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REDUCTION OF THE FOREST FUND AS A RESULT OF ILLEGAL ACTIVITIES OF THE LOCAL AUTHORITIES AND AS A CAUSE FOR PROTECTION OF THE ENVIRONMENTAL RIGHTS OF CITIZENS IN ADMINISTRATIVE COURTS

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Abstract

One of the environmental problems in Ukraine, with which are faced residents of territorial communities, is a gradual destruction of forests and the location of various objects of residential or industrial character within their territories. The purpose of the research is to carry out a legal assessment of the situations arising in Ukraine in connection with the transfer of forests to the category of green areas by local self-government bodies. In the paper the model is formulated for carrying out a legal assessment of situations and modelling protection of citizens` rights in forest and land relations that have arisen in connection with the transfer of forests to the category of green spaces by changing the purpose of lands of forest fund into another categories by local self-government bodies. In disputes concerning the implementation of environmental law by citizens (in particular, safe environment), any citizen of Ukraine should be considered a proper plaintiff in court without any restrictions on the territorial relationship (land plot and place of residence of the citizen).

Keywords: activities of the local authorities, administrative justice, environmental public-law dispute, environmental rights, forest land.

INTRODUCTION

Scientific, Practical Problems.

One of the environmental problems in Ukraine, with which are faced residents of territorial communities, is a gradual destruction of forests

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and the location of various objects of residential or industrial character within their territories. Obviously, this does not happen without the participation of the authorities, which by their decisions or inaction allow and even contribute to the destruction of natural forest resources. Although pragmatists try to explain this situation as the possibility of solving social and economic problems, nonetheless, experts who take care about the health of the nation and the environment believe that such activity is illegal because it prevents enforcement of environmental rights (right to a safe environment) not only citizens of a particular territorial community, but also residents of other communities, the country as a whole, and also causes changes of interconnected ecosystems.

Without getting into the complex debate concerning the priority of human needs, it should be noted that in fact such activities can be justified, admissible and effective in cases, as a rule, caused by generally accelerated urbanization, increasing urban populations and workers, especially around large cities and their satellite cities. At the same time, such activities should be a measure of last resort, comply with the current legislation of the country, be carried out by clearly defined procedures and be accompanied by use of compensation and recovery mechanisms.

However, the current state of the problem demonstrates the irreversibility of environmental consequences that were caused to nature in the early 2000s as a result of violation of the procedures for changing the purpose of forest lands without implementation of forest restoration measures and the current rapid start of building on forest lands devastated almost 10-15 years ago. In these days, when citizens of

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the forest areas become witnesses of the unexpected and unwanted starting of building works and are faced with restrictions on access to forest resources, some of the most initiative activists embark on a path of restoration of justice and the lost right to a safe environment and access to forest resources. In connection with this, the number of appeals to courts has recently increased in an attempt to appeal against local government decisions taken in the early 2000s aimed at building halt or returning forest status to the lands. However, the lack of unity of the positions of administrative courts in resolving such cases and delaying litigations in resolving public disputes makes it necessary to involve scientists in the process of resolving these problems.

In fairness, it should be noted that certain aspects of these problems have obviously already been explored by various scholars, while at the same time under the current conditions we should emphasize the value of the results of the analysis of case-law and comparison of the legal position applied by judges with complex branched legislation.

Purpose of the Study.

Based on the aforementioned, *the purpose of the research* is to carry out a legal assessment of the situations arising in Ukraine in connection with the transfer of forests to the category of green areas by local self-government bodies that causes reduction of the state forest fund, prevention of enforcement of environmental human rights, as well as the development of citizens' behaviour model to protect their environmental rights and interests in administrative courts.

Object and Subject of the Research

The object of the research is the management legal relations arising in the field of forest management and protection of environmental

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human rights. The subject of the research is activities and decisions of local self-government bodies and state bodies concerning the transfer of forests to the category of green spaces.

Research Methods and Techniques

The specific feature of the applied methodology of the research is determined by the concentration of attention on the study of public disputes and related decisions of local governments, dating from 2000-2004, which were adopted according to the legislation in force at the time, and have continued character and carry consequences in 2016-2019. For these purposes, the retrospective approach of legal analysis was used in the study, as well as historical and legal and documentary analysis in combination with legal comparison of the provisions of the past and present legislation, which helped to establish the laws and causes of "doubtful", in terms of lawfulness, the activity of the authorities. The method of experimental selection, quantitative methods and generalizations made it possible to identify the situations that were the subject of analysis and to determine their typicality. And the evaluation methods contributed to the critical verification of the legitimacy and lawfulness of the decisions and activities of local government bodies. Information resources were also used in the research, namely: state register of judicial decisions, state forest cadastre, state land cadastre, national information-analytical system "Liga-Zakon", information resources with official data of local self-government bodies. In addition, we have already studied in other our

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researches some questions about land disputes,[1] the results of which were also used in this paper.

THE FIRST TOPIC: GENERAL CHARACTERISTICS OF THE LEGAL REGIME OF FORESTS IN UKRAINE

In accordance with the general norm contained in Article 13 of the Constitution of Ukraine, the land, its subsoil, atmosphere, water and other natural resources within the territory of Ukraine, natural resources of its continental shelf and of the exclusive (maritime) economic zone shall be the objects of property rights of the Ukrainian people. State authorities and local self-government bodies shall exercise the ownership rights on behalf of the Ukrainian people within the limits determined by this Constitution. Every citizen shall have the right to utilise the natural objects of the people's property rights in accordance with the law. Property entails responsibility. Property shall not be used to the detriment of the individual or the society.[2]

The Forest Code of Ukraine of 21.01.1994 No. 3852-XII (hereinafter referred to as the Forest Code) determines that the *woods* of Ukraine are its national wealth and according to the destination and to location carry out mainly environmental (the water preserving, protective, sanitary and hygienic, improving, recreational), aesthetic, educational,

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[1] Pyvovar, Y., Pyvovar, I., Babyak, A., Nazar, Yu. & Ostrovskiy, S. (2019). Permission for the Development of a Land Management Plan for a Land Plot Allocation as an Administrative Service: a Theoretical Approach for Legal Practice. *Amazonia Investiga, 8*(22): 370-380.

[2] Constitution of Ukraine. Law of Ukraine, No. 254k/96-VR. *Information from the Verkhovna Rada of Ukraine*. 1996, 30: 141.

Electronic copy available at: https://ssrn.com/abstract=4080373

other functions and have limited operational value are subject to public accounting and protection.[1]

As follows from Article 4 of the Forest Code, all forests within the territory of Ukraine make up the forest fund of Ukraine. The forest fund also includes land not covered by forest vegetation but provided for forestry purposes.[2]

In general, all forests of Ukraine by environmental and economic importance, according to Article 36 of the Forest Code, are divided into the first and second groups.

The *first group* includes forests that perform mainly nature conservation functions.

Depending on the function, forests of the first group are classified into the following security categories:

1) water conservation (windbreak forest along river banks, around lakes, reservoirs and other water bodies, forest strips that protect the spawning grounds of valuable industrial fish, as well as protective forest plantations on drainage strips);

2) *protective* (forests are erosion preventive, landslide, *protective strips of forests along* railways, *highways* of international, state and regional importance, especially valuable are forests, state protective forest strips, ravine forests, steppe copses and other forests of steppe, forest and steppe regions and mountain areas, which play an important role for environmental protection). This category also includes

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[1] Forest Code of Ukraine, No. 3852-XII. *Information from the Verkhovna Rada of Ukraine.* 1994, 17: 99.

[2] *ibid.*

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protective forest strips, protective forest plantations on railroad strips, *protective forest plantations along highways strips*;

3) sanitary-and-hygienic and health-improvement (forests of settlements, forests of green zones around settlements and industrial enterprises, forests of the first and second zones of zones of sanitary protection of water supply sources and forests of zones of districts of sanitary protection of health-improving territories).[1]

In addition to the first group, forests within the territory of the nature reserved fund (reservation parks, national nature parks, natural monuments, natural landmarks, regional landscapes, forests of scientific or historical importance (including genetic reserves), forest plantations and subalpine tree and shrub clusters.

The *second group* includes *forests* that within the ecological value have operational one and in order to preserve the protective functions, the continuity and unexhausted use of which a restricted forest management regime is established.

While dividing forests into groups and referring them to the categories of protection, the boundaries of the lands occupied by the forests of each group and the category of protection are determined.[2]

At the same time, the legislator clearly states that the following objects *are not referred* to the forest fund: all types of green spaces within settlements that are not classified as forest; individual trees and groups of trees; shrubs on farmlands, estates, personal ploti of land, country houses and garden areas.

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[1] ***ibid.***

[2] ***ibid.,* part 1 of Article 37.**

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Therefore, from the abovementioned analysis and based on the circumstances of the investigated situation, it can be asserted that, initially, before making decision of the local authority, the object referred to the forests of the first category with an appropriate legal regime; and after such a decision – to green areas not belonging to the forest fund of Ukraine, and in accordance with another legal regime.

THE SECOND TOPIC: LEGAL REGIME OF GREEN SPACES (NOT RELATED TO THE FOREST FUND)

Describing the legal regime of green spaces, it should be noted that the creation, protection and use of plantations that are not related to the forest reserves shall be regulated by other acts of legislation, than the forest reserves.

Thus, according to the Regulations on the maintenance of green areas of cities and other settlements of Ukraine, approved by the Order of the State Committee of Ukraine on Housing and Utility Services of 29.07.1994, No. 70 (valid till 10.04.2006)[1] all green plantings in cities and other settlements (hereinafter – urban plantation) on functional signs are divided into three groups, of 1) general use – municipal and regional parks; parks of culture and rest, gardens at residential areas and groups of houses, squares, boulevards, promenades, wooded parks, meadow parks, waterparks and others; 2) limited use – plantations on the territories of public and residential buildings, schools, children's institutions, sports facilities, healthcare institutions, industrial companies, warehouse territories and others; 3) special purpose –

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[1] **Regulations on the maintenance of green areas of cities and other settlements of Ukraine. Order of 29.07.1994, No. 70. [valid]. Retrieved from: https://zakon.rada.gov.ua/laws/show/z0301-94**

Electronic copy available at: https://ssrn.com/abstract=4080373

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plantings along streets, in sanitary-protective and conservation zones, on the territory of botanical and zoological gardens, exhibitions, cemeteries and crematoria, high voltage power lines; forest improvement plantations; the planting of nurseries, flower farms; roadside plantation within cities and other settlements.

According to Order No. 70, all green spaces within settlements during any implementation of activities shall be subject to protection and restoration, except for green spaces that are planted or self-seeded in the protected areas of air and cable lines, transformer substations, electrical distribution points and enterprises and are removed on time.[1]

Protection of green spaces is a system of administrative and legal, organizational and business, economic, architectural and planning, and agrotechnical measures aimed at preserving, restoring or improving the performance of the relevant functions by green spaces.[2]

According to Order No. 70 protection, maintenance and restoration of green spaces at the land improvement facilities, and the removal of self-sown trees shall be implemented using state or local budget funds, depending on the subordination of the land improvement facility, and at land plots that are transferred for permanent use or rent, – at the expense of their owners or leaseholders according to regulations approved in the prescribed manner.[3]

It is also important that the General plan for the development of settlements in Ukraine is being developed and implemented taking into

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[1] ***ibid.*, par. 7.1**

[2] ***ibid.*, par. 2.1**

[3] ***ibid.*, par. 7.2**

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account the requirements for the protection of green spaces,[1] and urban development in settlements, in turn, are being carried out in compliance with the requirements for the protection of green spaces.[2]

Thus, the legal regime of maintenance of green spaces shall include protection and restoration, which in turn protect them from being cut down without any reason, except provided by legislation, for example, removal of hazardous trees, separate dried or defective trees, removal of plantings in protective zones, removal of self-sown trees, etc.

In addition, further, the procedure for cutting down green spaces was provided by the Law of Ukraine "On improvement of settlements",[3] the Procedure for removing trees, bushes, lawns, flower beds in settlements,[4] the Rules for the maintenance of green spaces in settlements of Ukraine.[5]

THE THIRD TOPIC: STATE RECORDING AS A MEANS OF FORESTS SECURITY AND PROTECTION

It should be noted that both modern and current in 2002 legislation provides for the state registration of forests and the *state forest cadastre* to effectively organize the security and protection of forests, rational use of forest resources, forest reproduction, systematic control over

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[1] ***ibid.*, par. 7.3**

[2] ***ibid.*, par. 7.4**

[3] **On improvement of settlements. Law of Ukraine No. 2807-IV. *Information from the Verkhovna Rada of Ukraine.* 2005, 49: 517.**

[4] **Procedure for removing trees, bushes, lawns, flower beds in settlements. Resolution No. 1045. Retrieved from: https://zakon.rada.gov.ua/laws/show/1045-2006-%D0%BF**

[5] **Rules for the maintenance of green spaces in settlements of Ukraine. Order, dated 10 April, 2006, No. 105. Retrieved from: https://zakon.rada.gov.ua/laws/show/z0880-06**

Electronic copy available at: https://ssrn.com/abstract=4080373

qualitative and quantitative changes in the forest reserves and provision of the Councils of People's Deputies, interested state executive authorities, forest users with information about the forest reserves (Article 94).[1] While Forest Code provides that the state accounting of forests and state forest cadastre contains a system of data and documents on legal regime of the forest reserves, its distribution among users, qualitative and quantitative state of forest reserves, the division of forests into groups and assignment to categories of protection, economic evaluation and other data needed for sustainable forest management and evaluation of the results of economic activities in the forest reserves.[2] The basis of the state forest accounting and the state forest cadastre is made up of materials of forest management, inventory, surveys and primary accounting of forests according to the unified system.[3]

In general, forest management is a system of state measures aimed at ensuring effective protection, rational utilization, increase of productivity of forests and their reproduction, forest resource assessment, as well as improve the culture of forest management, which is conducted on the whole territory of Ukraine by the state forest management bodies for public funds and under a uniform system in the manner prescribed by the Ministry of Forestry of Ukraine in coordination with the Ministry of Environmental Protection.[4]

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[1] **Forest Code of Ukraine, No. 3852-XII.** ***Information from the Verkhovna Rada of Ukraine.*** **1994, 17: 99.**

[2] ***ibid.*****, art. 95.**

[3] ***ibid.*****, art. 96.**

[4] ***ibid.*****, art. 93.**

Electronic copy available at: https://ssrn.com/abstract=4080373

That is exactly during the forest management there are implemented: 1) definition of the boundaries and internal organization of the territory of the forest reserves that are in use by regular forest users; 2) execution of topographic and geodetic works and special mapping of forests; 3) *inventory of forest reserves* with definition of species and age composition of forest stands, their condition, qualitative and quantitative characteristics of forest resources; 4) identification of forest stands that require felling related to forest management, the establishment of reforestation and afforestation, land reclamation, protection of forests etc., as well as order and methods of carrying out these activities; 5) *justification of division of forests into groups and assigning them to categories of protection*; 6) calculation of the calculated felling rate, the volume of felling related to forest management, and use of other forest resources; 7) determination of amounts of works on restoration of forests and afforestation, forest fire protection, protection against pests and diseases, as well as other forest management work; 8) forestry biological and other surveys and studies; 9) supervision of the forest management activities implementation developed by forest management and other managerial activities.

Accordingly, *the forest management materials should contain a comprehensive assessment of forest management, use of forest resources, use of land plots of the forest reserves*, and develop the main provisions of the organization and development of forestry. It should be noted that the forest management materials shall be approved by the state forestry authorities in coordination with local Councils of People's Deputies and environmental protection bodies. Such materials are the basis for the

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organization of forest management and use of forest resources by permanent forest users.[1]

Thus, *in establishing eligibility of local government body for disposition of a specific land plot of forest reserves* it is recommended to study the materials of forest management and other information and documents to determine the legal regime of the forest reserves, its users, qualitative and quantitative characteristics of the forest reserves, groups and categories of forests protection, economic valuation, other data and inventory content, surveys and primary accounting of the forest that make up the state accounting of forests and state forest cadastre.

The above allows us to state that as a result of administrative actions of local governments to change the purpose of forests, such objects are actually excluded from the *forest reserves of Ukraine*.

FOURTH TOPIC: CHECKING THE ELIGIBILITY OF THE LOCAL GOVERNMENT BODY TO MAKE DECISIONS ON CHANGING THE PURPOSE OF FORESTS

Determining the legal nature of the decision of the local council to change the category of forest lands and referring them to another category of land, it should be noted the following. We believe that this decision is a *regulatory act* within the meaning of paragraph 18 of part 1 of Article 4 of the Code of Administrative Justice of Ukraine (CAJ),[2] as

[1] *ibid.*, art. 94.

[2] Code of Administrative Justice of Ukraine, No 2747-IV. *Information from the Verkhovna Rada of Ukraine*. 2005, 35-37: 446.

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adopted by the authorized power entity (the respective village, settlement, city council) in statutory form and order, which establishes legal rules for public at large (including members of the local community) and is designed for repeated use. The same concerns a decision to transfer forests to land plantations.

To delineate the boundaries of the jurisdiction of local councils, it should be noted that according to the provisions of Article 6 of the Forest Code, all forests in Ukraine are the *property of the state*.[1] At the same time, Forest Code divides all forest resources into *forest resources* of *national standing* and of *local significance*. Forest resources of national standing include wood from the cuttings of main use and turpentine. *Local forest resources* include forest resources that are not classified as state resources.[2]

In addition, in Article 39 of the Law of Ukraine "On environmental protection" of 25.06.1991, No. 1264-XII (hereinafter – the Law No. 1264-XII),[3] the legislator designated as the natural resources of national significance, in particular, the forest resources of national significance, and to *natural resources of local significance* – natural resources that are not classified by the legislation of Ukraine as natural resources of national significance.[4]

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[1] Forest Code of Ukraine, No. 3852-XII. *Information from the Verkhovna Rada of Ukraine.* 1994, 17: 99.

[2] *ibid.*, art. 7.

[3] On environmental protection. Law of Ukraine, No. 1264-XII. *Information from the Verkhovna Rada of Ukraine.* 1991, 41: 546.

[4] *ibid.*, part 2, art. 39.

Electronic copy available at: https://ssrn.com/abstract=4080373

Vol. 22, issue 2- 2020 Print ISSN 2222-7288 Online ISSN 2518-5551

Despite the legal division of forest resources into state and local forest resources, the special value of all forests should be emphasized. This is stated in Article 5 of Law No. 1264-XII, which establishes that the state protection and regulation of use on the territory of Ukraine cover: the natural environment as a set of natural and natural-social conditions and processes, natural resources, both attracted to economic turnover and unused in the economy during this period (land, subsoil, water, atmosphere air, ***forest (that is, all forest, and, accordingly, all forest resources) and other vegetation, wildlife)*****, landscapes and other natural complexes.**

It follows that the state, represented by state bodies, has its own exclusive powers to ensure state protection and regulation of the use of all forests on the territory of Ukraine.

In addition, the law stipulates that the Verkhovna Rada of Ukraine manages forests on behalf of the state. The Verkhovna Rada of Ukraine delegates to the relevant Councils of the People's Deputies its powers to ***dispose of forests*****, as defined by this Code and other legislative acts. The Council of the People's Deputies, within its competence, shall grant land plots of the forest reserves for permanent use or withdraw them in accordance with the procedure defined by the Land Code and this code (Article 6).[1]**

Regarding the jurisdiction of local self-government bodies in the field of regulation of forest relations, we note that the competence of village and settlement Councils of the People's Deputies include:

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[1] **Forest Code of Ukraine, No. 3852-XII.** ***Information from the Verkhovna Rada of Ukraine.*** **1994, 17: 99.**

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1) provision of land plots of the forest reserves for permanent use within the boundaries of settlements and villages and termination of the right to use them;

2) provision of land plots of the forest reserves for temporary use within settlements and villages for special use of forest resources, cultural, recreational, sports and tourist purposes, for carrying out scientific research, as well as outside of them for utilization of secondary forest materials, implementing minor forest production and terminating the use of these plots;

3) implementation of measures for the security and protection of forests, suppression of forest fires, engagement of fire-fighting equipment for their extinction, as well as the prohibition of public visits to forests and entry of vehicles into them during a period of high fire danger in the manner prescribed by law.

4) organization of improvement of land plots of the forest reserves and cultural and consumer services for vacationers in the forests of green spaces and other forests used for these purposes;

5) ***solving other issues in the field of forest relations regulation within its competence.***[1]

According to Forest Code, ***the transfer of forest lands to non-forest for use in the interests not related to forest management*****, the use of forest resources and the use of land plots of the forest reserves for the needs of hunting, cultural, recreational, sports and tourist purposes and research, shall be carried out by decision of the authorities that provide these lands for use in accordance with land legislation. Transfer of**

[1] ***ibid.*****, art. 16.**

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forest lands to other categories shall be carried out with *the consent of the relevant state forestry authorities of the Republic of Crimea, regions, cities of Kyiv and Sevastopol.*[1]

THE TOPIC FIFTH: CERTAIN LEGISLATIVE GUARANTEES FOR FOREST CONSERVATION

To protect forests, it should be noted that according to Forest Code in case of transfer of land from the forest reserves into other categories of lands and their transfer to the property or making available for use for the needs not related to forest management, the bodies making such decision *at the same time solve the question of maintaining or cutting-down trees and shrubs* and on the order of use of the resulting wood.[2]

Enterprises, institutions, organizations and citizens, who are given ownership or use of land plots without the right to cut down trees and shrubs, must ensure their preservation and maintenance.[3]

If in the future there is a need to cut down trees and shrubs in these areas, the issue of felling and the procedure for using the harvested wood shall be solved by the body that decided to transfer ownership or grant use of the land plot.[4]

At the same time, we must pay attention to the mandatory participation of the state (its bodies) also in case, if local authorities make the next *decision on the future of forest resources (after making a decision to change the purpose of forests) - to cut down trees and shrubs.*

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[1] ***ibid.*, art. 42.**

[2] ***ibid.*, part 1, art. 44.**

[3] ***ibid.***

[4] ***ibid.*, part 3, art. 44.**

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Such a decision must be made by prior agreement with the relevant state bodies for environmental protection.[1]

From the analysis of the circumstances of a typical situation, we must state that in cases where the local government does not agree with any state body on the appropriate decision *to cut down trees and shrubs* and does not accept it, then there are no legal consequences.

THE TOPIC SIX: STATUS OF LANDS, WHERE FORESTS ARE LOCATED

According to Article 18 of the Land Code of Ukraine No. 2768-III of 25.10.2001 (hereinafter referred to as the Land Code), all lands of Ukraine within its territory, including islands and lands occupied by water bodies, which are divided into categories according to their main purpose. Each category of land in Ukraine has a special legal regime.[2]

The categories into which the lands of Ukraine are divided according to the main purpose are established by part 1 of Article 19 of the Land Code. In particular, they are: a) agricultural land; b) land of residential development; c) lands of nature reserve and another environmental protection purpose; d) lands of health-improvement purpose; e) lands of recreational purpose; f) lands of historical-cultural purpose; g) land for forestry purposes; h) lands of water resources; i) lands of industry, transport, communications, energy, defense and other purposes.[3]

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[1] ***ibid.*, part 4, art. 44.**

[2] **Land Code of Ukraine. Law of Ukraine No 2768-III. *Information from the Verkhovna Rada of Ukraine*. 2002, 3-4: 27.**

[3] ***ibid.***

Electronic copy available at: https://ssrn.com/abstract=4080373

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According to Land Code the assignment of land to a particular category shall be carried out on the basis of decisions of state authorities and local government bodies in accordance with their powers.[1]

Land Code of Ukraine establishes that changes in the purpose of land shall be carried out by executive authorities or local self-government bodies *that make a decision on transfer of these lands to ownership or granting them for use, withdrawal (purchase) of land and approval of land management projects or make a decision to create objects of environmental, historical and cultural purpose.*[2]

THE TOPIC SEVEN: SPECIAL PROCEDURE FOR TRANSFERRING LAND PLOTS FROM THE FOREST FUND TO OTHER LAND CATEGORIES

A systematic analysis of these norms gives grounds to assert that the legislation provides for a special procedure for transferring land plots from the forest reserves to other categories of land, which is characterized by:

obtaining by the relevant village, settlement, city council agreement of the relevant state forestry authorities of the Republic of Crimea, regions, cities of Kyiv and Sevastopol for the transfer of forest lands to other categories and making such a decision;

adoption by the relevant village, settlement, city council of the decision on the referring of the land plot, which is in municipal property and has the status of forest fund lands to another category of

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[1] ***ibid.*, part 1, art. 20.**

[2] ***ibid.*, part 2, art. 20.**

Electronic copy available at: https://ssrn.com/abstract=4080373

lands (for example, to lands of public and residential development, etc.);

simultaneous transfer of land plots into ownership or use, for needs that are not related to forest management, that is, the decision of the council to transfer them to ownership or provision for use;

approval of the land management plan or making a decision on creation of environmental, historical and cultural objects;

a simultaneous solution of a problem on the conservation or felling of trees and shrubs by prior agreement with the relevant state bodies for the protection of the natural environment and on the procedure for using the resulting wood – that is, making the appropriate decision by the council on the basis of a prior agreement with the relevant authority.

Thus, making by the relevant village, settlement, and city council of only a decision to transfer forests to the category of green spaces with the prior consent of the relevant state forestry authorities of the Republic of Crimea, regions, cities of Kyiv and Sevastopol to transfer forest lands to other categories is only one of the first stages of a special complex procedure for transferring land plots from the forest reserves to other categories of land.

THE TOPIC EIGHT: CONSEQUENCES OF VIOLATION OF THE PROCEDURE FOR TRANSFERRING LAND PLOTS FROM THE FOREST FUND TO OTHER CATEGORIES OF LAND

As follows from Article 21 of the Land Code, violation of the procedure for establishing and changing the purpose of land is the

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basis, firstly, for invalidating decisions of local governments on the provision (transfer) of land plots to citizens and legal entities; secondly, for invalidating agreements on land plots; thirdly, for bringing to justice under the law of citizens and legal entities guilty of violating the procedure for establishing and changing the purpose of land.

By Order of the Cabinet of Ministers of Ukraine of April 10 2008 No. 610-r "Some issues of disposal of forest land areas",[1] to prevent violations of the state and society interests while alienation and change of purpose of forest land plots, decision-making on granting permission for withdrawal of plots, transferring them into ownership and lease with right to change the purpose was suspended, except cases provided in this regulation.

Also, the specified regulation should withdraw previously granted permission to the withdrawal of plots, transfer them into ownership and lease with right to change the purpose in a case, when the local bodies of executive power or bodies of local self-government did not make the appropriate decisions or, where the results of verification established that such decisions were made with violation of requirements of the legislation.

According to Article 49 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine", the Order of the Cabinet of Ministers of Ukraine shall be a compulsory act.[2]

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[1] Some issues of disposal of forest land areas. Order No. 610-r. Retrieved from: https://zakon.rada.gov.ua/laws/show/610-2008-%D1%80 (invalidated on June 14, 2017)

[2] On the Cabinet of Ministers of Ukraine. Law of Ukraine No. 794-VII. *Information from the Verkhovna Rada of Ukraine*. 2014, 13: 222.

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This act of the Government, on the one hand, is an indicative and acceptable way to protect, in particular, forest lands, but it and other similar acts do not actually cover all similar problematic issues for reasons, in particular, of improper control by the authorized state executive bodies, and, accordingly, of identifying violations and informing the Government about them.

Therefore, the activities of the local authority (the relevant rural, village, city council) on the decision to classify the land, which was community property and had the status of forest reserves lands to other categories of land (including on the basis of the decision on the transfer of forests to the category of green space) without proper land management project, in the absence of the consent of the forestry authority, in violation of Article 19 of the Constitution should be considered illegal because it was made not on the basis of and not in the way envisaged by the Land Code of Ukraine. That is, in such cases, changing the purpose of land should be recognized as illegal, and the corresponding decision of the local government - illegal.

However, it should be borne in mind that the adoption by the respective village, settlement, city council of only decisions on the transfer of forests in the category of green space in itself does not predetermine the legal implications of automatic change of land purpose, and is only one of the prerequisites (subject to appropriate order) to complete the procedure of transfer of forest land to another category.

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THE TOPIC NINE:
RIGHT TO APPEAL TO A COURT

The other important task in this work is to identify the person who has the right to appeal against the decisions of local governments on the transfer of forest reserves lands to another category. The problem of this task lies in the answer to the question: does any capable citizen have the right to appeal against this type of a decision, or does this right belong exclusively to citizens-residents of the corresponding territorial community?

According to part 2 of Article 55 of the Constitution of Ukraine, everyone shall be guaranteed the right to appeal to the court against decisions, actions or omissions of public authorities, local self-government bodies, officials and officers.[1]

The decision of the Constitutional Court of Ukraine No. 19-rp/2011 of December 14 2011 states that human rights and freedoms and their guarantees determine the content and direction of the state's activities (part 2 of Article 3 of the Constitution of Ukraine). To carry out such activities, public authorities and local self-government bodies, their officials and public servants are vested with public authority, that is, they have a real opportunity to make decisions or perform certain actions on the basis of the powers established by the Constitution and laws of Ukraine. A person, in respect of whom a power entity has made a decision, committed an action or inaction has the right to protection.[2]

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[1] **Constitution of Ukraine. Law of Ukraine, No. 254k/96-VR.** ***Information from the Verkhovna Rada of Ukraine*****. 1996, 30: 141.**

[2] **Decision on Case No 1-29/2011.** ***Official Bulletin of Ukraine*****. 2011, 101: 72.**

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Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that everyone has the right established by law to a fair and public hearing of their case within a reasonable term by an independent and impartial court.[1]

Since the analyzed situations reside in the jurisdiction of administrative courts, we note that the objective of administrative proceedings in accordance with part 1 of Article 2 of the CAJ is a fair, impartial and timely resolution of disputes by a court in the sphere of public law relations for the effective protection of the rights, freedoms and interests of individuals, rights and interests of legal entities from authorities misconduct.[2]

Code of Administrative Justice provides that every person has the right to apply to the administrative court in accordance with the procedure established by this Code, if she believes that the decision, action or inaction of the power entities violated their rights, freedoms or legitimate interests.[3]

Consolidation of the rule-of-law state in accordance with the requirements of Article 1, the second sentence of part 3 of Article 8, Article 55 of the Constitution is, in particular, to guarantee everyone

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[1] Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950. Retrieved from: https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=

[2] Code of Administrative Justice of Ukraine, No 2747-IV. *Information from the Verkhovna Rada of Ukraine*. 2005, 35-37: 446.

[3] *ibid.*, part 1, art. 5.

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judicial protection of rights and freedoms, as well as to introduce a mechanism for such protection.[1]

From the analysis of the above provisions of the law, it is seen that the right to judicial protection provides for the possibility of applying to the court for protection of the violated right, but requires that the violation alleged by the plaintiff was justified. Such a violation must be real and relate to the individually expressed rights or interests of the person who claims on their violation.

General approaches to the question of whether the plaintiffs have a substantive interest, which is a prerequisite for the protection of their violated rights, were formulated in the Supreme Court's decision as of February 20 2019 in Case No. 522/3665/17. In this decision, the Court noted that the interest must have a legal character, which shall be manifested in the fact that the court's decision must have legal consequences for the plaintiff (para. 58); the interest must have an objective basis (para.59); the plaintiff must prove that they have a legitimate interest and are a victim of a violation of this interest by the power entity (para. 74).[2]

Based on the subject of our research, we draw attention to Article 50 of the Constitution,[3] which serves as a basic regulation that guarantees

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[1] Constitution of Ukraine. Law of Ukraine, No. 254k/96-VR. *Information from the Verkhovna Rada of Ukraine*. 1996, 30: 141.

[2] Resolution in the Case No. 522/3665/17. Retrieved from: http://reyestr.court.gov.ua/Review/80167902

[3] Constitution of Ukraine. Law of Ukraine, No. 254k/96-VR. *Information from the Verkhovna Rada of Ukraine*. 1996, 30: 141.

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everyone the right to a safe environment for life and health and to compensation for damage caused by violation of this right.

Regarding the environment, this provision is detailed in Article 9 of Law No. 1264-XII, which states that every citizen of Ukraine has the right to: a safe environment for his life and health; participation in the discussion of draft legislative acts, materials regarding the placement, building and reconstruction of objects that may negatively affect the state of the natural environment, and making proposals to state and economic bodies, institutions and organizations on these issues; participation in the development and implementation of measures for the protection of the natural environment, rational and integrated use of natural resources, and so on.

Answering the question, if the problem of changing the purpose of forest lands concerns any citizens, or only those who live in this type of land, we have our own position, which is based on the provisions of the legislation and is as follows. In forestry and land relations, the citizens and officials should be aware that the situations on transfer of forest reserves lands of the first category (that is, forests that perform environmental functions, in particular, protection from the roads influence) to lands of public and residential development and subsequent clearing of trees and shrubs to build the relevant objects of urban planning, concern the interests and rights not only of the residents of the locality near which the road passes, and suffering from noise, dust, gas, etc., but also any other citizen of Ukraine. This connection is due to the fact that, firstly, forests are objects of property rights of the entire Ukrainian people, secondly, forests are the national wealth of Ukraine, and thirdly, forests have useful properties – the

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ability to reduce the impact of negative natural phenomena, protect soils from erosion, regulate water flow, prevent pollution of the natural environment and clean it, promote the health of the population and its aesthetic education.

CONCLUSIONS

The situation outlined in this research is typical for Ukraine within the period of 2000-2005, with environmental consequences of which citizens are facing within the period of 2016-2019. Scientific analysis of such a situation allows recognize it as a kind of abuse scheme (gaps in the legislation) on the part of the local self-government bodies, with the help of which the removal of forests from the forest fund was carried out due to the change of purpose of the lands on which the forests were located. As it is demonstrated in the study, this is caused by the inconsistency of the legal regimes of the forest fund objects and the land fund objects, which makes it impossible to consider objectively interdependent objects as a whole, such as forest located on the ground, i.e. as "forest land", which should be in a single legal regime for land and forest on it.

However, while carrying out a legal assessment of situations and modelling protection of rights in forest and land relations that have arisen in connection with the transfer of forests to the category of green spaces by changing the purpose of lands of forest fund into another categories by local self-government bodies, the following legal facts should be taken into account and investigated:

1) whether the local government body has the authority to manage a specific land plot of the forest fund, based on forest management records and other information and documents;

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2) whether the requirements of the legislation were followed by local self-government body and whether the statutory procedure for the transfer of forests to the category of green spaces has been fulfilled, which may be a cause for declaring the decision unlawful.

In order to start using the land plot in the new status, it is considered insufficient to make only one decision of the local self-government body to transfer the forest to the category of green spaces, it should be followed by other decisions of this body, provided by the procedure, in particular the decision to grant permission for extraction of timber, shrubs;

3) whether the local self-government body received special agreement from the authorized state body (forestry authority) to change the category of land of forest fund;

4) whether a land development plan has been developed and approved for a land plot that is planned to be transferred from the forest fund to another appropriate category (in particular for residential or industrial building, etc.).

In case of negative response at least at one of mentioned (non-exhaustive list) issues, one can definitely declare the illegality of the respective decision of the local self-government body and the illegality of their activity that may serve as a basis for appeal to the court, as well as the cancellation of subsequent decisions, agreements of the governing body concerning transfer of such lands to the disposal of other entities.

In disputes concerning the implementation of environmental law by citizens (in particular, safe environment), any citizen of Ukraine should be considered a proper plaintiff in court without any restrictions on the territorial relationship (land plot and place of residence of the citizen).

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In cases when a cause of public ecological-land dispute and an appeal to a court become disagreement of a resident of the territorial community with the decision of the respective village, settlement, city council to transfer the land that had the status of lands of forest fund to another category of land and such decision is an obstacle in exercising environmental rights (in particular, the right to a safe environment), then it should be considered that such a resident is not of personal (individual) interest, but "social", "public" interest. The basis of substantive legal interest of such a resident is to resolve a socially important and socially significant issue – to cancel the change of purpose of the lands of the forest fund, as well as to protect the public interests – property right of the Ukrainian people to forests, woods – the national wealth of Ukraine and forests as a source of meeting the needs of society in forest resources.

At the same time, it should be taken into account that only one decision to transfer forests to the category of green spaces does not directly affect the rights and interests (in particular, concerning a safe environment, environmental degradation, not using property as a harm for an individual and society) of the resident of the respective settlement and member of the territorial community, since such a decision does not entail the automatic change of purpose of the land as a legal consequence and does not imply an automatic authorization for the destruction of trees. In this context, we would like to draw your attention separately to the fact that permission for the felling of trees and shrubs should be obtained in any case, regardless of the legal regime of use of natural plantations.

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