, a new one, called the Code of Criminal Procedure, was adopted in 1958 [6]. In the United States in 1985, a commentary on the Civil Procedure “Civil Procedure” was issued. In addition, Recommendation No. Rec (2001) 9 of the Committee of Ministers of the Council of the European Union states that in practice *the judicial process* is not always the most appropriate way to resolve an administrative-legal dispute [7]. In Poland, there is no distinction between the process and the procedure, and the procedure for reviewing administrative cases by public administration bodies is determined by the Code of Administrative Procedure [8]. There is no such distinction in the Netherlands as well [9]. For example, in this country, the Act on general administrative law defines almost the whole range of administrative and legal activities, including both judicial and extrajudicial proceedings, namely [10]:

- the publication of individual administrative acts (orders, conclusions), including on the application of the person;
- Appeal of administrative orders by submitting “objections” and “administrative appeals”;
- Appeal of orders (conclusions) in court;
- relations on monitoring compliance with legislation;
- the order of the use of “compulsory measures”, namely, physical measures, which are used by or on behalf of the administrative body, and are directed against activity (inaction) which

hinders the performance of duties established by or in accordance with the statutory norm;

- some general issues of the exercise of authority by administrative bodies, in particular the relationship with the right to issue orders (conclusions) on behalf of the administrative body (“mandat”) and the relationship with delegation of authority.

Consequently, it is impossible to contrast the process and the procedure, and it is even less possible to assume that in some cases there is a process, while in others it is a procedure, the process does not exist without procedures, and the procedure is the material embodiment of the process.

The above proves the necessity and legitimacy of the universal understanding of the legal process and the administrative process. Therefore, we propose the following system of features and requirements for land tenure and legal relations in general and land management process, in particular:

a) Participation of a special subject in the implementation of these means is obligatory. This special subject is the so-called “public administration”, which is represented in the form of state bodies of executive power or executive bodies of local self-government [11];

b) the use of the said means exclusively based on the law, and in cases provided for by law – and on the basis of sub-legal normative-legal acts;

c) the use of the indicated means exclusively within the competence of the relevant subject of “public administration”. Signs for items b) and c) are stipulated by the direct rule of Part 2 of Art. 19 of the Constitution of Ukraine, according to which bodies of state power and bodies of local self-government, their officials are obliged to act only on

the basis of, within the limits of authority and in the manner provided by the Constitution and laws, is specified in the work, observance of the law is a necessary condition for the existence of any state body [12];

d) the possibility of implementing this process with the use of state coercion, based on the authority of the state and the force of law, the existence of legislation that would clearly regulate the content, grounds and procedures for the application of measures of state coercion; compliance of activities with regard to application of measures of administrative-procedural coercion to legal norms; which is aimed at the subject and object of management, in order to achieve the established parameters of activity, the development of certain forms of behaviour and the maintenance of social discipline [13];

e) realization in the land management processes of the rules of law in the form of enforcement. Since, as noted above, the implementation of administrative and legal means is based on the rules of law, such implementation cannot be carried out otherwise than in the form of application of these norms. As O. F. Skakun states, enforcement is in: giving some participants legal relationships with subjective legal rights and assigning to other subjective legal responsibilities; resolving a dispute over a right; determination of the legal liability of the offender [14];

e) implementation of goal-setting in the form of a priority of ensuring the rights and freedoms of citizens. This attribute follows from the direct norm of art. 3 of the Constitution of Ukraine, according to which a person, his life and health, honor and dignity, inviolability and safety are recognized in Ukraine as the highest social value. Human rights

and freedoms and their guarantees determine the content and direction of the state's activities. The approval and guarantee of human rights and freedoms is the main responsibility of the state;

g) control over the use of land management procedures.

As a conclusion, the stated universal understanding of the land management process will contribute to the proper level of law enforcement in public administration.

Today, it can be objectively stated that there is a significant block of information that needs to be explored, as there are significant problems in practice and in the legislation regulating the organization and procedure of land management activities.

The theory of land management process is a relatively independent set of information about:

- relations that are formed in the land management process and their subjects (land management procedural relations);
- the conditions for implementing the land management process (proceedings, stages, phases) and the principles inherent in it;
- the procedure on the performance of notarial proceedings.

As for the system of the theory of land management process, it should be understood as the whole complex of various information, thoughts, hypotheses, etc., which were set out on paper or electronic media and systematized in the legislation, other normative or by-laws, dissertations, monographs, textbooks, manuals, registered as inventions relating to this field of knowledge. Moreover, today we can talk about the fact that the theory of land management process should provide information not only about the information released, but also to solve the issues posed by society, etc.

The system of the theory of land management process resembles the Mendeleev table, which already has identified elements, but there are gaps that over time should be eliminated. *For example*, one can agree with the scientists who have found a lack of a procedural link between the activities of land managers and architects of Ukraine, and this despite the fact that they perform one state function, as well as taking measures to protect land and their legal regime can occur not only in documentation for land management, but for urban planning as well.

Thus, the systematization of information can occur not only on formal grounds, if it already takes place in the regulations, but also conditioned by the needs of social relations, a comprehensive layout of land management services in a particular area of relations. *For example*, this applies to the state registration of land plots and rights to them. Thus, systematization of information will reveal those gaps in the theory of land management process, which need to be filled in with the necessary information.

Conceptual apparatus should be considered as one of the most important elements of the theory of land management process, which allows you to build holistic scientific concepts so that they rely on common terminology, understandable to all professionals.

Elements of the theory of land management process are also **theories, concepts** - specific elements of the subject of this science, which, on the one hand, is the result of knowledge, and on the other - the object of study at a new stage of cognitive activity of scientists. Unfortunately, the current state of development of land management and land management is far from desirable. In

many cases, land surveyors perform their duties and responsibilities rather “template”, which can be explained by many circumstances. In particular, it should be borne in mind that ordinary citizens do not know how best to exercise their rights to land and other natural resources. They will listen to their loved ones, neighbours, acquaintances, although it is better to consult a land surveyor. Usually a person comes in and without consultation asks to explain how to solve a land dispute related to the boundary of the land, although it is more appropriate to conclude a contract for land audit. The low standard of living of the population does not allow land surveyors to establish an adequate amount of their labour remuneration, which leads to the need to make a large number of land management actions, thereby reducing the attention of the particular applicant. The mentality of the Ukrainian people is that, until the person is forced by the circumstances to commit an act, it will not act, and the necessary documents will be issued also in the last term. Therefore, quite often, citizens do not issue rights to their land for years and do not receive certificates of ownership.

But one must also take into account the fact that a significant part of land managers after graduation from education in land management practice literally ceases to improve, in particular, **does not** study professional literature. As a result, the level of knowledge is limited by the land legislation of Ukraine, although such knowledge is a professional minimum. So, if there is a need to perform land management works for which there is no legislative regulation - they cannot perform them as procedural actions. Because of this, quite interesting scientific concepts re-

main so far only in the theory of land management process. *For example*, the concept of simplifying the number of approvals through zoning of land by types (subtypes) was suggested [15]. It is clear that such a concept enriches the theory of land management process and suggests perfect ways to protect the rights on land of citizens.

There are proposals for introducing into the land management process the latest advances in science and technology, for example, standards, norms and rules, which allows to improve the quality of documentation on land management [16]. But such a proposal is not discussed in scientific papers and official sources.

Consequently, the latest hypotheses, concepts, and theories are the quintessence of the theory of land management process, which indicates the prospects for its further development. But any development takes place in certain directions, namely:

- Improvement of the procedure for the implementation of land management proceedings;
- Involvement of the latest advances in science and technology in the land management practices;
- Development of the best land management legislation;
- Training of land managers;
- Preparing students for future professional activities.

The above shows the need for further development of the science of land management process. It will have a significant impact on improving the norms of land legislation, which is part of the land management procedure, on the identification and development of land management institutions, the formation and consolidation at the legislative level of the subordination of land man-

agement procedural legal relationships, their procedural rights and obligations. To characterize the land management process, namely the essence, the unity of its norms and institutions, it is also necessary to consider the question of its relationship with procedural law, to focus on the analysis of its subject and method of legal regulation.

Thus, the land management process mainly can be characterised as:

- 1) The kind of social process inherent in any legally significant activity;
- 2) Has a legal nature, its purpose - legal proceedings of land management (design, land violations, land disputes, complaints, etc.);
- 3) Is regulated by the procedural rules of national and international acts on the basis of which are carried out;
- 4) Is the power of authorized agents - competent authorities and officials;
- 5) Consists of procedural stages - a set of procedural actions related to the immediate purpose;
- 6) Is aimed at the adoption of legal decisions of general (normative acts) or individual (law-enforcement land management acts, in accordance with Article 20 of the Law of Ukraine "On Land Management", land management is obligatory on land of all categories, regardless of the form of ownership) nature;
- 7) Is recorded, as a rule, in documented acts having legal status, by various technical means.

The main function of the theory of the land management process is to provide all interested persons with objective information on the regulation of relations that are formed when performing land management procedures, improvement of the order of the activities of land surveyors, etc. This global function can be expanded to smaller functions that are reduced to:

- Ensuring a proactive development of positive theoretical concepts that must be embodied in legislation and land management practices. Namely, science should not explain why and on what grounds there were changes in the legislation, since the projects of the corresponding changes to the norms of material and procedural legislation should be discussed in advance with scientists who are engaged in studying problems of the notarial process. For example, the introduction of a market of agricultural land cannot be carried out in a civilized way without zoning of land by types (subtypes) of land use and the introduction of appropriate land management regulations as restrictions on land use. And such a political and socio-economic event should be discussed with the involvement of scientists and land managers. Namely, science can develop certain criteria in order to prevent and qualify the violation of the rights of citizens in actual land relations;

- Scientific analysis of the needs of society in land management services and the introduction of scientific hypotheses in legislation and land management practices;

- Studying the problems of applying land legislation to legislation and developing appropriate proposals that may prevent negative consequences for citizens;

- Development of more specific legislation that will clearly regulate the activities of land surveyors, etc.

Namely, the boundaries of the theory of land management process cannot be and inexpediently defined by certain frameworks, which can lead to disadvantages in the activities of land managers, which are related to the need to eliminate gaps in the regulation of inter-branch space, to establish relation-

ships between persons performing land management functions.

The second fundamental ***function of the theory of land management*** is the elaboration of rules for the coordination of state, public and private land interests in the formation of land plots and rights to them, their intended purpose and other components of the land use regime.

Taking into account the above, we have developed a logical-semantic model of the methodological process of forming a system of land management process (Fig.). The management system is a form of real implementation of managerial interconnections. It acts as if it were in the form of a real-life substance, through which the land management process in the system of land resources management and land use acquires a specific content and concrete expression, and the function of management - practical implementation.

In reality, management activities are the functioning of a land management system. The system of land management process is composed and functions not only in accordance with the content of the management function and the nature of the relations that underlie management interconnections, but also in accordance with the conditions in which the system of land management process is formed, as well as in accordance with the inherently proper system of land management process and principles of its construction, functioning and transformation.

The system of land management process is decomposed into a subsystem, the allocation of which is clearly visible from the figure. The first subsystem is that it is considered to be regarded as a management system - a set of administrative bodies, subdivisions and executors that perform the functions assigned to them and solve their tasks, as well as

a set of methods by which management influence is exercised through the land management process. Such a subsystem of the land management system can be

considered as the unity of organization, technology and management methods. The totality of blocks basically covers the whole subsystem of the

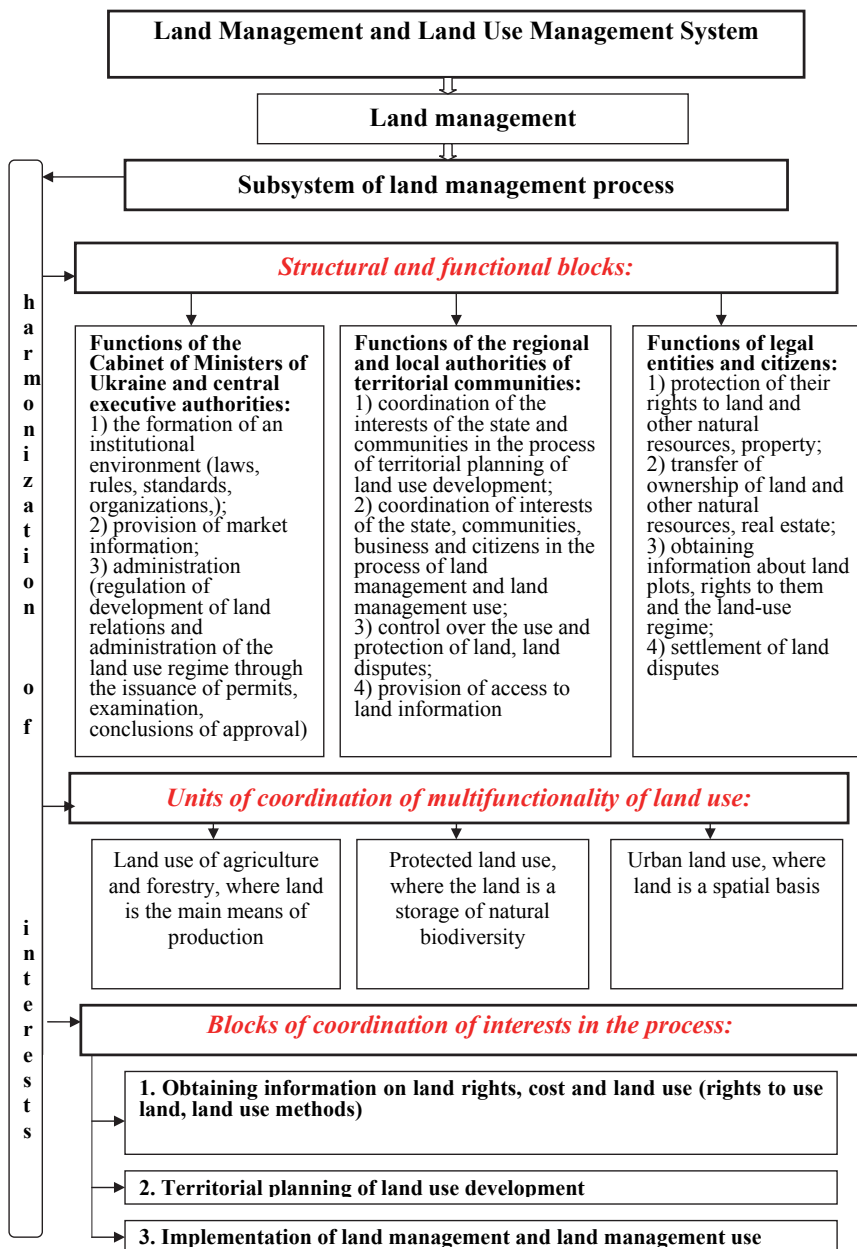


Figure. Logical-semantic model of the methodological process of forming a system of land management process.

land management process, although in relation to the relevant units, it can be specified that there are additional blocks that play a role in this subsystem. Such blocks can be, for example, blocks of national interests and even national managerial stereotypes. These blocks should be fundamentally distinguished from the first dedicated block of administrative ideology, since they are the expressions of certain types of ideology in society, in general, and not just the ideology of the land management process. The main named blocks and blocks, which arise in specific conditions and which are clearly expressed situational, are in dynamic interaction with each other, and with elements of the subsystem of the land management process of the control system.

Figure. Logical-semantic model of the methodological process of forming a system of land management process.

Summary

The presented studies confirm that the theory of land management process is a system of land management and procedural actions and information that are continuously improved and provide public needs for necessary protection of land rights of citizens, legal entities, state and territorial communities, as well as information on the best ways of activity of land surveyors on protection and protecting these rights. The basis of the theory of land management is its functions: providing all interested persons with objective information on the regulation of relations and elaboration of rules for the coordination of state, public and private land interests in the system of land resources management and land use.

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**ТЕОРЕТИКО-МЕТОДОЛОГІЧНІ
ЗАСАДИ ЗЕМЛЕВПОРЯДНОГО ПРОЦЕСУ**

Обґрунтовано, що основу теорії землеупорядного процесу складають його функції: забезпечення всіх заінтересованих осіб об'єктивною інформацією щодо регламентації відносин та вироблення правил узгодження державних, громадських та приватних земельних інтересів у системі управління земельними ресурсами та землекористуванням.

Ключові слова. *Землеустрій, землеупорядний процес, землеупорядний проект, землеупорядна процедура, землеупорядні дії.*

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**ТЕОРЕТИКО-МЕТОДОЛОГИЧЕСКИЕ
ОСНОВЫ ЗЕМЛЕУСТРОИТЕЛЬНОГО
ПРОЦЕССА**

Обосновано, что основу теории землеустроительного процесса составляют его функции: обеспечение всех заинтересованных лиц объективной информацией о регламентации отношений и выработки правил согласования государственных, общественных и частных земельных интересов в системе управления земельными ресурсами и землепользованием.

Ключевые слова. *Землеустройство, землеустроительный процесс, землеустроительный проект, землеустроительная процедура, землеустроительные действия.*