

UDC 332.33(061.1 EC+477) (043.2)

Tetiana Kozlova¹
Oleksij Rudich²**APPROPRIATION OF LAND FOR STATE AND MUNICIPAL NEEDS
IN THE EU COUNTRIES AND IN UKRAINE**National Aviation University
Komarova avenue, 1, Kyiv, Ukraine, 03680
E-mail: ¹t_kozlova@ukr.net; ²alexey_rudych@ukr.net

Abstract. *The article is devoted to the appropriation of land in the EU and Ukraine. We identify the main features and differences of land appropriation for public use in the EU and in Ukraine and analyze the problems that can occur with improper appropriation. The paper represents comparative analysis of land appropriation procedures in Ukraine and in the EU.*

Keywords: expropriation; land plot; ownership; social necessity; social need

1. Introduction

For a long time our capital city Kyiv has been waiting for Big Ring Road (BGR). But once again at the beginning of 2015 the construction of the project was shelved, despite the fact that BGR is a unique facility that will give impetus to the development of any and all industries, as well as create new jobs.

The road's route goes mainly along existing highways that are in need to be expanded and remodeled, state reserve lands and partially distributed land plots of farmers, which are the most difficult part in implementation of the project. For the purposes of BGR's construction and operation land plots located within the planned area of placement should be transferred to the state/municipal property. In order to do this private property rights of individuals and entities on such land plots should be stopped. Current legislation [1] provides the following options for termination of the right of private property:

- Redemption of land with funds, for public use;
- Redemption of land in exchange for a similar land plot, for public use;
- Appropriation of land for reasons of social necessity.

As predicted by Ministry of Infrastructure, the biggest problems with land will occur in Vyshgorod, Brovary, Kiev Svyatoshinsky and Vassilkivskyj districts, since the land plots have to be appropriated due to social necessity. The processes of appropriation of land to the state are rather complex and long term, that is why these issues are to be dealt with in advance.

Land appropriation can certainly bring benefits to society but for those at risk of property loss,

expropriation is a factor of instability. Expropriation is a power of government to acquire ownership of private land without the voluntary consent of the owners or users to meet the needs of society [2].

In all countries, governments are major owners of land and property within their territory. Institute of compulsory land buyout exists in every country, as it is often necessary for the purposes of socio-economic development and environmental protection.

Since various international legal organizations are concerned about property rights and payment of equivalent compensation in case of land appropriation, this issue requires further study, development, specification and improvement of existing regulatory framework and creation of an appropriate legislation and mechanisms for implementing its norms.

Ukraine has chosen integration into European economic, political and legal space as its strategic development direction. In accordance with the Law «On State Program of Adaptation of Ukrainian legislation to the European Union's legislation» [3] adopted in March, 2004 Ukraine should develop and adopt new laws and adapt existing ones so that they meet standards of regulation of land relations and ownership rights operating in the EU.

The study aims to identify common features and major differences of land appropriation for state and municipal needs and comparative analysis of procedures of land appropriation in the EU and Ukraine.

2. Analysis of recent research and publications

Accumulated to date foreign studies [2, 4, 5] show that, regardless of in what country the land

appropriation occurs, the key issues that require research and conscious attitude are: buyout purposes, the legal basis of compensation, basis and methods of assessment which are needed for this. The works of local scientists M. Hvesyk [6], O. Kucher [7], A. Martin [8], A. Miroshnichenko [9] are devoted to these very problems. Articles of D. Hylyuka [10], T. Kovalenko [11], A. Oleinika [12] highlight some reasons for forced termination of the right to use the land as well as a variety of legal maneuvers performed by public authorities in the exercise of such appropriation.

On the legislation level relations concerning the expropriation of land are regulated by the Land Code of Ukraine, the Civil Code, the Law of Ukraine № 1559-VI of 17.11.2009 «On the appropriation of land and other real estate located thereon, which are privately owned, for public needs or social necessity» [1].

3. The objectives of land expropriation

The expropriation of land in Ukraine is conducted in accordance with the existing legal framework. Law of Ukraine [1] provides two kinds of appropriation: in case of social need and in case of public necessity. A social need is based on national interests or the interests of territorial communities, a need for land plots, including those in which the real estate is situated, buyout of which is carried out in the manner prescribed by law. Public necessity is based on national interests or the interests of local

communities and it is an exceptional necessity to ensure which an expropriation of land and other real estate located thereon is allowed in accordance with the law. So, the first kind of appropriation involves buyout by agreement of the parties, while the second is an expropriation (with compensation) of land in court, which may be initiated if the land owner refused to voluntarily sell it and objects that are on it.

Whereas Article 17 of the Universal Declaration of Human Rights [13] states that «no one shall be deprived of his property without reason», the implementation of expropriation will be considered as valid, fair and legitimate, if the land is taken for the purposes which are clearly and to full extent foreseen by law. Therefore, the law of the country must register a clear list of requirements that reduce uncertainty by providing a comprehensive registry of needs, beyond which the government will have no right to appropriate land. Law of Ukraine [1] provides a list of social needs, according to which buyout of land is conducted, and registry of reasons for expropriation. Comparative analysis of the list of reasons for land buyout and the reasons on which expropriation is possible, gives us an ability to note their similarities.

Let us define common and distinctive purposes of expropriation by analyzing the experience and practice of the EU countries (Table 1).

Table 1. Purposes of land plot expropriation

Ukraine	EU countries
placement of objects of national security and defense	ensuring the needs of defense
placement of linear objects and objects of transport and energy infrastructure (roads, bridges, platforms, pipelines, power lines, airports, seaports, oil and gas terminals, power stations) and facilities necessary for their operation	providing transportation needs (roads, canals, highways, railways, bridges, piers and airports)
placement of objects associated with mining operations of national importance	–
–	construction of municipal infrastructure (water supply, sewerage, electricity, gas economy, channels and lines, irrigation and drainage systems, dams, reservoirs)
–	construction of public buildings (schools, libraries, hospitals, factories, religious institutions, state and municipal housing)
placement of natural reserve fund; cemeteries	creation (organization) of public parks, recreational grounds, gardens, sport grounds, stadiums and cemeteries

List of reasons for expropriation due to state and municipal needs in the EU countries is broader and more detailed. The list of reasons for expropriation in Ukraine in our opinion does not meet the requirement of completeness. For example, reference to the possibility of land appropriation to accommodate the facilities required for maintenance of linear objects and objects of transport and energy infrastructure, which do not directly belong to the linear objects and related infrastructure creates the opportunity for abuse and corruption.

Justification of expropriation has an explicit nature when expropriated land plot will be transferred to government agencies or to build new roads, railways, airports and more. Also an explicit nature is ensured when expropriated land plot is given to a private enterprise, but to meet public needs of society.

More controversial is an occurrence when the government expropriates private land plots and transfers them to private real estate developers and large companies to satisfy their own needs, so it is highly necessary to strictly monitor the situation, so that appropriated land plot is provided for public services, social and economic development, population welfare and environmental protection.

In practice, in some countries legislation on expropriation after the enumeration of specific needs for which land may be expropriated at the end of the list the remark: «The other obvious social needs» is added (such as in the laws of Poland), which is an additional condition that allows expand purposes of land expropriation and makes the list endless. This formulation provides flexibility to expand the list of legitimate public purposes that justify expropriation, in case if one day the government requires a land plot for needs, which were not discussed during the adoption of the relevant law. The legislation of Ukraine does not have such a regulation, which of course is a positive aspect

4. The procedures of land expropriation

Constitution of many EU countries provide both protection of private property and authority of state to appropriate land without voluntary consent of the owner. However, within European countries there are considerable differences. In some cases, the conditions of expropriation are defined by general traits, in other cases there exists a detailed legislation. The majority of countries supplement the constitutional norms with specific laws and regulations on expropriation, sometimes expropriation is partially regulated by civil

laws on ownership and partly by administrative legislation, particularly while defining the state powers and procedures.

Having analyzed the legal norms of various countries we may define basic common features of legislation on expropriation in EU countries:

1. Protection and ensuring of a proper process and procedure of appropriation.

2. The transparency of the procedure. All documents relating to the procedure are available to all interested parties. Interested parties have the right and the real possibility of access to information which is submitted in a meaningful to the parties way.

3. Clear and legislated rules which limit the power of government to use expropriation, enabling citizens to protect and defend their rights, support the sense of security on the appropriate level.

4. Diligent governance at all levels. Institutions that execute expropriation must conscientiously comply with the law, because violation of laws by local officials undermines the legitimacy of expropriation. Diligent governance reduces the possibility of abuse of power and corruption.

5. Developed and easily accessible mechanisms of appeal to protect citizens' property rights.

6. Adequate (equivalent) compensation. Legislation of countries ensures that the affected owners will receive adequate compensation, which is equal to those damages and losses they suffered as a result of land expropriation, or they will receive a similar land plot, which is not worse than expropriated one.

Article 4 of the Law of Ukraine [1] enshrines principles of appropriation of private property for social needs or for reasons of public necessity, which have some common traits with the main features of the EU legislation. At the same time there are no clear mechanisms and procedures for preparation, the approval of decision for buyout and expropriation of land in Ukraine. The existing legal provisions define the rights of public authorities or local governments in a general manner, which can lead to significant losses, especially due to the possible appropriation of agricultural land.

In addition, the existing legal norms regarding buyout and expropriation of land have a problematic aspect, namely compensation for lost land plot. In the legal framework there are unsettled standards on determination of the value of land and real estate, damages caused to their owners due to expropriation, lack of clearly defined subjects of compensation assessment, uncertainty of planning

and funding mechanisms required for buyout or refunding of the appropriated land and so on. Also, interests of other parties (except the owners of sites that are appropriated) are not taken fully into account in the legislation of Ukraine on the expropriation of land.

If expropriation is done improperly, the following problems can occur:

- reduction of security of property ownership: citizens may lose confidence in safety and security of ownership if the government is able to expropriate private land without respecting the proper procedures and / or without payment of adequate compensation;

- reduction of investment: unguaranteed ownership, the threat of property eviction and related income discourages domestic and foreign investors;

- weakening of the land market, threat to the land ownership negatively affects the volume of transactions, depriving citizens of willingness to

invest in the acquisition or maintenance of property, reducing the value of land;

- provision of reasons for corruption and abuse of power;

- detention of land acquisition in case of complaints about unfair procedures, that may delay land purchase, thereby blocking the implementation of projects and increasing costs;

- payment of inadequate compensation to the affected owners and users: financial payments may not meet the needs of provision the affected persons with residence (home) consistently after the expropriation of their land. Individuals may feel that they have not received compensation for losses resulting from the deprivation of their cultural, religious or emotional aspects of land ownership [2].

Common and different appropriation procedure's levels in Ukraine and the EU countries are shown in Table 2.

Table 2. Comparative analysis of land plot appropriation procedures in Ukraine and the EU countries

Stage	Ukraine	EU countries
Planning	The executive agencies or local governments make decision on land buyout for social needs a on the basis of master plans of settlements and other planning documentation, materials of approval of location of such objects of land management projects for land allotment and other land management documentation approved in legitimate manner.	First it is necessary to determine the possible location of the land required to satisfy the needs of society, involving all interested parties. Then one should determine the exact location and area of land plot subjected to expropriation. The gathering of all the necessary data is conducted. Assessment of the impact of the project involving persons whose interests are affected by the project is carried out.
Notification	Executive body or local authority shall in writing notify the owner (s) within five days from the date of the decision, but not later than three months prior to their buyout. If the residence location of land owner is unknown, these individuals are to be notified by placing relevant advertisement, in which information about the buyout object is contained, as well as buyout purpose, its terms, the rights and obligations of owner (s) of land plot, information on a dwelling house, dwelling rooms (location, area) provided instead of bought out one.	Publication of notice to inform landowners and land users about government's intention to expropriate their land. Message outlines the purpose of expropriation, procedure, important dates, procedural rights of interested parties. Public meetings and discussions give citizens the opportunity to learn more about the project, to express their views on the project and the idea about compensation.
Assesment and claiming	The owner (owners) of land plot and other real estate located thereon shall notify the relevant executive authority or local authority for consent to negotiate the terms of buyout or for a refusal of such buyout within one month from receiving the information (written notification). The procedure for determining the buyout price is determined by Article 5 [1].	On the scheduled date amount of compensation for land plot subjected to expropriation is specified. Landowners and land users submit their claims for compensation. Assessment of land is conducted by an agency (institution) that appropriates the land or other government authority. Further negotiations and consultations may be conducted.

End of Table 2

Compensation payment	In case of land buyout for society needs owner (s) of the property can get compensation of value of these objects in cash or may acquire ownership of a similar land plot or real estate which value is taken into account in determining the purchase price.	Government pays compensation to affected parties or gives them other land plots.
Assumption of ownership	The right of ownership of land plot and other real estate located thereon, which is purchased for public use, is transferred to the state or community after signing the contract of sale (or other transaction that involves the transfer of property) and state registration of such rights.	Government enters into ownership of the land plot and the direct ownership of land plots, which were appropriated for the stated purpose.
Appellation	The executive body or local authority, which decided that the appropriation of land, in case of disagreement with the owner of the land and other real estate located thereon on their buyout for public use refers to the administrative court with a claim for expropriation of these facilities.	Owners and users are able to challenge the expropriation, including the decision of appropriation, appropriation procedure and the amount of compensation offered.
Restitution	If the need to use land and other real estate located thereon, which was bought out for public use or expropriated due to social necessity, disappeared, the body, which decided to repurchase these objects, within a month from the day when it became aware or should have become aware of it, takes appropriate action.	There are opportunities to return to the land plots that were expropriated to the former owners (users), when the need for such areas disappeared.

5. Conclusions

To ensure the realization of public interest of people of Ukraine, State, local communities in the formation of modern land relations, land ownership right has to fulfill a social function just as it does in developed countries with fully functioning land market.

The expropriation of land plots for construction purposes of BGR follows both Ukrainian and European legislation. But we need a well-balanced approach to land expropriation, which requires first of all respect for the rights of owners of land plots subjected to expropriation. There should be a balance between the general interest of society, the requirements for the protection of property rights and the principles of land appropriation.

The Government of Ukraine should ensure the protection and security of human rights during the land appropriation for state and municipal needs. Also, citizens need a legal assistance, so that they are enabled to exercise their right to appeal for

protection of their rights. Clear principles of legislation and standards of expropriation will provide legitimacy and transparency of land appropriation, reduce conflicts between owners and the government.

The development and improvement of the legal framework on land plot appropriation should be aimed primarily at establishing clear procedures for the preparation and the decision-making for buyout and expropriation of land plots, the development of available appellation mechanisms to protect citizens property rights, determining the purchase price for the appropriated land plot, full refund to owners according to market value (or provision of an equivalent replacement, in the absence of land market) and setting minimum terms of compensation payment.

Compensation for appropriated land plot has to make sure that citizens find themselves in the position of not worse than they had before expropriation. Legislation should be flexible enough

to provide an opportunity to determine the equivalent compensation in all cases. Thus, further development and improvement of assessment framework should ensure that the advantages and benefits of expropriation exceeded the associated costs.

The centralization of powers of expropriation will help promote the adoption of common standards, a full-fledged state policy in this area and elaboration of high professional skills. There is a current necessity for creating recommendations on the requirements for the qualification of experts and professionals in order to develop the necessary skills for conduction of appropriation evaluation and compensation procedures. Only a complete and efficient land management system can guarantee ownership right and its defense.

References

- [1] Law of Ukraine of 17.11.2009 № 1559-VI «Pro vidchuzhennia zemelnykh dilianok, inshykh ob'ektiv nerukhomoho maina, shcho na nykh rozmishcheni, yaki перебуvaiut u pryvatnii vlasnosti, dlia suspilnykh potreb chy z motyviv suspilnoi neobkhidnosti». Online resource. Available from Internet: <http://zakon4.rada.gov.ua/laws/show/1559-17>.
- [2] Keit S. Prymusove vidchuzhennia zemelnykh dilianok ta kompensatsiia – FAO 2009 / S. Keit ta in.; perekl. M. Fedorchenko. – K. : IRTS «Reformuvannia zemelnykh vidnosyn v Ukraini». 2009. 51 p.
- [3] Law of Ukraine of 18.03.2004 № 1629-IV «Pro Zagalnodержavnu programu adaptatsii zakonodavstva Ukraini do zakonodavstva Yevropeiskogo Soiuzu». Online resource. Available from the Internet: <http://zakon2.rada.gov.ua/laws/show/1629-15>.
- [4] Kauko V. Problemy prymusovogo vykupu zemelnikh dilianok : globalnyi kontekst / Kauko Viitanen, Ibimina Kakulu; perekl. M. Fedorchenko. – K. : IRTS «Reformuvannia zemelnykh vidnosyn v Ukraini». 2009. 12 p.
- [5] Zimmermann W. Effective and Transparent Management of Public Land: Experiences, Guiding Principles and Tools for Implementation. – International Federation of Surveyors, December 2008. – 17 p.
- [6] Khvesyk M. A. Institutional transformation and the financial and economic regulation of land use in Ukraine: monograph / M. A. Khvesyk, V. A. Holian, A. I. Krysak. – K. : Kondor, 2007. – P. 342–249 (in Ukrainian).
- [7] Kucher O. O. Vykup i prymusove vidchuzhennia zemelnykh dilianok: pravovi ta ekonomichni aspekty / O. O. Kucher, S. M. Horbatovych // Zemlevporiadnii visnyk. 2005. N 2. P.47–52 (in Ukrainian).
- [8] Martyn A. Vikup zemelnykh dilianok dlia suspilnykh potreb: yak udoskonalyty organizatsiino-pravovi mekhanizmy? / A. Martin // Journal of Land Surveying. 2009. N 8. P.28–35 (in Ukrainian).
- [9] Miroshnichenko A. Sfera dopustymogo zastosuvannia prymusovogo vidchuzhennia zemelnikh dilianok v Ukraini / A. Miroshnichenko, A. Shaipov // Visnyk Kyivskogo natsionalnogo universytetu im. T. Shevchenka. N 86. 2011. P. 30–32 (in Ukrainian).
- [10] Khyliuk D. «Suspilna neobkhidnist» lekho pozbavyt bud-koho yoho pryvatnoi vlasnosti / D. Khyliuk // Zemelne pravo Ukraini: teoriia i praktyka. 2010. N 4. P. 14–17 (in Ukrainian).
- [11] Kovalenko T. Prymusove vidchuzhennia zemelnykh dilianok / T. Kovalenko // Agrobusiness today. Ukraine. 2011. N 13(212). Online resource. Available from Internet: <http://www.agrobusiness.com.ua/component/content/article/29-2011-05-11-22-05-40/514-2011-07-04-07-23-13.html>.
- [12] Oleinyk O. Vyluchennia zemli dlia suspilnykh potreb, zakon ye, yakoiu bude yoho realizatsiia? / O. Oleinyk // Zemelne pravo Ukraini: teoriia i praktyka. 2010. N 2. P. 58–60 (in Ukrainian).
- [13] Zahalna deklaratsiia prav liudyny vid 10.12.1948. – Online resource. Available from the Internet: http://zakon2.rada.gov.ua/laws/show/995_015.

Received 10 March 2015.

Т. В. Козлова¹, О. В. Рудич². Вилучення земель для державних та муніципальних потреб у країнах ЄС та Україні

^{1,2}Національний авіаційний університет, проспект Космонавта Комарова, 1, Київ, Україна, 03680

E-mails: ¹t_kozlova@ukr.net; ²alexey_rudych@ukr.net

Визначено спільні основні особливості та відмінності вилучення земель для державних та муніципальних потреб у країнах ЄС і Україні. Проведено порівняння цілей примусового відчуження в країнах ЄС та Україні. Проаналізовано проблеми, які можуть виникнути при неналежному відчуженні земельних ділянок. Окремо виділено такий проблемний аспект відчуження як компенсація за втрачену земельну ділянку. Проведено порівняльний аналіз процедури відчуження земельних ділянок в Україні та країнах ЄС. Визначено, що має бути баланс між загальними інтересами суспільства, вимогами до захисту прав власності та принципами відчуження земель.

Ключові слова: земельна ділянка; право власності; примусове відчуження; суспільна необхідність; суспільна потреба

Т. В. Козлова, О. В. Рудич. Изъятие земель для государственных и муниципальных нужд в странах ЕС и Украине

Национальный авиационный университет, пр. Космонавта Комарова, 1, Киев, Украина, 03680

E-mails: ¹t_kozlova@ukr.net; ²alexey_rudych@ukr.net

Определены общие основные особенности и отличия изъятия земель для государственных и муниципальных нужд в странах ЕС и Украины. Проведено сравнение целей принудительного отчуждения в странах ЕС и Украине. Проанализированы проблемы, которые могут возникнуть при ненадлежащем отчуждении земельных участков. Отдельно выделен такой проблемный аспект отчуждения, как компенсация за изъятый земельный участок. Проведен сравнительный анализ процедуры отчуждения земельных участков в Украине и странах ЕС. Определено, что должен быть баланс между общими интересами общества, требованиями к защите прав собственности и принципами отчуждения земель.

Ключевые слова: земельный участок; общественная необходимость; общественная потребность; право собственности; принудительное отчуждение

Kozlova Tetyana (1963). Candidate of Sciences (Technical). Associate Professor.

Department of Land Planning and Cadastre, National Aviation University, Kyiv, Ukraine.

Education: Kyiv Institute of Civil Aviation Engineers, Kyiv, Ukraine (1985).

Research area: research and tendencies of development and improvement of land relations.

Publications: 97.

E-mail: t_kozlova@ukr.net

Rudich Oleksij (1993). Postgraduate Student.

Department of Land Planning and Cadastre, National Aviation University, Kyiv, Ukraine.

Education: National Aviation University, Kyiv, Ukraine (2015).

Research area: research and tendencies of development and improvement of land relations.

Publications: 3.

E-mail: Alexey_rudych@ukr.net