

## LEGAL PROBLEMS OF PROTECTION AGRICULTURAL LAND FROM WAR WASTE

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Since February 24, 2022, in Ukraine (and in the East of the country – for 10 years already<sup>1</sup>) intensive shelling has been carried out every day, craters from aerial bombs have been created, new mined areas have been created, heavy military equipment has been destroyed, which leads to the leakage of oil products, burning of the land, etc. All these consequences of military operations pollute the soil, and with it, negatively affect the country's economy and people's health.<sup>2</sup>

Two years after the full-scale invasion, KSE estimates total agricultural losses at 10.3 billion dollars, up 18% from the previous year. As for the reclamation, the KSE estimates an estimated cost of 329 million dollars. After the first year of the invasion, approximately 836,000 hectares of farmland were damaged, resulting in 184 million dollars in losses due to the need for reclamation. As of October 2023, this number has increased to 1.5 million hectares of agricultural land, which is 3.6% of all agricultural land in Ukraine.<sup>3</sup>

The issues of legal protection of agricultural land are traditionally given considerable attention in Ukrainian land and agrarian legal science. It should be mentioned, in particular, the monographic studies of N. S. Gavrysh<sup>4</sup>, P. F. Kulynych<sup>5</sup>, T. V. Lisova<sup>6</sup>. However, with the beginning of the full-scale

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<sup>1</sup> The war in the east of Ukraine. Wikipedia. URL: [https://uk.wikipedia.org/wiki/Війна\\_на\\_сході\\_України#:~:text=Війна%20на%20сході%20України%2C%20або,проголошення%20«державних%20суверенітетів»%20ДНР%20i](https://uk.wikipedia.org/wiki/Війна_на_сході_України#:~:text=Війна%20на%20сході%20України%2C%20або,проголошення%20«державних%20суверенітетів»%20ДНР%20i)

<sup>2</sup> Is it possible to heal the soil from war – answers to the most common questions. Kurkul. URL: <https://kurkul.com/spetsproekty/1423-chi-mojna-vilikuvati-grunt-vid-viyni--vidpovidi-na-nayposhirenishi-zapitannya>

<sup>3</sup> Roman Neyter, Sergiy Zorya, Oleksandr Muliar (2024) Agricultural War Damages, Losses, and Needs Review. KSE. URL: [https://kse.ua/wp-content/uploads/2024/02/RDNA3\\_ukr.pdf](https://kse.ua/wp-content/uploads/2024/02/RDNA3_ukr.pdf)

<sup>4</sup> Kulynych P.F. Legal problems of protection and use of agricultural lands in Ukraine. Monograph. Kyiv: Logos, 2011. 688 p.

<sup>5</sup> Lisova T.V. Legal provision of land restoration: theoretical and practical problems. Monograph. Kharkiv: urayt, 2020. 396 p.

<sup>6</sup> Havrysh N. S. Use, reproduction and protection of soils in Ukraine: theoretical and legal aspects: monograph. Odesa: Legal literature, 2016. 398 p.

invasion of the Russian Federation into Ukraine, when the indicated category of land suffered devastating losses and the problems associated with overcoming the consequences of the war and the reclamation of lands contaminated by war waste come to the fore, it becomes especially urgent to conduct further research in this area. As rightly noted by M. M. Potip the post-war reconstruction of Ukraine should be focused on restoring land resources. Therefore, scientific research aimed at studying ways of restoring the fertility and ecological safety of Ukraine's chernozems, reducing the negative impact on the environment, and promoting the creation of effective agriculture and agro-industrial complex is highly relevant.<sup>7</sup>

The legal principles of preservation and protection of land, including agricultural land, are enshrined in national legislation. First of all, it is the Constitution of Ukraine, which states that land is the main national wealth, which is under the special protection of the state (Article 14).<sup>8</sup> In addition, the Land Code of Ukraine, in which a separate Chapter VI of Land Protection is devoted to the above-mentioned issues. And the main normative legal document in this area is the Law of Ukraine "On Land Protection", which defines the legal, economic and social foundations of land protection in order to ensure their rational use, reproduction and improvement of soil fertility, other useful properties of the land, preservation of the ecological functions of the soil cover and environmental protection.<sup>9</sup> However, the realities of war require an adequate reaction of the legislator to new challenges. For example, one of the biggest problems is the problem of demining the territory of our country. Thus, according to an infographic study by the Ministry of Environmental Protection and Natural Resources of Ukraine<sup>10</sup> during the war, Ukraine became the most mined country in the world. 30% of the territory must be checked for the presence of mines. Humanitarian demining requires significant investment. Thus, the cost of demining 1 hectare of land is 1,710 dollars, which includes reclamation of degraded soil and physically altered areas and demining. For producers of agricultural products, such sums are significant, and in some cases unsustainable. In order to resolve this issue, on March 12, 2024, the Cabinet of Ministers of Ukraine approved the Procedure for the use of funds provided for in the state budget for the compensation of costs for humanitarian demining of agricultural lands<sup>11</sup>. This normative legal act provides that the state will compensate 80% of the cost of land demining to legal entities regardless of their organizational and legal form or to natural persons – entrepreneurs who produce marketable agricultural products on land owned by them and/or on leased agricultural land plots. The price for demining services will be determined through open bidding in the Prozorro system, and compensation will be provided only once per contaminated land plot.

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<sup>7</sup> Potip M.M. (2023) COMBATING POLLUTION AND SOILING OF LAND RESOURCES: LEGAL ASPECTS. Legal scientific electronic journal. URL:<https://doi.org/10.32782/2524-0374/2023-7/33>

<sup>8</sup> Constitution of Ukraine. URL: <https://www.president.gov.ua/ua/documents/constitution/konstituciya-ukrayini-rozdil-i>

<sup>9</sup> On land protection. Law of Ukraine dated June 19, 2003 №962-IV. URL: <https://zakon.rada.gov.ua/laws/show/962-15/ed20171218#n24>

<sup>10</sup> The Russian-Ukrainian war: impact on the environment. URL: <https://www.topleadprojects.com/war-in-ua-environmental-impact-ukr>

<sup>11</sup> On the approval of the Procedure for the use of funds provided for in the state budget for compensation of costs for humanitarian demining of agricultural lands. Resolution of the CMU dated March 12, 2024. № 284. URL:<https://www.kmu.gov.ua/npas/pro-zatverdzhennia-poriadku-kykorystannia-koshitiv-peredbachenykh-u-derzhavnomu-biudzheti-dlia-s284120324>

Therefore, in order to support farmers, the Cabinet of Ministers of Ukraine has allocated 3 billion hryvnias for the compensation program for humanitarian demining in Appendix No. 3 to the State Budget of Ukraine for 2024, which was adopted by the Verkhovna Rada of Ukraine on November 9, 2023 No. 3460-IX<sup>12</sup>.

However, the issue of demining should take into account the protection and restoration of agricultural lands and soils in general. Thus, the draft National Mine Action Strategy developed by the Ministry of Economy of Ukraine, designed for 10 years, includes three strategic goals: protecting people, returning land to productive use, and strengthening the capacity of the mine action system. In addition, the Ministry of Economy of Ukraine has started work on the Mine Action Operational Plan, which will specifically determine who will do what, where and when in the context of the implementation of the National Mine Action Strategy and, above all, will coordinate government structures, foreign partners, representatives of local authorities, businesses and people directly<sup>13</sup>. Unfortunately, the National Mine Action Strategy has not yet been published and approved by the National Security and Defense Council of Ukraine, which, in our opinion, is unacceptable in wartime conditions. After all, the process of demining, handling of war waste and land restoration is quite long-term and will be relevant for more than one decade.

Another long-term consequence of the war, which will determine the future of agriculture in Ukraine, is soil degradation. It should be noted that chemical soil contamination in previously mined areas will have negative consequences for agricultural production, the environment and people for generations to come. For these reasons, demining should take place in conjunction with a comprehensive environmental assessment and monitoring of soil contamination. This should be taken into account by the Government when preparing all documents related to mine action. Science-based remediation on less polluted land and fair conservation of land on the most polluted areas are also critical—for farmers who may otherwise lose their means of production; for local communities and consumers who must have access to healthy food; and for the environment, whose disturbed ecosystems must be restored<sup>14</sup>.

Therefore, it is important to determine the most optimal model for the restoration of land contaminated by war waste, taking into account all the features, including the consequences of hostilities. In addition, the Law of Ukraine "On Land Protection" should be maximally adapted to future problems and lay the foundation for further land reclamation.

Taking into account all the danger and seriousness of the situation taking place in Ukraine, the state, together with scientists, educators, agrarians and business representatives, needs to look for and develop mechanisms for the restoration of damaged agricultural lands, as well as create all the necessary theoretical and legislative basis for such reclamation. After all, it is through joint efforts that it will be possible to overcome critical problems and minimize the consequences of military actions in the post-war future of Ukraine.

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<sup>12</sup> On State Budget of Ukraine for 2024. Law of Ukraine dated November 9, 2023 № 3460-IX. URL: <https://zakon.rada.gov.ua/laws/show/3460-20#Text>

<sup>13</sup> The Ministry of Economy has started work on the Mine Action Operational Plan. Government portal. URL: <https://www.kmu.gov.ua/news/minekonomiky-rozpochal-robotu-nad-operatsiynym-planom-protymynnoi-diialnosti>

<sup>14</sup> How does war affect soil fertility and food quality? (2023). ECOACTION. URL: <https://ecoaction.org.ua/vijna-vplyvaic-na-grunty.html>