

IRYNA IGNATENKO
PhD in Law, Associate Professor,
Department of Land and Agricultural Law,
Yaroslav Mudryi National Law University
irena.nekosargot@gmail.com

GANNA KORNIYENKO
Doctor of Legal Sciences, Professor,
Department of Land and Agricultural Law,
Yaroslav Mudryi National Law University
gannakor1@hotmail.com

NATALIIA MELNYK
PhD in Law, Assistant,
Department of Land and Agricultural Law,
Yaroslav Mudryi National Law University
nataliiamelnyk18@hotmail.com

LIDIA KUPCHENIA
PhD in Law, Associate Professor,
Department of Entrepreneurship and Law
Poltava State Agrarian University
lidiaku@hotmail.com

LEGAL REGULATION OF PROTECTION OF LAND RIGHTS IN UKRAINE IN THE CONDITIONS OF MARKET TRANSFORMATIONS

ABSTRACT

The article is dedicated to the constitutional and legal analysis of issues concerning the protection of land rights in Ukraine. The normative enshrinement of property rights is a necessary condition for the functioning of the legal system. The reflection of guarantees for land ownership rights in the Constitution of Ukraine is a primary task. This will create a fundamental basis for existing legislation and ensure comprehensive legal regulation of land relations. Clear normative consolidation of land ownership rights guarantees in the Constitution of Ukraine is a prerequisite for the effective functioning of the land ownership rights protection system.

Attention is focused on the fact that the fundamental principles of land relations are declared in the Constitution of Ukraine: the right to land is an absolute right and is guaranteed by the state to the Ukrainian people, and consequently to every citizen. However, not all constitutional principles are properly

implemented. The state authorities responsible for establishing the legal regime for all lands must assume responsibility for the full institutionalization of constitutional norms.

We conclude that the issues of constitutional protection of land rights remain underexplored and require detailed analysis and justification. The state must strive for excellence and take examples from foreign countries with effective and well-regulated land legislation.

KEYWORDS: land rights; protection of land rights; land use; land protection; land relations; legal regime of land; property rights; land tenure; restrictions on rights; land disputes.

INDEX: 1. Introduction. - 2. Methodology. - 3. Constitutional protection of land relations. - 4. Protection of land rights in the European Court of Human Rights - 5. Conclusion.

1. Introduction

The history of human society demonstrates that land ownership has always played a crucial role in an individual's economic and social status, thereby driving the persistent struggle for land rights across all eras and nations. The struggle for land has been a primary catalyst for numerous revolutions throughout the world.

The protection of property rights is a fundamental task of any legal system. The essence of property rights should be determined not only by the needs of civil turnover but also by the state's ability to guarantee their protection. The current stage of Ukraine's development as a legal state is characterized by the multifaceted and complex problems that have accumulated over time, hindering sustainable development¹.

Ukraine, as a democratic and legal state, has proclaimed the right to land as one of its highest values in its Constitution. This right is upheld through the judicial system, thereby imposing on the state the duty to observe, recognize, and protect it. This signifies that Ukraine not only acknowledges land rights but also declares the protection of these rights as one of the state's primary priorities. The protection of property rights in general consists of a range of specialized civil legal remedies aimed at preventing violations, as well as resto-

¹ LISOVA, T., SHARAPOVA, S., BREDIKHINA, V., AND LEIBA, L. (2023). *Sustainable Development of Rural Areas in the Conditions of Globalization: Ukrainian Realities*. *Journal of Environmental Management and Tourism*, 14 (1), p. 217. doi:10.14505/jemt.v14.1(65).21

ring or protecting the property interests of owners.

It is essential to note that the right to land ownership enshrined in the Constitution of Ukraine has yet to be adequately reflected in land legislation. The successful completion of land reform, the implementation of a land market, effective combat against the shadow land market and corruption in land relations, and proper legislative provision of land ownership rights for Ukrainian citizens are all impossible without adherence to relevant constitutional norms. The national legal doctrine requires a thorough examination of the theoretical issues and constitutional principles governing land ownership and its protection. This is crucial for reforming market land relations to ensure effective socio-economic development and the rule of law in land relations.

These problems have become particularly acute following the military aggression against the Ukrainian people, as the state and the entire nation of Ukraine have rallied to defend land as an object of property rights, a fundamental national asset, and the territorial foundation of state sovereignty in the war against the enemy. The war undeniably influences societal views on the social value of land and its natural resources for the Ukrainian people, land rights and plots, soil conservation, water and forest resources, land protection, and the defense of state sovereignty. The severe damage inflicted by Russian military aggression on the Ukrainian people and their land, soils, subsoil, water bodies, forests, living organisms, and terrestrial and marine ecosystems underscores the need for heightened protection and valuation of these resources.

The war has affected global trade dynamics, production volumes, and consumption patterns, causing commodity prices to rise in 2022-2023 and threatening global food security². The majority of problems arising in this context are new to Ukrainian society, and approaches to their resolution are still largely being formulated. Therefore, the question of reforming land relations in the context of protecting land rights requires thorough investigation³.

2 KAPELISTA, I., KORNIYENKO, G., SKLIAR, V., VOITSITSKA, K., and DERMAN, V. (2023). *The Impact of the Russian-Ukrainian War on Global Food and Environmental Security. Transactions on Environment and Development*, 19, p. 809. doi: 10.37394/232015.2023.19.76

3 FEDCHYSHYN, D., IGNATENKO, I., CHYRYK, A., and DANILIK, D. (2023). *State regulation of sustainable development of rural areas in the system of food security of Ukraine. Visions for Sustainability*, 20, p. 278. doi: 10.13135/2384-8677/7731

2. Methodology

The research methods used in this study are primarily based on the theoretical foundations of various branches of Ukrainian and international law, including state theory, constitutional law, land law, agrarian law, environmental law, civil law, commercial law, international public law, and others. The article relies on the analysis of contemporary scientific developments addressing theoretical and practical issues related to the protection of land rights, land reform, and regulation of land relations.

The methodological framework of the research is complemented by the scientific recommendations of foreign scholars. Our perspective is informed by recent works that also focus on the role of property rights to land. The concern of weak property rights on reserve has motivated calls from academics^{4 5 6} and policy proposals, such as the First Nations Property Ownership Initiative, to reform the current land tenure regime.

The allocation and maintenance of property rights is a core function of Westernized liberal state-making⁷, which may explain the reticence for direct reform of property relations even if changes in land use is a consensus policy choice⁸. Shoemaker analyzes the relationship between the way property is legally constructed and how this leads to racial injustice in the US rural sector⁹. Importantly, Horst attempt to advance a «land justice» research agenda through the mechanisms of international comparison and dialogue¹⁰.

4 ALCANTARA, C. (2003). *Individual property rights on Canadian Indian reserves: The historical emergence and jurisprudence of certificates of possession*. *Canadian Journal of Native Studies*, 23(2), 391-424.

5 BAXTER, J., TREBILCOCK, M. (2009). *Formalizing land tenure in First Nations: Evaluating the case for reserve tenure reform*. *Indigenous Law Journal*, 7(2), 45-122.

6 FLANAGAN, T., BEAUREGARD, K. (2013). *The wealth of First Nations: An exploratory study*, report, Fraser Institute, Centre for Aboriginal Policy Studies.

7 SIKOR, T., LUND, C. (2009). *Access and property: a question of power and authority*. *Development and Change*, 40, 1-22. doi: 10.1111/j.1467-7660.2009.01503.x

8 TRAUGER, A. (2014). *Toward a political geography of food sovereignty: transforming territory, exchange and power in the liberal sovereign state*. *The Journal of Peasant Studies*. 41, 1131-1152. doi: 10.1080/03066150.2014.937339

9 SHOEMAKER, J. A. (2021). *Fee simple failures: rural landscapes and race*. *Michigan Law Review*, 119, 1695-1756. doi: 10.36644/mlr.119.8.fee

10 HORST, M., MCCLINTOCK, N., BAYSSE-LAINÉ, A., DARLY, S., PADDEU, F., PERRIN, C., REYNOLDS, K., and SOULARD, C.-T. (2021). *Translating land justice through comparison: a US-French dialogue and research agenda*, 38, 865-880. doi: 10.1007/s10460-021-10202-4

The issue of constitutional regulation regarding the protection of land rights in Ukraine is relatively new in contemporary legal science. While general problems related to land relations regulation have been within the scope of these scholars, the question of constitutional protection in this area has been largely overlooked. Given this context, the aim of this research is to develop theoretical and legal principles for improving the legal mechanism for protecting land rights, especially in light of the completion of reform processes in the land sector.

The empirical basis of the study consists of Ukrainian land, environmental, natural resource, civil, commercial, and constitutional legislation regarding land ownership, legislation from other countries, international legal instruments, and the practice of applying current legislation in the field of land ownership regulation by state authorities and local self-government bodies.

3. Constitutional protection of land relations

Ensuring and protecting the right to land ownership for Ukrainian society has always been one of the most contentious issues, and it remains pertinent in contemporary societal and state development. Without comprehensive resolution at the highest governmental level of land and natural resource issues in the national interest – the interests of Ukrainian citizens – it is impossible to construct a democratic, sovereign, lawful, and prosperous Ukrainian state. Therefore, this thesis should be regarded as a fundamental element in the constitutional definition of the democracy and sovereignty of the Ukrainian state as a cohesive and inviolable entity within its existing borders.

In his book «The Social Contract» (1762), Jean-Jacques Rousseau developed the concept that the right of each individual to land is always subordinate to the right of the community to all land. At the same time, in justifying the idea of a social contract, the philosopher asserted that «the community, in accepting the property of private individuals, does not at all deprive them, but, on the contrary, only ensures legitimate ownership for them»¹¹ [11]. Such an approach forms the basis for reconciling societal and private interests in the legal framework for the implementation of land

11 ROUSSEAU, J.-J. (1762). *The Social Contract, or Principles of Political Right (Du contrat social)*.

ownership rights for the Ukrainian people.

The right to land ownership is constitutionally guaranteed. According to Part 1 of Article 14 of the Constitution of Ukraine, «land is the principal national asset under special state protection»¹². Simultaneously, Part 2 of Article 14 of the Constitution guarantees «the right to land ownership, stipulating that this right is acquired and exercised by citizens, legal entities, and the state exclusively in accordance with the law»¹³. Thus, the right to ownership is guaranteed by the state, considered an absolute right, and is under special state protection. The procedures for acquiring, exercising, and terminating land ownership rights are defined in the Land Code of Ukraine. The Land Code also outlines a system of guarantees for land ownership rights, including guarantees for the protection of land rights, compensation for damages to landowners and land users, and the resolution of land disputes.

According to Part 1 of Article 13 of the Constitution of Ukraine, «land, subsoil, atmospheric air, water, and other natural resources within the territory of Ukraine, the resources of its continental shelf, and the exclusive (maritime) economic zone are objects of ownership by the Ukrainian people»¹⁴. Thus, the Ukrainian people are recognized by law as a subject of land relations. It is evident that the concept of the Ukrainian people as landowners should be understood in a socio-political rather than a legal context. Consequently, Part 2 of Article 14 of the Constitution specifies that «the right to land ownership is acquired and exercised by citizens, legal entities, and the state exclusively in accordance with the law»¹⁵. Additionally, Article 142 of the Constitution establishes that «land may be owned by territorial communities of villages, settlements, cities, and city districts»¹⁶.

Moreover, since December 2019, the Constitutional Court of Ukraine has been considering three constitutional submissions requesting an official interpretation of the first sentences of Articles 13 and 14 of the Constitution of

12 Constitution of Ukraine. Dated 28 June 1996.
<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#Text>

13 *Ibid.* Part 2 Art. 14.

14 Constitution of Ukraine. Dated 28 June 1996.
<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#Text>

15 *Ibid.* Part 2 Art. 14.

16 *Ibid.* Art. 142.

Ukraine. This highlights the practical significance and objective necessity of defining the legal essence of these provisions of the state's Basic Law.

In general terms, the essence of this legal model is that land, subsoil, atmospheric air, water, and other natural resources within the territory of Ukraine, as well as the resources of its continental shelf and exclusive maritime (economic) zone, are objects of ownership by the Ukrainian people. The Ukrainian people are recognized as an independent subject of land and natural resource ownership rights and can exercise ownership, use, and disposal rights over land in the forms and within the limits specified by the state's Basic Law. These rights can be exercised either directly by the people or indirectly through authorized state and local government bodies acting on behalf of the Ukrainian people.

The aforementioned constitutional provision raises a series of theoretical and practical questions: First, can the people of a country realistically serve as a subject of ownership rights in general, and specifically as a subject of ownership rights to natural resources? Second, when and in what manner did the Ukrainian people transfer their ownership rights to natural objects and their resources to state authorities and local self-governance bodies? Third, the Constitution does not define the limits within which state authorities or local self-governance bodies can exercise ownership rights over natural objects and their resources.

This constitutional provision continues to spark intense debates among scholars of Ukrainian land law. As P. Kulynych notes, «any constitution, including the Constitution of Ukraine, is a politico-legal document that contains not only legal norms but also provisions of a political or politico-legal nature. According to the scientist, the constitutional provision stating «land is the property of the Ukrainian people» should not be seen as establishing a monopoly on land ownership or ascribing ownership to a single subject. Rather, it should be viewed as the state's declaration of intent to establish certain requirements (restrictions) on the acquisition and exercise of land ownership rights by individuals and legal entities in the interests of the

Ukrainian people»¹⁷. M. Shulga shares a similar view, arguing that the notion of the Ukrainian people as landowners should be understood only in a socio-political context. In the legal sense, it is unlikely that the people can be considered the owners of the specified natural resource¹⁸.

Moreover, the Constitution of Ukraine not only legally embodies the natural right of the Ukrainian people to land into a positive (legal) right of ownership but also obliges the state to ensure the special protection of land as an object of ownership and a principal national asset of the Ukrainian people (Article 14).

According to Article 13 of the Constitution of Ukraine, «the state guarantees the protection of the rights of all subjects of ownership and economic activity and ensures the social orientation of the economy»¹⁹. This provision specifies the content of the Ukrainian people's ownership right to land, as exercised by state authorities and local self-governance bodies, as well as the right of every citizen to use the natural objects owned by the Ukrainian people.

In exercising ownership rights over land on behalf of the Ukrainian people, the state, represented by legislative, executive, and judicial authorities, is obligated to fully protect the rights not only of landowners but also of land users who use land plots to meet their own needs.

The state ensures the protection of the rights of all subjects of ownership and economic activity and guarantees their equality before the law. This means that the conditions and scope for owners to exercise their powers are the same for all subjects, and their subjective rights are protected equally.

Article 41 of the Constitution, which regulates ownership relations in Ukraine, is of particular importance in clarifying the content of land ownership rights. The first three parts of this article define the rights of ownership: possession, use, and disposal, as well as its forms: private, communal, and state. Part 4 of the article states that «no one can be unlawfully deprived of

17 KULYNYCH, P. (2001). *Constitutional aspects of ownership of agricultural land. Problems of ownership and management in agriculture: monograph*. Kyiv, 216 p.

18 SHULGA, M. (1998). *Current legal problems of land relations in modern conditions*. Kharkiv, 224 p.

19 Constitution of Ukraine. Dated 28 June 1996. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#Text>

ownership rights and that the right to private property is inviolable»²⁰. The subsequent parts specify an exhaustive list of circumstances under which ownership rights can be forcibly deprived. These constitutional provisions fully apply to land ownership as well.

Given the fundamental importance of land as a strategic asset for any country, the regulation of ownership and use of land occupies a special place in all developed legal systems²¹.

Analyzing the provisions of the Constitution of Ukraine regarding land ownership rights, we believe they require improvement and amendments. This opinion has been formed through the analysis of the constitutions of several foreign countries: Lithuania, Slovakia, Slovenia, Croatia, Hungary, Romania, among others. The reference to the fundamental laws of these countries is driven by their proximity to Ukraine, certain common mentalities, and consequently, similarities in the legislative base on some critical points, in our opinion. Moreover, these countries have achieved economic development and have high-quality and effective legislative regulation of land relations, which can be considered by Ukraine when improving its national regulatory framework.

Upon conducting this research, we found that most of these neighboring countries protect the right to land ownership in their constitutions. According to Article 47 of the Constitution of the Republic of Lithuania «land can be owned only by citizens of the Republic of Lithuania and the state. Land parcels can be owned by a foreign state for the establishment of diplomatic and consular missions, in accordance with the procedure and conditions established by law». Article 54 of Lithuania's fundamental law prohibits the depletion of land and its subsoil. The state guarantees oversight to ensure the prudent use, restoration, and augmentation of natural resources²². A similar provision is found in the Constitution of Romania, specifically in Article 41, which enshrines and guarantees the protection of private property. Additionally, the Romanian Constitution prohibits foreigners and stateless persons from owning

²⁰ *Ibid.* Part 4 Art. 41.

²¹ FEDCHYSHYN, D., IGNATENKO, I., and BONDAR, □. (2019). *Protecting the rights of foreigners to investment-attractive land plots in Ukraine*. *Juridical Tribune*, 9(2), 317-329. <http://www.tribunajuridica.eu/arhiva/An9v2/4.%20Fedchyshyn,%20Ignatenko,%20Bondar.pdf>

²² Constitution of the Republic of Lithuania. Dated 25 October 1992. <https://lrkt.lt/en/about-the-court/legal-information/the-constitution/192>

land parcels²³.

The Republic of Hungary guarantees the right to ownership in its Fundamental Law²⁴. Article 4 of the Constitution of the Slovak Republic states that «mineral resources belong to the Slovak Republic, which guarantees their protection and preservation for the benefit of its citizens and future generations»²⁵. The Constitution of Kazakhstan explicitly prohibits restrictions on property rights. Article 39, paragraph 3, states that «in no case shall the rights and freedoms provided for by paragraph 2 of Article 26 of the Constitution be subject to restriction», and the specified paragraph includes the following provision: «Property, including the right of inheritance, is guaranteed by law»²⁶.

Article 48 of the Constitution of the Republic of Croatia guarantees the right to ownership and obligates property owners and users to care for the common good. Foreigners may acquire property under conditions prescribed by law. Article 52 establishes «land is under special protection of the state. The state guarantees the procedure for the use and exploitation of significant assets, such as land, by authorized persons and owners in accordance with the law»²⁷. The Constitution of Slovenia dedicates an entire article, Article 71, to the protection of land. It guarantees the existence of laws that prescribe procedures for the rational use of land and conditions for its exploitation. Special protection of agricultural land is legislatively enshrined²⁸.

The Spanish Constitution does not list property rights among the rights that may be suspended in the event of a declaration of a state of emergency or siege (Article 55). Consequently, property rights are exercised in full and are fully protected²⁹. This issue is similarly regulated in the constitutions of Cyprus

²³ Constitution of Romania. Dated 21 November 1991. <https://www.presidency.ro/en/the-constitution-of-romania>

²⁴ Fundamental Law of Hungary. Dated 25 April 2011. <https://www.parlament.hu/documents/125505/138409/fundamental+law/73811993-c377-428d-9808-ee03d6fb8178>

²⁵ Constitution of the Slovak Republic. Dated 1 September 1992. <https://www.prezident.sk/upload-files/46422.pdf>

²⁶ Constitution of the Republic of Kazakhstan. Dated 30 August 1995. <https://www.akorda.kz/en/constitution-of-the-republic-of-kazakhstan-50912>

²⁷ Constitution of the Republic of Croatia. Dated 22 December 1990. https://www.sabor.hr/sites/default/files/uploads/inline-files/CONSTITUTION_CROATIA.pdf

²⁸ Constitution of the Republic of Slovenia. Dated 23 December 1991. <https://www.us-rs.si/media/ustava.pdf>

²⁹ Spanish Constitution. Dated 6 December 1978. <https://www.senado.es/web/conocersenado/normas/constitucion/detalleconstitucioncompleta/>

and Lithuania.

Part 4 of Article 41 of the Constitution of Ukraine proclaims that «the right to private property is inviolable and establishes that no one can be unlawfully deprived of their property»³⁰. These provisions are fundamental principles of guarantees for the protection of private property rights and fully correspond with Article 1 of Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, which states that «every natural or legal person is entitled to the peaceful enjoyment of their possessions. No one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law»³¹. These principles are enshrined in the constitutions of many European countries. For example, part 3 of Article 17 of the Bulgarian Constitution states: «private property is inviolable»³².

By declaring the principle of inviolability, part 5 of Article 41 of the Constitution of Ukraine establishes certain limitations regarding its exercise. Based on the logic of this provision, it can be observed that, on the one hand, «forced alienation of objects of private property rights may be applied only as an exception for reasons of societal necessity», and on the other hand, «only in conditions of wartime or a state of emergency». Thus, a situation has arisen that requires clarification of approaches to the criteria for legitimate restriction of the rights and freedoms of individuals and citizens enshrined at the constitutional level and bringing them into line with norms of international law.

Therefore, advanced European states have not only enshrined the right to property in their constitutions but have also defined its guarantees, including prohibiting the exhaustion of land, ensuring state supervision over its use, protection, and maintenance for the benefit of citizens, and protecting agricultural

index.html?lang=en

30 Constitution of Ukraine. Dated 28 June 1996.
<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80?lang=en#Text>

31 Council of Europe. (1950). Convention for the Protection of Human Rights and Fundamental Freedoms. Dated November 4, 1950.
https://www.echr.coe.int/documents/d/echr/convention_ENG

32 Constitution of the Republic of Bulgaria. Dated 12 July 1991.
<https://www.parliament.bg/en/const>

lands, among others.

It is worth reminding that Article 13 of the Constitution of Ukraine declares that the state ensures the protection of the rights of all subjects of property and economic activity. It also enshrines equality before the law for all subjects of property rights without exception and guarantees the protection of their rights and freedoms. These fundamental provisions are of decisive importance for subjects of land legal relations. Thus, the Land Code of Ukraine guarantees and ensures equal conditions and methods of protection of the right of ownership and the right of use of specific land plots for individuals and legal entities. «A landowner or land user may demand the elimination of any violations of their rights to land, even if these violations are not related to deprivation of the right to own the land plot, and compensation for any damages incurred»³³.

It should be noted that according to the Constitution of Ukraine, human and citizen rights and freedoms are protected exclusively by the court, and everyone is guaranteed the right to appeal decisions, actions, or inaction of state authorities, local self-government bodies, officials, including in cases of land disputes.

Ukrainian legislation does not contain a normatively established definition of the category «protection of rights». In land legislation, protection of land rights is allowed by recognizing the right to a land plot, restoring the situation that existed before the violation of the right to a land plot, declaring the act of the executive authority invalid, compensating for damages, etc. A comparative analysis of legal norms of civil and land legislation on methods of protection of land rights allows for the following conclusions. Firstly, land legislation does not contain the entire list of methods of protection of violated rights, and the absence of legal norms regarding the use of methods of protection not specified in the Land Code does not prevent the use of protection methods established in civil legislation to protect rights to other real estate. Secondly, the Code contains articles on the most applicable methods of protecting land rights, defining the features of their application, but for the

³³ Land Code of Ukraine. Dated 25 October 2001. <https://zakon.rada.gov.ua/laws/show/2768-14?lang=en> - Text

protection of land rights, methods such as declaring a disputed transaction invalid and applying the consequences of both its invalidity and the nullity of a transaction, declaring the decision of the assembly invalid; self-defense of rights, awarding of the obligation to perform in kind, etc.

Thus, legal protection of land rights is the activity of authorized subjects of land legal relations aimed at recognizing or restoring violated land rights, the protection of which is guaranteed by the state. A state can be considered civilized if it ensures the guaranteed status of property rights, including land rights.

4. Protection of land rights in the European Court of Human Rights

Ukrainian land legislation ensures the regulation and protection of property rights over land, provided that the owner uses their property lawfully and without violating the rights and interests of others. However, the essence of legal protection of property is interpreted differently in legal science and practice. The imperfection of land legislation has historically created and continues to create numerous issues in law enforcement, and national judicial precedents reflect varying methods of protecting property rights, sometimes in similar legal relations.

The highest law of Ukraine, in Article 55, part 4, of the Constitution of Ukraine, declares that «everyone has the right, after exhausting all national legal remedies, to seek the protection of their rights and freedoms in relevant international bodies to which Ukraine is a member or participant». The European Court of Human Rights (ECHR), while not serving as an appellate court, does not annul or review decisions of national courts. However, the ECHR can obligate the respondent state to take «general measures», such as amending legislation, influencing law enforcement practices, or ensuring that actions concerning the protection of property rights comply with existing legal procedures. These legal possibilities and mechanisms positively impact the Ukrainian judicial system and can progressively transform Ukrainian land legislation in the process of forming a national mechanism for protecting the rights of landowners.

The decisions and judgments of the European Court of Human Rights aim not only to protect the violated rights and interests of individuals but also serve as legal standards and a means for uniform understanding and interpreta-

tion of legal norms in the law enforcement activities of European states.

According to Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed on November 4, 1950, in Rome, and ratified by the Law of Ukraine on July 17, 1997, No. 475/97-VR, the practice of the ECHR is binding for our country. Article 17 of the Law of Ukraine «On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights» of February 23, 2006, No. 3477-IV, stipulates that courts apply the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights as a source of law in adjudicating cases.

Before analyzing the ECHR's case law on the protection of land ownership, it is essential to understand how and by what principles the Convention protects the right to property. It is noteworthy that the principles proclaimed by the Convention, namely the right to peaceful enjoyment of one's possessions and the wide margin of appreciation afforded to states in establishing laws, influence the formation of national precedent-based land law practices in any state. The right to property, including land, is enshrined in the First Protocol to the Convention.

The provisions of the Convention grant states a broad margin of appreciation in enacting laws deemed necessary for controlling the use of property in accordance with the general interest. This implies that states have considerable discretion in selecting the methods and means of legal protection, which national legal systems produce as forms of law application.

In the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in 1948, it is established that «no one shall be arbitrarily deprived of his property» (Article 17) ³⁴.

The Council of Europe, in Protocol No. 1 (1952) to the Convention for the Protection of Human Rights and Fundamental Freedoms, similarly emphasizes in Article 1 that «natural and legal persons may be deprived of their possessions only in the public interest, in accordance with the law, and the general principles of international law». At the same time, it is necessary to consider

³⁴ Universal Declaration of Human Rights. Dated 10 December 1948. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

that international and European instruments, while protecting individual rights, grant states the right to restrict and expropriate property. For instance, in the aforementioned Protocol No. 1, the same Article 1, in its second part, states that a state has the right to «enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties»³⁵.

Therefore, the general principle of free use of property must always be considered in conjunction with the state's right to limit the use of property in accordance with the provisions of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ³⁶.

In our view, when developing a strategy for the protection of land ownership rights in Ukrainian courts, it is essential to consider that Article 1 of Protocol No. 1 encompasses three distinct norms to which the European Court of Human Rights (ECHR) attaches great importance in property rights cases. These norms serve as principles for the protection of land ownership. The Court examines these principles based on the circumstances of each specific case: the principle of peaceful enjoyment of one's property, respect for the right of property by society; the procedure for deprivation of property – no one shall be deprived of their property except in the public interest and under the conditions provided by law; and the state's authority to control the use of property in accordance with the general interest, often referred to as the «margin of appreciation», which allows for the introduction of laws necessary to achieve this legitimate aim.

In general, complaints about violations of property rights can be based solely on Article 1 of the First Protocol. However, such complaints are often submitted in conjunction with claims of violations of Article 6 of the Convention, «Right to a fair trial» or Article 13 «Right to an effective remedy» or both. A notable example in this context is the case of «Rysovskyy v. Ukraine»³⁷ decided on October 20, 2011.

35 Council of Europe. (1950). Convention for the Protection of Human Rights and Fundamental Freedoms. Dated November 4, 1950. https://www.echr.coe.int/documents/d/echr/convention_ENG

36 GOMIEN, D., HARRIS, D., and ZWAAK, L. (1996). *Law and practice of the European Convention on Human Rights and the European Social Charter*. Council of Europe Publishing.

37 European Court of Human Rights. (2011). Case of Rysovskyy v. Ukraine. (Application no. 29979/04). [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-107088%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-107088%22]})

The application of decisions involving foreigners and other states is often a subject of discussion. Analysis of judicial practice shows that courts are willing to apply such categories of decisions. For instance, in its decision of July 2, 2019, in case No. 48/340, the Grand Chamber of the Supreme Court referred to the ECHR decision in «Stretch v. the United Kingdom»³⁸ and in its decision of May 29, 2019, in case No. 761/20844/13-c, the court referred to the decision in «Brumarescu v. Romania»³⁹.

Further supporting this argument is the informational letter from the Higher Commercial Court of Ukraine dated April 22, 2016, in which the court stated: «Thus, in connection with the ratification of the Convention, its protocols, and the adoption of the Law of Ukraine «On the Execution of Decisions and Application of the Practice of the European Court of Human Rights», commercial courts in adjudicating cases within their jurisdiction should apply the Court's decisions and rulings in any case that has been before it»⁴⁰.

Considering all the aforementioned points, it is evident that the use of ECHR rulings in justifying various legal positions has become a standard practice. Thus, the analysis of ECHR decisions concerning land disputes is practically beneficial. To organize judicial decisions for analysis, they can be divided four groups: 1) land disputes concerning property protection (e.g., «Zelenchuk and Tsytsyura v. Ukraine»⁴¹, «Vira Dovzhenko v. Ukraine»⁴², «Svitlana Ilchenko v. Ukraine»⁴³, etc.); 2) land disputes regarding errors of public authorities in land relations (e.g., «Rysovskyy v. Ukraine»⁴⁴, «Stretch v.

38 European Court of Human Rights. (2003). Case of Stretch v. The United Kingdom (Application no. 44277/98). <https://hudoc.echr.coe.int/eng?i=001-61173>

39 European Court of Human Rights. (1999). Case of Brumărescu v. Romania. (Application no. 28342/95). [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-58337%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58337%22]})

40 Higher Commercial Court of Ukraine. (2016). On the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the jurisdiction and practice of the European Court of Human Rights. Information letter dated April 22, 2016 No. 01-06/1444/16. <https://zakon.rada.gov.ua/laws/show/en/v1444600-16?lang=uk#Text>

41 European Court of Human Rights. (2018). Case of Zelenchuk and Tsytsyura v. Ukraine. (Applications nos. 846/16 and 1075/16). [https://hudoc.echr.coe.int/%20eng#{%22itemid%22:\[%22001-183128%22\]}](https://hudoc.echr.coe.int/%20eng#{%22itemid%22:[%22001-183128%22]})

42 European Court of Human Rights. (2019). Case of Vira Dovzhenko v. Ukraine. (Application no. 26646/07). [https://hudoc.echr.coe.int/rus#{%22itemid%22:\[%22001-189146%22\]}](https://hudoc.echr.coe.int/rus#{%22itemid%22:[%22001-189146%22]})

43 European Court of Human Rights. (2019). Case of Svitlana Ilchenko v. Ukraine. (Application no. 47166/09). [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-194183%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-194183%22]})

the United Kingdom»⁴⁵, «Borshchevskaya v. Ukraine»⁴⁶, etc.); 3) land disputes regarding access to justice in the protection of land rights (e.g., «Ponomarenko v. Ukraine»⁴⁷, «Sokurenko and Strygun v. Ukraine»⁴⁸, «Bochan v. Ukraine»⁴⁹); 4) land disputes regarding the right to respect for private life (e.g., «Grimkovskaya v. Ukraine»⁵⁰, «Religious community of Jehovah's witnesses of Kryvyi Rih's Ternivsky district v. Ukraine»⁵¹).

The analysis of national court practices shows that the Convention for the Protection of Human Rights and Fundamental Freedoms and ECHR case law are applied in resolving land disputes and protecting land rights of various entities. Measures to control the use of land ownership should be carried out while maintaining a balance between public and private interests. The ECHR, in its decisions on property rights protection, assesses how balanced the legal act adopted by the national court is, addressing the protection of private individuals' rights and public interests. This assessment covers not only the actions (or inactions) of state bodies (including courts) but also the fulfillment of obligations by private individuals. However, the ECHR allows that the state may, in exceptional cases, limit private property rights in the name of maintaining public order.

It is noteworthy that in January 2024, the European Court of Human Rights published its statistical report for 2023, indicating that Ukraine ranked

44 European Court of Human Rights. (2011). Case of Rysovskyy v. Ukraine. (Application no. 29979/04). [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-107088%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-107088%22]})

45 European Court of Human Rights. (2003). Case of Stretch v. The United Kingdom (Application no. 44277/98). <https://hudoc.echr.coe.int/eng?i=001-61173>

46 European Court of Human Rights. (2008). Case of Borshchevskaya v. Ukraine. (Application no. 9962/05). [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-82975%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-82975%22]})

47 European Court of Human Rights. (2011). Case of Ponomarenko v. Ukraine. (Application no. 1071/08). [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-106672%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-106672%22]})

48 European Court of Human Rights. (2006). Case of Sokurenko and Strygun v. Ukraine. (Applications nos. 29458/04 and 29465/04). [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-76467%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-76467%22]})

49 European Court of Human Rights. (2015). Case Bochan v. Ukraine (No. 2). (Application no. 22251/08). [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-152331%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-152331%22]})

50 European Court of Human Rights. (2011). Case of Grimkovskaya v. Ukraine. (Application no. 38182/03). [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-105746%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-105746%22]})

51 European Court of Human Rights. (2019). Case of Religious community of Jehovah's witnesses of Kryvyi Rih's Ternivsky district v. Ukraine. (Application no. 21477/10). <https://hudoc.echr.coe.int/eng?i=001-195539>

second in terms of the number of judgments issued. Of the 130 judgments, seven concerned violations of Article 1 of the Additional Protocol (protection of property rights), which is a small percentage compared to other types of cases. One of the most common types of complaints was the violation of property rights, although the number of such complaints has recently decreased⁵².

Thus, the protection of land rights at the European Court of Human Rights is an important and necessary element in guaranteeing human rights. When appealing to the ECHR regarding the protection of land rights, it is essential to remember the admissibility criteria, the three-part test, and the multifaceted nature of land relations to achieve the desired outcome in the case. Overall, the Court's decisions contribute to ensuring a fair trial and influence national legislation, improving the protection of citizens' rights, including those related to land issues.

In conclusion, it can be inferred that the European Court of Human Rights serves as a supranational judicial body in the realm of protecting violated rights, acting as a guarantor of the realization of rights and freedoms. The ECHR strives to maintain a balance between public and private interests in the resolution of property disputes.

At the same time, the judges of the European Court of Human Rights remind us that reducing the number of complaints to the ECHR primarily depends on the effective functioning of national Supreme Courts. These courts act as a filter at the national level and can independently correct errors arising in domestic judicial processes.

5. Conclusion

The formation of a land market is a crucial component for the successful socio-economic development of Ukraine. The need to improve the legislative framework in the field of land relations is particularly pressing at this stage of land reform. The fundamental principles of land relations are declared in the Constitution of Ukraine, according to which the right to land is an absolute right guaranteed by the state. However, despite the extensive system of legal

⁵² European Court of Human Rights. (2024). *Statistical reports*. <https://www.echr.coe.int/statistical-reports?fbclid=IwAR3Hn1bCgM55GZD4EMBJQQgU4qMltYaXnlBhTcJ9iVljetGdFVI8VivKmzQ>

norms regulating the sphere of land relations, not all constitutional principles are properly implemented.

As a result of our research, we have concluded that the issues of constitutional guarantees of the right to land ownership remain underexplored and require detailed analysis and substantiation. To form a high-quality legislative system, the state must strive for perfection and take examples from foreign countries that have effective and efficient legislative regulation of land relations.

A clear normative consolidation of the guarantees of the right to land ownership in the Constitution of Ukraine is crucial for the functioning of the system of protection of land ownership rights. Overall, the experience of EU member states is highly beneficial for Ukraine; however, its application must consider national specifics and the unique social relations within Ukraine.

A notable positive aspect of the national legislation is the presence of a system of guarantees for land ownership rights in the Land Code of Ukraine. These include guarantees for the protection of land rights, compensation for damages to landowners and land users, and mechanisms for resolving land disputes. However, these guarantees, in our view, should primarily be reflected in the Constitution of Ukraine.

The concept of protecting land ownership rights in the context of national and European standards requires extraterritorial and supranational recognition, adopting a transnational approach based on universal principles, standardized legal norms, and systematic legal solutions. When internal methods of protection are exhausted, and in the absence of reasonable legitimate procedures for the protection of land ownership rights, it is necessary to resort to international procedures.

When appealing to the European Court of Human Rights (ECHR) for the protection of land ownership rights, in addition to meeting the general admissibility requirements, it is crucial to consider the established standards of justice in the property (land law) sphere prevalent in European society. To enhance the application of positive ECHR practices in cases against Ukraine, the issue of the absence of effective legal remedies in land ownership disputes requires further scientific exploration. The development of adequate judicial means for the protection of land ownership rights in Ukraine, in accordance

with current standards and norms, is still in its early stages and requires dedicated comprehensive scientific research.

Integrating these guarantees into the Constitution would provide a stronger foundation for the protection of land ownership rights, aligning Ukraine's legal framework with both national needs and European standards. The continuous development of legal norms and judicial practices, informed by comparative analysis with European models, is essential for fostering a robust and effective system of land ownership rights protection in Ukraine.