JURISDICTION OF COURT PROTECTION OF ENVIRONMENTAL RIGHTS OF MEMBERS OF TERRITORIAL COMMUNITIES IN LAND RENTAL DISPUTES WITH LOCAL COUNCILS

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Abstract.

The purpose of the article is to provide a scientific normative and legal justification for the competence of the citizen – member of the territorial community to assert in court the environmental rights in a land dispute with the parties to the contractual lease relations, as well as to carry out the legal assessment of such dispute. Substantiated that legal disputes in conflicts between citizens on the one hand and local self-government bodies (local councils) on the other, with the requirement to terminate leases and/or sublease of land plots concluded between

the local council and business entities, have a private law nature, which is decisive in deciding the jurisdiction of the court, in which such a dispute should be resolved. The substitution of the concepts "change of designated purpose of a land plot" and "change of the type of use of a land plot" is considered an inadmissible and gross violation in the administrative activities of the governmental authority, when the management decision (act) formally specifies a provision for changing the designated purpose of a land plot, but in fact the form of implementation does not change the category of land, but change the type of use of a land plot, and vice versa.

Keywords: administrative activities, environmental rights, land rental disputes, local councils, jurisdiction of disputes.

INTRODUCTION

Scientific, practical problems.

In the field of land utilization, which is now on the verge of dramatic change, residents of territorial communities more and more often become victims of unfair unlawful collusion of local self-government authorities with entrepreneurs trying to invest cheap money "in the last minute" and get "easy" excess profit. At the same time, such "businessmen", receiving natural resources (in particular, land, forests) and privileges for their use, neglect the interests and rights of local citizens, change the original conditions declared in the signed agreements with the authorities (in particular on the targeted use of the land given to them for utilization), distort nature, destroy environment. Of course, in these conditions of environmental challenges and dangers, conflicts occur more and more often, the main initiators of which are citizens of the respective settlements and public environmental organizations that try to defend the environmental rights and their interests, interests of their families, territorial community and population of the

country in general. Courts remain the main method of such protection, although having a low level of confidence. However, unfortunately, experts and scientists[1,2] now state the ambiguous judicial practice of resolving such conflicts, delaying the hearing of cases, "transferring" cases from one court to another, etc. This actualises these issues and indicates the need for a renewed scientific debate in order to work out ways to address the most urgent issues in the field.

Object and Subject of the Study.

The *object of the study* is a sphere of land relations, which are of a conflicting nature and concern the settlement of a public-law dispute between citizens and local self-government authorities in the field of land utilization and environment.

The immediate *subject of research* is the typical situations of appealing by a citizen who is a member of a territorial community against decisions of local councils on the conclusion of agreements on lease and sublease of land plots between such bodies and legal entities, in the course of which changes were made in the targeted use of such land plots.

Purpose of the study.

The purpose of the article is to provide a scientific normative and legal justification for the competence of the citizen – member of the territorial community to assert in court the environmental rights in a land dispute with the parties to the contractual lease relations, as well as to carry out the legal assessment of such dispute. The tasks that need to be resolved to achieve this purpose are the following ones: determining the jurisdiction of the dispute; carrying out legal assessment of the possibility of appealing by a citizen (a member of a territorial community) against the decision of the local council on reviewing

[1] **Pyvovar, et. al., 2019.**

[2] **Kolodiy, et. al., 2020.**

and approval of the project of land management, which made a change of a designated purpose of the land plot, leased to another person; substantiation of the practicability of combining the claims in a single court proceeding.

Research Methodology and Materials.

The methodological basis of the article is forecasting, legal analysis, systematization and modelling. Systematic analysis together with the reception of analogies facilitated the identification of legal disputes characterized by a similar set of characteristics, close in time and in circle and type of participants. For the sake of clarity, a modelling technique was applied, the example of which was an analysis of typical problems and the ways of solving them. The basic data for such a model is the type of dispute (in particular, this is a typical legal dispute arising from the adoption of an individual act by a power entity regarding specific economic entities in the utilization of land), the circle of participants in this dispute (firstly, it is a local council, secondly, economic entities (S1, S2) that have the status of "tenant 1" (SO1) and "subtenant 2" (SO2), thirdly, a citizen trying to defend his environmental rights that, according to his opinion, are infringed by the illegal issuance of an individual act of land utilization).

RESEARCH RESULTS

THE FIRST TOPIC

THE QUALIFIED INITIATOR OF THE DISPUTE AND THE JURISDICTION OF THE DISPUTE

In making a legal assessment of a given situation, the primary task is to determine whether any citizen who is not a party to a specific legal relationship has the right to file a lawsuit in court with claims against third parties, including appealing against the administrative decisions of power entities addressed to specific persons. In this regard, one of the last unambiguous position of the Supreme Court, which is based on Article 6 of the Code of Administrative Justice of Ukraine (hereinafter – CAJ)[1] should be mentioned:

> **"*to determine the circle of persons entitled to appeal an individual act, it is necessary to identify all persons to whom this act is related, that is, it violates rights or interests, not just in relation to whom it is accepted. ... The order challenged in this case was not adopted in respect of the plaintiff, but concerns his rights and interests, and therefore he has the right to sue in this case.*" [2]**

As it is known, by the legal nature the decisions of the local council to terminate the lease and sublease land plot agreements concluded between the local council, the entity S1, the entity S2 and to conclude the land plot sublease agreement by the entity SO2, should be attributed to the *individual legal acts* in the interpretation of paragraph 19 part 1 Article 4 of the CAJ of Ukraine.[3] In fact, the agreements (decisions) made by the authorized subject (relevant village, settlement, city council) are, firstly, directed to the regulation of property relations regarding the

[1] **Code of Administrative Justice of Ukraine, No. 2747-IV, 2005.**

[2] **SC, Resolution in the Case No 461/2935/16-a, 2019.**

[3] **Code of Administrative Justice of Ukraine, No 2747-IV, 2005.**

use of a particular land plot, secondly, they apply only to specifically defined entities, which are mentioned in this decision, thirdly, their legal validity (formal obligation) is exhausted by a fixed term, etc.

However, following the model of the situation, the main task of the citizen, who initiates the conflict, is to prove that *as a result of the decision of the local self-government authority* to terminate the land plot lease and sublease agreements concluded between the local council, subject S1, subject S2 and the conclusion of the land plot sublease agreement of subject SO2, *environmental rights and interests of such a citizen who also does not have and does not claim a property right to the land have been violated*. Such a citizen pursues the goal of preserving the environmental conditions of the particular settlement, where he and his family reside.

Obviously, in such situations, the subject matter of the dispute is not property. In this case, these are the environmental rights. A citizen who initiates such a conflict, uses his status as a member of a territorial community, and justifies that his rights and interests are violated by being a resident of the respective settlement, and therefore interested in the conservation of green spaces, wants to prevent the illegal construction and facilitate the development of the territory of this settlement and environmental safety. In addition, it is considered that the relevant decisions of the local council are unlawful and therefore subject to revocation, because they also violate the requirements of land, forest, town planning and other legislation. At the same time, considering judicial protection as the only possible effective way of protecting their rights, citizens as a rule more often resolve their conflict in court rather than to higher administrative institutions, that are now hardly trusted.

Another task that needs to be resolved is to find out the jurisdiction of the dispute, that is, the answers to the following two questions: 1) whether the claims

made by the plaintiff are subject to review in administrative proceedings, and 2) whether the local council in these legal relationships is in charge of managerial functions, not business or civil and contract ones. The answers to these two questions will help to determine whether such a dispute is of a public-law nature.

In examining the grounds for citizens to file lawsuits, Ukrainian justice takes into account the provisions of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, which guarantees everyone the right to a fair and public hearing within a reasonable time by an independent and impartial court, established by law.[1]

It is generally acknowledged that the criteria for the delimitation of judicial jurisdiction, that is, the conditions provided by law under which a particular case is subject to review under the rules of a particular type of judicial proceedings, are the subjective composition of the legal relations in dispute, the subject of the dispute and the nature of the material legal relations in dispute in their totality. In addition, such a criterion may be a direct indication in the law of the type of judicial proceedings in which a particular category of cases is considered.

Jurisdiction and powers of administrative courts, the procedure for judicial proceedings in administrative courts are determined by the CAJ.[2]

According to part 1 of Article 2 of the CAJ, the task of administrative justice is the fair, impartial and timely resolution of disputes by the court in the field of public-law relations in order to effectively protect the rights, freedoms and interests of individuals, rights and interests of legal entities from violations by the power authorities.[3]

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[1] **Council of Europe, 1950.**

[2] **Code of Administrative Justice of Ukraine, No. 2747-IV, 2005.**

[3] ***Ibid.***

Paragraphs 1-3 of part 1 of Article 4 of the CAJ define the administrative case as a public-law dispute removed to an administrative court for making a decision, in which: at least one party performs public-managerial functions, including the exercise of delegated powers, and the dispute arises in connection with the performance or non-performance of these functions by such party; or at least one party provides administrative services under legislation authorizing or obliging to provide such services only to the power entity and the dispute arose in connection with the provision or non-provision of those services by such party; or at least one party is a subject of the electoral process or referendum process and the dispute arose in connection with a violation of its rights in such a process by the power entity or another person; and an administrative court is a court that deals with the consideration and resolution of administrative cases, according to this Code.[1]

According to paragraph 7 of Part 1 of Article 4 of the CAP, the power entity is the state government body, local self-government authority, their official person or public officer, other entity in the exercise of their public-power administrative functions on the basis of legislation, including the performance delegated authority or the provision of administrative services.[2]

According to the rules of paragraph 1, part 1, Article 19 of the CAP of Ukraine, the jurisdiction of administrative courts extends to cases in public-law disputes, in particular, disputes of natural or legal persons with the power entity to appeal against its decisions (normative legal acts or individual acts), actions or inaction, except for the cases where other legal proceedings are provided by law for the settlement of such disputes.[3]

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[1] ***Ibid.***

[2] ***Ibid.***

[3] ***Ibid.***

Therefore, administrative courts have jurisdiction over disputes of natural or legal persons with a public authority, a local self-government body, their official or officer, whose object is to verify the legality of decisions, actions or inaction of these bodies (persons) taken or made during their exercise of power administrative functions, except for the disputes, where other order of court decision is provided by law.

Public-law dispute has a special subject composition. The participation of the power entity is a mandatory feature in order to classify the dispute as a public-law one. However, the participation of a power entity in the dispute does not give grounds to identify the dispute with the public-law one and to refer it to the cases of administrative jurisdiction.

The decisive feature of the case of administrative jurisdiction is the essence (content, nature) of the dispute. The public-law dispute that falls within the jurisdiction of the administrative courts is a dispute between the parties of public-law relations, and it refers to these relations.

At the same time, private law relations are characterized by the presence of a property or non-property personal interest of the participant. A dispute is of a private-law nature if it is caused by a violation or threat of a violation of a private right or interest, as a rule, a property one, of a specific entity to be protected in the manner provided for by law for the sphere of private-law relations, even if management activities of power entities have led to a violation of private right or interest.

According to part 1 of Article 19 of the Civil Procedural Code of Ukraine, courts hear civil cases arising from civil, land, labor, family, housing and other legal relations in the order of civil proceedings, except for cases, which are considered in another court procedure. Courts also examine in civil proceedings the requirements for registration of property and property rights, other

registration actions, if such claims are derived from a dispute over such property or property rights, if this dispute is subject to consideration in the local general court and submitted for its consideration with such requirements (part 2, Art. 19 of the CPC of Ukraine).[1]

The provisions of substantive law, namely Article 15 of the Civil Code of Ukraine (hereinafter – the CC of Ukraine) provides for the right of every person to defend his/her civil right in case of its violation, non-recognition or contestation. Every person also has the right to the protection of his/her interests which is not contrary to the general principles of civil law.[2]

According to part 4 of Article 11 of the Civil Code of Ukraine, in the cases established by acts of civil legislation, civil rights and responsibilities arise directly from acts of public authorities, authorities of the Autonomous Republic of Crimea or local self-government bodies. Therefore, decisions of the power entities, which include, in particular, local self-government bodies, may be the basis for the emergence/termination of civil rights and responsibilities.[3]

According to paragraph 10, part 2, Article 16 of the Civil Code of Ukraine, the methods of protection of civil rights and interests include, in particular, the recognition of decisions, actions or inaction of a public authority, an authority of the Autonomous Republic of Crimea or a local government body, their officials and officers as illegal ones.[4]

According to part 1 of Article 21 of the Civil Code of Ukraine, the court finds it illegal and abolishes a legal act of individual action issued by a state authority, an authority of the Autonomous Republic of Crimea or a local government body, if it

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[1] Civil Procedural Code of Ukraine, No. 1618-IV, 2004.

[2] Civil Code of Ukraine, No. 435-IV, 2003.

[3] *Ibid.*

[4] *Ibid.*

contravenes the acts of civil law and violates civil rights or interests. Thus, the recognition of the decision of the power entity as illegal may be a way of protecting civil law or interest. [1]

Thus, if a citizen perceives a violation of his rights in the consequences caused by a decision, act or inactivity of a power entity, which he considers unlawful, and these consequences have led to the emergence, change or termination of civil relations, they are of property nature or related to the realization of the property or personal non-property interests of such citizen, then the recognition of such decisions as illegal one (unlawful) is a way of protecting his/her civil rights and interests.

From the above-mentioned we can conclude that the legal relations that are formed between the parties in this model situation are civil and legal one and cannot be the subject of dispute in the administrative process, since in this case there is a dispute about civil law, namely the recognition of rights, freedoms and interests arising from land relations.

That is, for the interested parties it should be assumed that the decision of the power entity in the field of land relations, which has features of a non-statutory act and exhausts its effect after its implementation, can be contested in terms of its legality, and the very requirements for recognizing the decision illegal can be considered within the procedure of civil or economic litigation, if the results of the implementation of the decision of a private or legal entity arose a civil law and controversial legal relations on which the claim is based, have a private law nature. In such case, a claim for recognizing the decision illegal can be considered as a way of protecting the violated civil law under Art. 16 of the Civil Code of Ukraine and be sued for consideration in civil or economic litigation,[2] if, in fact, the basis and

[1] ***Ibid.***

[2] ***Ibid.***

purpose of such a claim became a challenge of a person's civil property right (for example, the right to use a land plot on the basis of the agreement) as a result and after the implementation of the decision of the power entity.

Therefore, disputes that are of public-law nature, that is, they arise from the regulatory and executive powers or executive function of public bodies should be examined in administrative courts. If as a result of a decision, a person acquires a real right to a land plot, then the dispute concerns privately legal relations and is subject to consideration in the order of civil or economic litigation, depending on the subject composition of the parties to the dispute.

Thus, from the above-mentioned analysis, it follows that the dispute between a citizen – a member of a territorial community and a local council concerning termination of the lease and sublease agreements of a land plot concluded between the local council, the subject S1 and the subject S2 and the conclusion of a lease agreement of a land plot between the local council and the subject S2 relates to private law relations. This is based on the fact that in the first case the property right of the subject S1 to the land plot was terminated, in the second case - the property right of the subject S2 arose and exists as a result of the relevant decision of the local council. Therefore, the decision on the lawfulness of the acquisition or termination by the subjects S1 and S2 of such a right should be carried out in civil or economic proceedings, depending on the subject matter of the parties involved in the dispute.

This position is also supported by the Resolution of the Grand Chamber of the Supreme Court in Case No.809/739/17 of May 15, 2018, in which it overruled the decisions the lower courts and closed the open proceeding in administrative case. The main arguments of such a decision were the positions of the judges that

"… from the moment of entry into a land rental agreement as a basis for the beginning private law relations in case over cancellation of an order of the state

authority on approval of the planning documents on land management and transferring land plot into rent, which, according to the stated claims, violated the right to a safe and healthy environment, are subjected to review in civil or economic legal proceedings, depending on the parties involved in the dispute. From the plaintiff's arguments, the content of the claims and the circumstances established in this case it is evident that the PERSON_3 appealed to the administrative court for protection of his right to a safe and healthy environment, which in his opinion was violated in connection with the transferring a land plot for farm lease to the PERSON_7, on which the tenant constructs a fattening pig farm. The contested decree of approval of the planning documents on land management and transferring land plot into rent has expired its term in connection with its implementation and occurrence in the PERSON_7 the right to use the land plot in terms of concluded contract with the defendant. This dispute concerns private law relations, since there is property right of a third party to a land plot that arose as a result of and after the implementation of the disputed decree, and the issue of the lawfulness of the acquisition of such right by this private entity, as well as the issue of violation of the plaintiff's rights as a result of improper use of land plot, should be carried out within civil or economic legal proceedings, depending on the parties involved in the dispute".[1]

Furthermore according to Art. 13, 14, 140, 142, 143 of the Constitution of Ukraine,[2] Art. 11, 16, 167, 169, 374 of the Civil Code of Ukraine,[3] Art. 80, 84, 123, 124, 127, 128 of the Land Code of Ukraine[4] bodies of executive power or bodies of

[1] **SC, Resolution in the Case No 809/739/17, 2018.**

[2] **Constitution of Ukraine, No. 254k/96-VR, 1996.**

[3] **Civil Code of Ukraine, No. 435-IV, 2003.**

[4] **Land Code of Ukraine, No 2768-III, 2001.**

local self-government in legal relations concerning the disposal of state and communal land plots (granting land plots to citizens and legal entities into ownership or use, alienation of land plots of state or communal property, conclusion, modification, termination of agreements of sale and purchase, rent, lease of land plot and other agreements concerning land plots, establishment of easement, superficies, emphyteusis, including making appropriate decisions by state authorities and bodies of local self-government) act as bodies, through which the state or local community exercise the powers of owner of land plots.

When exercising their appropriate powers, state or local self-government bodies enter into civil and economic relations with private entity or legal entity. Thus, in such relations, the state or territorial communities are equal participants in land relations with other legal entities, private entities and economic entities.

Relationships connected with acquisition and realization of rights to land plots and the civil circulation of land plots by citizens, legal entities are based on the principles of equality of the parties and are civil one.

In view of the above-mentioned, we consider that an appeal (claim) of a citizen in the said model case, the subject of which is verifying the correctness of the transfer of the respective rights to a land plot (in particular on lease contractual basis), cannot be examined according to the rules of administrative legal proceedings.

A similar legal position is stated in the resolution of the Supreme Court of Ukraine of February 24, 2015, in case No.21-34a15,[1] and in the resolution of the Grand Chamber of the Supreme Court of 04 April 2018.[2]

[1] **SC, Resolution in the Case No 21-34a15, 2015.**

[2] **SC, Resolution in the Case No 817/1048/16, 2018.**

Also important in this issue is the consideration of the case law of the European Court of Human Rights. For example, the decision in the case "Sokurenko and Strygun v Ukraine", which demonstrates the position of this court according to which the court, which heard the case that doesn't come within its jurisdiction, cannot be considered as a "court established by law" within the meaning of Article 6 part 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November, 1950, which guarantees everyone's right to fair and public hearing of his/her case within a reasonable time by an independent and impartial court established by law.[1]

Therefore, according to paragraph 1 of part 1 of Art. 238 and part 1 of Art. 354 CAJ passed court decisions in such case within the administrative legal proceedings are subject to revocation and administrative proceedings should be closed.

[1] **European Court of Human Rights, Decision in case "Sokurenko and Strygun v Ukraine", nos. 29458/04 and 29465/04, 20 July 2006.**

THE SECOND TOPIC

LEGAL EVALUATION OF THE OBJECT OF APPEAL

Another important task that needs to be solved in this model situation is performance of a legal evaluation of the possibility to appeal, by a citizen – a member of a territorial community, a decision of a local council concerning consideration and approval of a land management plan, by which was changed the designated purpose of the land plot leased to another person.

This issue should be based primarily on the rules of land legislation, which interpret the concept of the intended purpose of the certain object. Thus, in accordance with Article 1 of the Law of Ukraine "On Land Management" the intended purpose of the land plot is the intended use of a land plot, determined on the basis of documentation on land management in accordance with the procedure established by the legislation.[1]

Another act of land legislation, the Land Code of Ukraine, in Article 19 divides all lands of Ukraine by main purpose into different categories, in particular, a) residential land and b) public development.[2] Part 1 of Article 20 of the Land Code stipulates that the land is referred to one or another category on the basis of decisions of state authorities, the Verkhovna Rada of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea and local self-government bodies within their powers. The change of purpose of land plots is carried out according to land management plans for their allocation.

Therefore, the change of the designated purpose of land plots (that is transfer of land plot from one category defined by part 1 of Article 19 of the Land Code of

[1] **On Land Management. Law of Ukraine, No 858-IV, 2003.**

[2] **Land Code of Ukraine, No 2768-III, 2001.**

Ukraine to another) is carried out within land management plans and following the appropriate procedure.[1]

At the same time, according to part 5 of Article 20 of the Land Code of Ukraine *the types* of land plot *use* within a certain category of land (except agricultural land and defence lands) *are determined by its owner or user independently* within the requirements for the use of land of this category established by law, taking into account urban planning and land management documentation.[2]

***Thus, the change of the type of land plot use within one category of land* (with the exception of agricultural land and defence lands) is carried out by its owner (user) independently.**

According to the above-mentioned analysis, one of the reasons for the conflict in such a situation is manipulation between two categories of "change of designated purpose of a land plot" and "change of the type of use of a land plot", which are quite often mutually replaced by the authorities in cases of appeal of citizens and legal entities, as well as in the process of exercising land control.

One should be agreed with scientists (Brykaylo, 2019[3]) and the Supreme Court that changing the type of land plot use within one category of land is not a change of its designated purpose, and therefore *does not require the completion of procedures that in accordance with the land legislation of Ukraine are applied while changing the designated purpose of the land plot* (development of a land management plan for a land plot allocation, its approval, etc.). According to part 5 of Article 20 of the Land Code of Ukraine the only condition, which should be considered during independent determining a type of use of a land plot by its

[1] ***Ibid.***

[2] ***Ibid.***

[3] **Yuri Brykaylo, 2019.**

owner/user is the compliance with the requirements for the use of land of this category established by law and the need to take into account urban planning and land management documentation.[1]

As the arguments of this position, one should use the decree of the State Committee of Ukraine on Land Resources of July 23, 2010 No.548, which approved the Classification of types of designated purpose of land (hereinafter referred to as the CTDP).[2] In accordance with the Land Code of Ukraine and the Law of Ukraine "On Land Management" CTDP is the basis for use by state authorities, local governments, organizations, enterprises, institutions for land recording and reporting on land resources. This decree also defines the division of land into separate types of the designated purpose of land, characterized by its own legal regime, ecosystem functions, types of construction, and types of particularly valuable objects.

Thus, when appealing against the local council's decisions on consideration and approval of a land management plan concerning the change the designated purpose of a land plot, which contains information on the change of type of a land plot use that is in use under lease conditions within one category of land, in particular, out of lands for construction and maintenance of other public buildings, for example, for construction of office and hotel entertainment complex with objects of social sphere and recreation on the land for construction and services multiple family dwelling, one should clearly distinguish the concepts of "change of the designated purpose of a land plot" and "change of the type of use of land plot". Nevertheless, when the authorized body formally prescribes in the decision an item on the change of designated purpose of a land plot, in fact the form of realization does not change the category of land, but change the type of use

[1] **SC, Resolution in the case No 806/5308/15, 2019.**

[2] **SCULR, Order, No. 548, 2010.**

of a land plot. Accordingly, in such situations, the authority actually demonstrates a substitution of the mentioned categories, which can most often be interpreted as a technical error, which is eliminated in case of additional attention to it.

THE THIRD TOPIC

SUBSTANTIATING THE FEASIBILITY OF CONSOLIDATION OF THE CLAIMS IN A DISPUTE INTO JOINED COURT PROCEEDINGS

As it follows from the requirements of the administrative procedural legislation, disputes of public-law nature should be resolved under administrative procedure. The delimitation of jurisdiction in land disputes is periodically mentioned in the decisions of the Supreme Court. Thus, in particular, from the Resolution of the Grand Chamber in Case No. 752/1666/17 of November 7, 2018, it follows that a dispute over an appeal against a decision of a local self-government body concerning the change of the type use of a land plot by a public authority is subject to administrative legal proceedings, if the subject of such dispute is a verification of the legality of a decision concerning the exercising governmental administrative functions by a local self-government body, rather than the issue concerning the decision of property right to a land plot. The following conclusion can be drawn based on the following legal position of this court: "in the case No.752/1666/17 the plaintiff appeals the decision of the executive body of the Kyiv City Council No.85 of February 17, 2016, which changed the Prosecutor General of Ukraine the type of use of a land plot for construction, operation and maintenance of the residential-office complex (by a specific location address). The subject of this dispute is the verification of the legality of the decision concerning the exercising governmental administrative functions by the executive body (Kyiv City State Administration),

and not the issue of the plaintiff's property right to the land plot".[1] From another Resolution of the Grand Chamber in Case No.381/3752/16 of April 18, 2018, it also follows that an appeal against the actions of a private person, who owns a land plot, concerning the exercising his powers as a legal entity of property right as to the change of the designated purpose of a land plot excludes hearing the case as a public-law dispute by courts of administrative jurisdiction. This is due to the following legal position: "The change of the designated purpose of the land plot and subsequent registration of the ownership is carried out on the basis of the application of the owner of the land plot, and after the consideration of such application within a month the relevant local self-government body makes an appropriate decision. In view of the given impugned decision of the defendant, it is, in fact, the realization of will of the owner to change the designated purpose of a land plot, which is into his ownership. This category of disputes does not fall within the jurisdiction of administrative courts".[2]

At the same time, it should be reminded that while hearing a case the duty of the court is to comply with the requirements of comprehensiveness, completeness and objectivity of clarifying the circumstances of the case and evaluating the evidences. Comprehensiveness and completeness of hearing involves clarification of all legally relevant circumstances and the evidences provided with all their inherent properties, qualities and characteristics, their relations, relationships and interdependences. Such clarification prevents one-sidedness and provides, as a consequence, a legal and reasonable decision. If the claims are joint, inextricably linked and the resolution of one of them depends on the resolution of the other claims, then such claims should be considered in the same proceeding.

[1] **SC, Resolution in case No. 752/1666/17, 2018.**

[2] **SC, Resolution in case No.381/3752/16, 2018.**

Based on the above-mentioned, we should state that in the model situation the decision of the power entity is implemented, since the parties concluded a lease, that is, there were mutual property rights and obligations inherent in civil (economic) legal relations. Therefore, the requirements for recognition as unlawful and cancellation of the decision of the local council to review and approve the land management plan concerning the change of the designated purpose of the land plot and the obligation of the Head Office of the State Land Cadastre to make a record in the Land Registry, which was made on the basis of the contested decision concerning the change the designated purpose of the land plot, also *eligible for consideration within civil proceedings.* This is due to: firstly, the fact that the property rights to a land plot of the person are contested by a third person (who has no property right to such land plot) are derived from the acquisition of the right to use a land plot of the legal entity; secondly, these requirements are related to a common subject – a land plot; thirdly, the court of competent jurisdiction should determine the form and content of the contested decision of the local council to change the designated purpose.

On this issue, it should be concluded that the consideration of claims concerning the conclusion of a lease agreement for a land plot between a local council and a legal entity, changing the designated purpose of a land plot and making changes to the Land Registry, and therefore the legal evaluation of the same evidences in different cases of different jurisdictions will, firstly, contradict the task of justice in the resolution of the dispute and secondly, encourage the parties to initiate a large number of court proceedings to protect a certain right. This approach is unacceptable.

CONCLUSIONS

The conducted research shows that legal disputes in conflicts between citizens on the one hand and local self-government bodies (local councils) on the other,

with the requirement to terminate leases and/or sublease of land plots concluded between the local council and business entities, have a private law nature, which is decisive in deciding the jurisdiction of the court, in which such a dispute should be resolved.

In such a situation, the issue of the rightful acquisition or termination of the right to use the respective land plot by the economic entities, as well as the issue concerning violation of, in particular, the environmental rights of the complainant (plaintiff), who does not have property right to the respective land plot, should be exercised within civil or economic legal proceedings.

In order to prevent a conflict in a typical situation, initiators are recommended to carry out a preliminary legal assessment of the relevant decision of the local self-government body to lease and/or sublease land plots to economic entities, taking into account the differentiation of the terms "change of designated purpose of a land plot" and "change of the type of use of a land plot". It should be borne in mind that in the first case the corresponding change can be made only by an authorized authority according to grounds and procedures clearly defined by the law; in the second case, it can be carried out in own discretion and independently by the owner of a land plot without changing its designated purpose. The substitution of the mentioned concepts is considered an inadmissible and gross violation in the administrative activities of the governmental authority, when the management decision (act) formally specifies a provision for changing the designated purpose of a land plot, but in fact the form of implementation does not change the category of land, but change the type of use of a land plot, and vice versa.

In the typical situation, when the decision of the authorized power entity has already been implemented (the parties have concluded a lease agreement, sublease, and consequently, mutual property rights and obligations have arisen), the

relations acquire civil law or economic law (depending on the status of the subjects) nature. Therefore, based on the case-law of the Supreme Court and joint cause of action are inextricably linked and the decision of one of them depends on the resolution of other claims, it is considered necessary to resolve the dispute with the claims, firstly, to define as unlawful and disaffirm the decision of the authorized local self-government body (in particular, the local council) to approve the land management plan to change the designated purpose of a land plot, and, secondly, to oblige another authorized state body (in particular the Head Office of the State Land Cadastre) to make record in the Land Registry, which was made under the contested decision to change the designated purpose of a land plot within one proceeding in civil proceedings (not administrative one).

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