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## CONTRADICTIONS IN THE FUNCTIONING OF LEGAL MECHANISM OF STATE REGULATION IN LAND RELATIONS IN THE SPHERE OF URBAN PLANNING

*In this article structural components for the functioning of legal mechanism and their interrelations between each other are being analyzed. The author also investigates the contradictions and flaws in the studied legal mechanism of public administration. The purpose for the existence of a legal, social state is the establishment of civil society, creation of conditions that ensure human rights and freedoms, settlement of conditions which are beneficial for the development of society. These conditions are directly dependent on the functioning of the national economic system. That is the reason why legal analysis of state regulation of land use in the city planning is essential, and the results of the study may provide an impetus for improving the legal mechanism of state regulation of urban processes in land area. By carrying out an analysis of the functioning of the legal mechanism of state regulation of land relations in the construction industry, we can conclude that the effective functioning of the legal mechanism is possible only under the condition of proper functioning of all its components, which include the principles of the rule of law, transparency of legislation-making system, efficient practical application of normative legal acts and state regulations, constant prosecutor's supervision along with legislative protection of legitimate rights and interests, defense of violated rights and freedoms at the court.*

**Keywords:** legal mechanism, regulation, land relations, urban planning.

**Суворов В.П. Протиріччя функціонування правового механізму державного регулювання**  
*Аналізуються складові елементи функціонування правового механізму, їх взаємозв'язки, встановлюються протиріччя та вади досліджуваного механізму державного управління.*

**Ключові слова:** правовий механізм, державне регулювання, земельні відносини, містобудування.

**Суворов В.П. Противоречия функционирования правового механизма государственного регулирования земельных отношений в градостроительстве**

*Анализируются составные элементы и инструменты функционирования правового механизма, их связи, устанавливаются противоречия и недостатки исследуемого механизма государственного управления.*

**Ключевые слова:** правовой механизм, государственное регулирование, земельные отношения, градостроительство.

### Introduction

The purpose for the existence of a legal, social state is the establishment of civil society, creation of conditions that ensure human rights and freedoms, settlement of conditions which are beneficial for the development of society [13]. These conditions are directly dependent on the functioning of the national economic system. Proclamation of the land as the wealth of the Ukrainian people in the Basic Law [8], which is the basis of the economic system, demonstrates the importance of proper regulation of land relations in the state and society. No production can function without land use, land relations as a priority area of public administration. Land regulations in the area of urban development by

the means of land legislation and, accordingly, the proper functioning of the legal mechanism of state regulation of land relations in the field of urban planning is the key towards the development of human settlements. Appropriate legal relations in the land area are of great importance in the process of ensuring rights and freedoms of citizens. That is why legal analysis of state regulation of land use in the city planning is essential, and the results of the study may provide an impetus for improving the legal mechanism of state regulation of urban processes in land area.

### Analysis of resent research

The study of land relations has been addressed by many scholars, particularly: A. Melnyk

analyzed the essence and nature of legal regulation of land relations [9] A. Chebotareva explored aspects of effective and sustainable land management of the city from the standpoint of the science of public governance [14] Y. Demyanchuk studied the characteristics of legal regulation of land relations [1]. A. Miroshnichenko investigated standardization as a mean of regulation of land relations [11]. A. Dorosh carried out fundamental research on management of land relations at regional level [3]. Big emphasis on the study of the administrative responsibility for violations in the sphere of land had been paid by author Milimko L. [10]. These studies cover a considerable range of scientific interests of researchers, but the legal functioning of state regulation of land relations in urban planning has not yet been studied enough.

#### **Statement of research objectives**

The aim of this research is conducting analysis of the functioning of legal mechanism of state regulation of land relations in urban planning by examining individual components of them mechanism and detecting its contradictions and flaws, that hinder its further successful development.

#### **Results**

Legal mechanism ensures the functioning of the state government, the relationship of citizens with business and government. That is exactly the reason why proper functioning of the legal mechanism is a key element for the development of the state. Thus, proper regulation of land relations in urban development is not possible without the right functioning of legal mechanism. The basis for the operation of any legal mechanism is the rule of law, justice, legal equality, social freedom, equality of citizens before the law, social freedom, social and civic duty, democracy, national equality, humanism, mutual responsibility of the state and the individual, political, ideological and economic pluralism, the inviolability of human rights [13]. The combination of these principles forms the basis of the legal mechanism. Failure of their application in the society, public administration and governmental regulation of economic processes creates significant risks for the effective development of society and the state. Rule-making mechanism plays an important role in the functioning of the legal system, with the help of which all land relations are being regulated. Improper operation tracking of all existing legislative acts, inappropriate relationships between competent state bodies in

the development, adoption, implementation and practical control over their use is the cause of the existence of a significant number of outdated legal acts in the study area.

So, now we shall analyze the functioning of the legal components of state regulation of land relations in urban planning.

*The legal and normative component.* The system of legal acts in the sphere of land use in urban planning includes 46 laws. Practical applicability of legislation by using a large number of sub-legal acts, including 29 presidential decrees, 114 resolutions and 134 orders of the Cabinet of Ministers of Ukraine, many orders of central authorities, registered with the Ministry of Justice of Ukraine [2]. The land legislation of Ukraine is sufficiently developed with regulatory work being carried out continuously, whilst their existing problems and shortcomings doesn't allow to work more efficiently. As the proof of this fact there serves a significant branching of land laws inconsistent with other fields of law. To the problems of legal regulation one can count in insufficient orderliness of execution of powers of local governments in land relations, procedural issues regarding the management and disposal of lands. The biggest drawback in current national land legislation in the area of city planning takes place in enforcement and litigation of the law due to the cases of its duplication, conflicts in regulation and ambiguous interpretation of the law by the authorities involved in the processes of direct land relations. In addition, local governments functioning is being effectively disrupted in the areas of planning and territorial development by the means of the lack of financial resources in land relations, due to the lack of economic development, absence of open areas of budget revenues, degradation of territories, insufficient quantity of responsibilities being laid at the parties in investment and foreign trade activities. Land legislation is imperfect also in the part of holding open auctions. Land Code of Ukraine [4] stipulates that auctions are conducted by order of the state authorities and organs of local self-government whilst the formation of the lot is carried out in the view of the existent appropriate budgets, which do not always have the financial resources available for this purpose. Financial problems contribute to the lack of planning documentation in sufficient quantity and of appropriate quality, that is the exactly reason why urban cadastre system does not operate efficiently. Financial and fiscal system

is too centralized, which holds back the execution of the effective legal function of state regulation of land relations in urban planning and impedes the development of areas because it does not have direct effect of some current legislation.

*The human rights component.* This element of legal mechanism is one of the most important, because it has direct impact on improving the functioning of the state regulation of land relations. Protection of legal interests, rights and freedoms is the highest priority of the operation of the state. Violations of the rights of individuals and legal entities is happening due to the ignorance of current legislation with legal entities reluctance to defend their violated rights, the existence of corruption of officials at the level of state officials and local self-government, various law enforcement and judicial authorities. Protection of rights and interests is done directly by individuals whose rights had been violated, their authorized representatives (lawyers, human rights organizations). However, an important role in the functioning of the human rights component of the legal mechanism should belong to the civil society and non-governmental organizations. To some extent the effectiveness of the human rights component influences state policy and local elites. The biggest flaw in the practical functioning of the legal mechanism is corruption in the land relations and poor law enforcement practice, political instability in the society. As the proof of this fact serve indicators of international organizations about the impact of corruption on society [12], according to which we can make a conclusion that the influence of corruption on citizens is pretty high. That is why human rights component needs to be re-developed in order to comply with the execution of the rule of law and in practice along with safeguarding

legitimate interests of citizens, organizations and associations. Instead, the operation of the component will not be effective if there is no improvement in the law enforcement procedures and judicial legal mechanism components.

*Law enforcement component* involves practical execution of the law and realization of power by law enforcement agencies in this area. Legal regulation of law enforcement is quite effective, but current legislative acts contain various duplications of functions of different law enforcement agencies in land relations. The protection of rights and legitimate interests of citizens currently lies within the competence of two special controlling public authorities, namely the State Agricultural Inspection of Ukraine and State Architectural and Construction Inspectorate of Ukraine. Besides that certain issues are being dealt by local state bodies of police, namely Service for Fighting Economic Crimes, the Department for Combating Organized Crime, tax police units and inspection units of the Security Service of Ukraine, State Financial Inspection etc. Direct supervision of the compliance of the activities of various state institutions and police authorizes is being carried out by Prosecutors Office, which occupy an important role in the law-enforcement mechanism.

Indicators of prosecutor's supervision and control on the topic of compliance of the activities of some specially authorized by the state authorities to current national legislation in land relations in 2012-2013. (Table. 2) allows us to suggest that resulting from three out of four checks there is an established fact of compliance of the operational activities of inspected institutions and bodies with established legislation in land relations area.

Table 1

**Main margins of the operation of prosecution office according to the outcomes of the activities for the oversight of the compliance of specially authorized state bodies in the area of land relations with current national legislation in the years 2012-2013.**

<b>Indicator of efficiency</b>	<b>2012</b>	<b>2013</b>	<b>2013 in % in comparison to 2012</b>
Quantity of prosecutor's office inspections	2952	6078	206
Number of criminal cases launched as the result of inspections carried	151	223	147
Number of criminal cases forwarded to the court	144	55	38
Number of state officials, which had been liable of criminal offence	1924	2640	137

Table 2

**Main margins of the operation of prosecution office according to the outcomes of the activities for the oversight of the compliance of specially authorized state bodies in the area of land relations with current national legislation in the years 2012-2013.**

Indicator of efficiency	2012	2013	2013 in % in comparison to 2012
Quantity of prosecutor's office inspections	1399	1959	140
Number of criminal cases launched as the result of inspections carried	83	68	82
Number of criminal cases forwarded to the court	65	13	20
Number of state officials, which had been liable of criminal offence	1235	1190	96

According to the results of each twentieth inspection criminal investigation is being launched. Flaws in the legal mechanism at the stage of direct exercise of delegated powers of the authorities in land relations is quite high. It is therefore worth of paying more attention to improving the legal mechanism with the view of increasing the liability of state officials in execution of their duties and obligations.

Driven from the results of the prosecutor's office inspections for the oversight of the compliance of specially authorized state bodies in the area of land relations with current national legislation in the years 2012-2013 allows us to suggest that the bodies authorized to execute state land policy as well as local state authorities committed a number of offenses, including criminal ones, in the area of land relations, which adversely affects the government regulation of land relations in the field of urban planning and hinders economic development accordingly.

However the lack of common definitions in the criteria for evaluating the efficiency in the execution of legal mechanism of state regulation of land relations in the field of urban planning cannot completely objectively determine the efficiency of the legal mechanism as the whole.

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### Conclusions

By carrying out an analysis of the functioning of the legal mechanism of state regulation of land relations in the construction industry, we can conclude that the effective functioning of the legal mechanism is possible only under the condition of proper functioning of all its components, which include the principles of the rule of law, transparency of legislation-making system, efficient practical application of normative legal acts and state regulations, constant prosecutor's supervision along with legislative protection of legitimate rights and interests, defense of violated rights and freedoms at the court.

In order to allocate proposals for solving existing problems and improving the enforcement of the legal mechanism further investigational activities of the organizational features of state regulation of land relations in the area of urban planning and construction business should be applied with aim to identify additional practical enforcement problems in the area of regulation of land relations in urban development along with the invention of the ways to improve the mechanisms its practical application.

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