DRAFT LAW OF UKRAINE № 7289: compliance with the norms of the Land Code of Ukraine and the need to adopt the draft law
Draft Law of Ukraine № 7289: compliance with the norms of the Land Code of Ukraine and the need to adopt the draft law

The issue of regulating land relations in the war and postwar periods is quite problematic in Ukraine. It is important to create such a legal framework that would meet the conditions and needs of martial law, would not contravene the current acts governing land issues and contribute to the preservation of the main wealth of the Ukrainian people - Ukrainian land. The urgency of solving land issues in wartime is reflected in the active regulatory activities in this area. An example of such a regulatory activity is the draft law of Ukraine № 7289 "On Amendments to Certain Legislative Acts of Ukraine Concerning the Special Features of Regulation of Land Relations under Martial Law" of April 15, 2022. (hereinafter also - the draft law). As of 12.05.2022, this draft law was adopted by the Verkhovna Rada and on May 13, 2022 it was sent for signature to the President.

The draft law and its explanatory note were prepared in a hurry, so they have "blunders" that can generate different interpretations, and not always for the benefit of the people and the environment.

The draft law proposes the following:

1. “For the purpose of placing facilities for temporary residence of internally displaced persons (hereinafter referred to as IDPs), land plots of communal property shall be provided for permanent use to the executive bodies of village, town and city councils. Transfer of land plots of state and communal property for such purposes to individuals and legal entities on other property rights is prohibited.

Placement of temporary buildings, their complexes intended for livelihood (temporary residence and service) of internally displaced persons may be carried out on land plots of all categories of land (except for lands of nature reserves and other nature protection purposes, lands of historical and cultural purpose) without changing the designated purpose of the land. Construction of capital buildings and structures on the specified land plots shall be carried out in accordance with the designated purpose of the land plots."

These changes do not take into account the provisions of Art. 92 of the Land Code of Ukraine (hereinafter - the LC of Ukraine) on the right of permanent use of land, which indicate that the right of permanent use of land cannot be granted to individuals. Also, the Land Code of Ukraine indicates that the transfer of land plots to the ownership or use of communal lands of the respective territorial communities for all needs is carried out by village, town or city councils. The draft law gives such a right to the executive committees of councils (hereinafter - the executive committee), but this applies only to the provision of land for placement of temporary accommodation of IDPs. Such authority of executive committees is not provided by Art. 33 of the Law "On Local Self-Government in Ukraine". However, the draft law does not contain provisions on amendments to the Law of Ukraine “On Local Self-Government in Ukraine”.

2. "Change of a designated purpose of the land plot for the purposes specified in sub-paragraphs “a”- “c” of sub-paragraph 4 of this paragraph (placement of production facilities of enterprises relocated (evacuated) from the hostilities zone; location of river and sea ports (terminals), construction of electricity supply networks, gas distribution, water supply, heat supply, sewerage
networks, agricultural production) is carried out without complying with the requirements of Part 9 of Article 20 of the Land Code of Ukraine (LCU).

Part 9 of Art. 20 of the Land Code of Ukraine indicates that the change of designated purpose of particularly valuable lands is allowed only in the following cases:

- placement on them of objects of national importance, roads, power transmission and communication lines, pipelines, drainage and irrigation canals, geodetic points, housing, socio-cultural facilities, facilities associated with the extraction of minerals, oil and gas wells and production facilities related to their operation;
- location of industrial facilities on the lands defined by paragraph "a" of part one of Article 150 of this Code;
- alienation of land plots for public needs or on the grounds of public necessity, classification of lands defined by par. "a" and "b" of part one of Article 150 of this Code as lands of nature reserve fund and of other nature protection purpose, historical and cultural purpose, forestry purpose.

Thus, the draft law offers the possibility of changing the designated purpose of particularly valuable lands even for the needs of agricultural production.

For your reference, particularly valuable lands, according to Art. 150 of the Land Code of Ukraine, include:

- a) as a part of agricultural lands: not eroded non-solonetz-like chernozem on loess-like rocks; meadow-chernozem non-saline non-solonetz-like loam soils; dark gray podzolized soils and podzolized chernozems on loess-like rocks and gley; brown mountain-forest and sod-brown deep and medium-deep soils; sod-podzolic loamy soils; brown soils of the Southern coast of Crimea, sod deep soils of Transcarpathia;
- b) peatlands with a peat depth of more than one meter and drained regardless of the depth, peatlands as part of wetlands of international importance;
- c) lands provided for permanent use to the national agrarian manufacturing association “Massandra” and its affiliated enterprises; lands of research fields of research and educational institutions;
- d) lands of nature reserving and other nature protecting purposes, lands of historical and cultural purposes.

3. "Establishment, change of designated purpose of a land plot for the purposes specified in subparagraphs "a"– "c" of sub-paragraph 4 of this paragraph (placement of production facilities of enterprises relocated (evacuated) from the hostilities zone; location of river and sea ports (terminals), construction of electricity supply networks, gas distribution, water supply, heat supply, sewerage networks, agricultural production) as well as for new construction, reconstruction of buildings for temporary accommodation of internally displaced persons, objects of road and transport infrastructure, (except for road service), locations of temporary storage of waste resulting from war-caused destruction, terrorist acts and sabotage or works to eliminate their consequences are allowed without compliance with the rules of correlation of the type of designated purpose of a land lot and the type of functional purpose of a territory as determined by the relevant urban planning documentation, provided that the placement of relevant objects on the land plot will not lead to violations of restrictions on land use (including in the field of construction), requirements of regulations, construction norms and other regulations that are mandatory according to the law. It is not allowed to establish or change the designated
The purpose of the land without complying with correlation between the type of designated purpose of the land and the type of functional purpose of the territory if the land is located in a landscape-recreational area defined by urban planning documentation at the local level, except river ports (terminals), decisions on the expediency of placement of which were taken by the central executive body that ensures the formation of state policy in the area of inland water transport), protected area defined by such documentation, or classified as lands of nature reserves and lands of other conservation purposes, lands of historical and cultural purposes, lands of the water fund (except for the location of river ports (terminals), as well as in the case when according to urban planning documentation at the local level on the territory where the land is located, there was envisaged placement of objects functioning for the purpose of education, health care, culture, social security, housing and communal services provision, civil defense, and military and other defense facilities, line facilities of engineering, transport and energy infrastructure, engineering infrastructure of reclamation systems."

Therefore, the provisions of the draft law indicate that it is not allowed to change the designated purpose of a land lot belonging to state and communal property in the protected area defined as such by proper documentation, or on lands classified as lands of nature reserve fund and with other nature protection function, lands with historical and cultural functions, water fund lands. Therefore, changing the designated purpose of the lands of the nature reserve fund, for example, for agricultural production, continues to be prohibited. However, lands within the territories of protected areas that do not have the appropriate category may be at risk of being used for construction of factories or pig farms. Peatlands can also be provided for such purposes as the location of production facilities of enterprises relocated (evacuated) from the hostilities zone; placement of river ports (terminals), construction of power supply networks, gas distribution, water supply, heat supply, sewage facilities; agricultural production, if this draft law is adopted by the parliament.

The analyzed draft law establishes special requirements that will apply during the period when the functioning of the State Land Cadastre is suspended, namely:

- the designated purpose of the land lot can be changed only for the purposes of placement of production facilities of enterprises relocated (evacuated) from the hostilities zone; placement of river ports (terminals), construction of power supply networks, gas distribution, water supply, heat supply, sewage facilities; agricultural production, or for the placement, including construction, of temporary accommodation for internally displaced persons, or for the placement of temporary storage of waste resulting from destruction caused by the hostilities, terrorist acts, sabotage or elimination of their consequences, or placement of road transport infrastructure facilities (except for road service facilities).

- the designated purpose of the land lot of private property cannot be changed;

-the designated purpose of the land plot of communal property can be changed only by the decision of the village, town, city council, on the territory of which the land plot is located, and the land plot of state property - by the decision of the executive authority, which disposes of the respective land lot.

However, the draft law does not regulate management of land lots and facilities that will be built on them after termination of martial law. Thus, it is necessary to bring the designated purpose of these land plots into compliance with the requirements of the legislation regarding the categories of lands on which the relevant facilities will be located, taking into account that the demolition of such facilities after termination or abolition of martial law may be problematic.
Also, the Chief Legal Department of the Verkhovna Rada points out that the analyzed draft law should provide a mechanism for changing the designated purpose of land on which the relevant facilities are located, in cases where their designated purpose can not be maintained after termination or abolition of martial law, and also under conditions of protecting against the consequences of location of objects on lands performing specific functions in the area of health protection, recreation, forestry, water fund protection, as well as fertile soils located on the territory of agricultural lands.

In the absence of legislative regulation of the outlined issues, there will be complications related to the insecurity of these lands and the lack of a legal mechanism to bring the conditions of land use in compliance with the requirements for the use of certain categories of land, which will adversely impact environmental protection, preservation of natural territories, in particular those protected on international level and those protected by Ukraine within the obligations stipulated by the Association Agreement between Ukraine on the one hand and the European Union and the European Atomic Energy Community and its Member States on the other hand, historical and cultural heritage, agriculture development etc.

Conclusions

As we can see, the draft law contains a number of significant shortcomings that could result in significant damage to Ukraine's environment. To a greater extent, the mentioned "blunders" are related to the haste during the preparation of the analyzed draft law. Despite the shortcomings of the draft law, it was adopted by the Parliament of Ukraine, which did not see a number of inconsistencies between the text of this draft law and, for example, the Land Code of Ukraine. Whether the shortcomings of the draft law will be ignored and whether it will come into force depends entirely on the President.