

# Historical and Legal Analysis of Development of Administrative Responsibility for Unauthorized Occupation of a Land Plot

Stytsiuk Bohdan, Flight Academy of the National Aviation University

Kovalchuk Vitalii, Lviv Polytechnic National University

Harasymiv Taras, Lviv Polytechnic National University

Zabzaliuk Dmytro, Lviv State University of Internal Affairs

Kozin Serhii, National University of Life and Environmental Sciences of Ukraine

## Abstract

**Description:** The purpose of the article is to investigate the stages of development of the institute of administrative responsibility for unauthorized occupation of a land plot, in particular during the existence of the Russian Empire and the USSR. **Methodology:** The methodological basis of the study is dialectical-materialistic and formal-logical methods of scientific knowledge of social and legal phenomenon and general scientific and special methods based on them. This allowed researching the problem of the unity of its social content and legal form. **The results of the study.** On the basis of the analysis of scientific literature, the historical and legal analysis of the development of administrative responsibility for unauthorized occupation of a land plot during the existence of the Russian Empire and the USSR was carried out. **Practical implications:** Having taken note of the analysis of legal acts adopted during the studied period we can conclude that the assertion of the Soviet authorities was accompanied by the increased criminal liability for violations in the area of land use. **Value/originality:** It was stated that the legislation of the USSR has significantly influenced the development of modern Ukrainian legislation, which regulates administrative liability in the area of land use in general and for the unauthorized occupation of a land plot in particular.

## Keywords

History of Development, Administrative Responsibility, Legislation, Land, Russian Empire, USSR.

## Introduction

The legal nature and the essence of the institute of administrative responsibility for unauthorized occupation of a land plot are characterized by instability and historical variability, since they are always determined by the level of socio-economic development of society and the approaches of the legislator to regulate the relations in the area of land use. Therefore, in the history of development of the analyzed institute several stages can be clearly identified, the scientific study of which allows obtaining reliable information on the circumstances of objective reality that influenced its development. In view of the foregoing, we propose to study it bit by bit in order to make a thorough understanding of the history of development of the institute of administrative responsibility for unauthorized occupation of a land plot, the reasons and conditions that influenced it. In our opinion, the most interesting within our study are the periods of existence of the Russian Empire and the USSR.

## Material and Methods

The methodological basis of the study is dialectical-materialistic and formal-logical methods of scientific knowledge of social and legal phenomenon and general scientific and special methods based on them. This allowed researching the problem of its social content and legal form in unity. The comparative legal and formal legal methods were used during the analysis of the norms of the Code of Malorossiya Rights of 1807, the Penal Enforcement Code of 1845, The Land Code of USSR of 1992, etc., which regulated the issue under consideration. The method of formal logic as well as structural method made it possible to examine the elements of the institute of unauthorized occupation of a land plot. Historical and legal method provided an opportunity to highlight the evolution of scientific views on specific issues. The method of systematic analysis made it possible to identify significant features of the studied offense. Based on the integrated syntheses approach conclusions and suggestions on the topic of the study have been formulated.

Some problematic issues of administrative responsibility for the unauthorized occupation of a land plot in were considered by such scientists as: Hetman, Holosnichenko, Honcharuk, Kivalov, Kisiliuk, Kurylo, Koval, Lukianets, Miroshnychenko, Mykolenko, Muntian, Nosik, Oriekhova, Ostapenko, Pohribnyi, Remniev, Sushchenko, Tatsii and many others. However, despite the considerable amount of the research conducted, it should be noted that to date there is no comprehensive study in the legal literature devoted to analyzing how the institution of administrative responsibility for unauthorized occupation of a land plot had been developing, in particular during the existence of the Russian Empire and the USSR.

## Results and Discussion

As we begin the study, we must note that an important stage of development of responsibility for unauthorized occupation of a land plot is associated with the adoption of the Code of Malorossiya Rights of 1807. A characteristic feature of this act is that it not only established the list of violations of rights of landowners and land users, but also regulated the procedure for bringing the violators to justice (Article 55 of the Code) (Vislobokov, 1992).

The further development of the legislation of the Russian Empire was characterized by emulating the experience of the most developed European countries, which was characterized by the delineation of legal regulation of different branches of law. As a consequence, in 1845 the Penal Enforcement Code was adopted, which in its essence was the first Criminal Code. At the same time, the Code, like all previous acts, did not distinguish between criminal, administrative and disciplinary liability. And this is natural, since in the first half of the 19<sup>th</sup> century the court had not yet been separated from the administration, and the police and political investigations had been granted broad powers.

The analysis of the structure of the Code shows that most of the crimes set out in the Code of Malorossiya Rights of 1807 were grouped into separate section—the Police Statute for the Prevention and Suppression of Crimes (Vol. XIV). Among the property crimes, which were envisaged in this act, a special emphasize was placed on crimes related to the seizure of someone else’s real estate and the destruction of boundaries and signs. In particular, any violent attack on alien lands, houses or other property with intent to seize them was punished. At the same time, the abduction by armed assailants or combined with causing grievous bodily harm or creating life-threatening conditions was an aggravating circumstance in respect of criminal responsibility and punishment. It should be noted that the Code took into account the increased public danger of such an attack and provided for a punishment in the form of an exile to Siberia for settlement or referral to a detention center. In addition to the forcible seizure of land, the Code also provided for the responsibility for the destruction of boundary lines and other signs with an intention of appropriating a part of immovable property or with any other unlawful purpose (Tatsii et al., 2003). In our opinion, by criminalizing such actions, the legislator had tried to ensure the comprehensive protection of private land ownership, especially of landlords and other feudal landowners.

The Code had been existing in its original form for 40 years without taking into account partial editorial amendments. In 1885, some significant changes were made, and the legal rules governing responsibility for the forcible seizure of a foreign land were transferred to Chapter XII—“*On Crimes and Offenses against Property of Individuals*”. In particular, an unauthorized seizure of a land plot, which was associated with the lack of legal rights to it, was affected by the provisions of Article 294. Besides, for the first time, the article clearly enshrines the principles of differentiation and individualization of criminal liability when committing acts of complicity (Penal Enforcement Code, 1845).

In 1903 a new collection of Criminal Laws under the name “*Criminal Code*” was adopted and published. When applying the chapters and articles of the new Criminal Code of 1903, the judicial institutions were obliged to be guided only by those chapters and articles, which became effective (Tatsii et al., 2003). At the same time, it was the last codified act of the Russian Empire, which provided for responsibility for unauthorized use of a foreign land plot (Beliaiev et al., 1992).

Thus, to summarize the above stated, it should be noted that the described stage of development of administrative responsibility for unauthorized occupation of a land plot

is characterized by the regulatory and legal consolidation not only of the expanded list of violations of the landowners' rights, but also by the procedural order of bringing those guilty to justice. Besides, it was at this stage that the process of distinction of legal regulation of the various branches of law was initiated, although the types of liability (administrative, criminal, civil and disciplinary) had not yet been identified.

The next stage in the history of development of the institute of administrative responsibility for unauthorized occupation of a land plot is the collapse of Russian czarism. Under the pressure of the revolutionaries, the autocracy fell, Nicholas II gave up the throne, and a republican regime was actually established in the country. In such circumstances, new authorities were faced with tasks that needed immediate solution. That was to overcome the negative tendencies in the sphere of economy, to resolve the national issue, and to determine the legal status of the land.

After the February Revolution, the power was actually assumed by the interim Government. It upheld the unitary form of the Russian state in which Ukraine could have only national-cultural autonomy. Clearly, such a solution was not welcomed by Ukrainian political intelligence and led to the emergence of an alternative center of power in Ukraine—the Central Rada. Continuing its own line of government, the Central Rada adopted four Universals in turn. In view of the subject of our research, the Third Universal, which proclaimed the formation of the Republic of Ukrainian People in the nine Ukrainian provinces, is of particular interest. Besides, the Universal secured the mechanism for protection of the rights of land owners in order to prevent permanent decline of agriculture. In particular, official explanations to the Third Universal stated:

*“Universal does not allow any unauthorized seizure of land or any good, deforestation, etc., as such seizures will inevitably destroy the already existing national wealth and cause ruins and quarrels in the country and among the peasantry”* (Klunnyi, 1926).

Further, in the Clarifications to the Land Affairs, dated from November 11, 1917, the mechanism for protection of the land from unauthorized seizure was fixed and the responsibility for such actions was established:

*“No illegal seizure of land or equipment should be allowed. All those, who allow themselves to violate the established procedure for the calculation and division of land, or who without the permission of the Committee will be tempted by stuff, which belongs to all people, will be severely punished by law, as the robbers of national property. Forests, like the land itself, are also property of all people”* (Klunnyi, 1926).

The prohibition of unauthorized occupation of land was also discussed in the Circular of the Ministry of Internal Affairs no. 24 of March 04, 1918, *“On the basics of the Ukrainian People's Republic policy”*. In particular, it was stated:

*“Wrongful seizures, violence, violations of this law and lawful decisions of the land committees by anyone, will be resolutely suppressed, using weapons, if necessary; the perpetrators will be severely sanctioned”* (Tatsii et al., 2003).

It is appropriate to note that the interim Government's policy was also aimed at preventing unauthorized seizure of land. For example, on April 08, 1918, the special decree referred to empowerment of the provincial commissioners to act in cooperation with local public committees towards "*immediate cessation of any encroachments against an individual and property of citizens*". For this purpose, military teams were allocated to the disposal of the provincial commissioners. The government, in turn, guaranteed the landowners compensation for damages (Tatsii et al., 2003).

The legislation of the Western Ukrainian People's Republic also provided for the responsibility for unauthorized occupation of land. In particular, Article 21 of the Law "*On Land Reform*" of April 14, 1919 gave to local authorities the right to imprison for 6 months the persons, who illegally occupied a land plot, as well as to impose a fine of up to 10,000 on such persons (Muzychenko, 2008).

During the Hetmanate period, any unauthorized seizure of land was prohibited under the conditions of restoration of the institute of private ownership of land. For example, the letter to Ukrainian people proclaimed:

*"Private property rights will be fully restored as the foundation of culture and civilization, and all the orders of the former Ukrainian Government, and as well as of the interim Government of the Russian Federation, will be abolished. The freedom to sell and purchase the land will be restored"* (Klunnyi, 1926).

At the same time, the right to private ownership of land did not last long, as immediately with the advent of the Directory, its leadership, following the example of the Ukrainian Central Council, proclaimed the complete nationalization of land, forests, factories and plants. The appropriation, deforestation and theft of these national treasures had been equated with the crimes against State property, which were being combated with the involvement of the entire state executive and legislative mechanism (Muzychenko, 2008).

At the end of 1918 the right to private ownership of land was completely abolished, and the Constitution of the USSR of 1919 finally enshrined the exclusive right of State to land and land resources. A number of normative legal acts were adopted for the development of this constitutional provision, which processed the institute of the single State land fund, which was only directly administered by the Soviet authorities. Any civil law agreements on land were forbidden, and only the State-the single owner of the land-had the right to determine its fate as an object of ownership and use (Tatsii et al., 2003).

At the end of consideration of this stage of development of the institute of administrative responsibility for unauthorized occupation of a land plot, it is necessary to consider the statement of Volokh (2002), who notes that in times when different authorities had been changed repeatedly in Ukraine, the hostilities took place on its territory, when neither human life nor property were valued, the forcible seizure and destruction of which became a common practice for the warring parties, the criminal law was not actually acting, although the national governments of Ukraine attempted

to protect the property from unlawful encroachment, but actually, for objective and subjective reasons, the interests of owners were not protected. Thus, despite the fact that from 1917 to 1992 the land tenure regime had been repeatedly changing, the legislative activity of various political regimes had given the highest priority to ensuring a proper mechanism for the protection of landowners' rights (regardless of whether it was State or private individuals). At the same time, the legislation of the analyzed period has not yet acquired a modern differentiation, and therefore the responsibility for the unauthorized seizure of a land plot was only considered within the framework of criminal law.

Another historical stage in the development of the legislation in the area of responsibility for unauthorized occupation of a land plot is associated with the adoption of the Civil Code of the USSR and the Criminal Code of the USSR in 1992. For example, Article 2-3 of the Criminal Code of the USSR proclaimed:

*“All lands within the USSR, no matter under which authority they are, constitute the property of the Workers and Peasants State. All agricultural lands, as well as those that can be used for agricultural production, constitute a single State land fund, which is in the charge of the People’s Commissariat of Agriculture and its local bodies”* (Ukrainian Soviet Socialist Republic, 1992).

According to the provisions of the Land Code of USSR of 1992 land judicial commissions were established to resolve disputes in land matters: rural municipality, county and provincial commissions; in doing so, and cases in land commissions were considered in adversary proceedings.

All disputes arising from land management, as well as disputes in relation to land use rights, such as group or individual land use, land allotments from the community, general and private redistribution of land, total or partial deprivation of users in their possession land use in cases established by law, changes in the size, boundaries, location and composition of land use (land management, land reclamation, road construction, alienation for state and public appropriateness, etc.), family disputes in relation to the division of land, and other land use disputes were subject to judicial land commissions. The procedure for considering cases in land judicial commissions, the withdrawal of their members, the representation of the parties, the calling of witnesses and knowledgeable persons, their remuneration, the consequences of their failure to appear, etc. were determined by the relevant rules established for the consideration of cases in the people’s courts.

The Criminal Code of the USSR of 1992, unlike the legal acts of the Russian Empire, ignored the need for criminal protection of land from unauthorized seizure, providing criminal liability only for certain violations in the area of land use. Thus, Article 99 contained provisions prohibiting:

*“Violation of laws and mandatory regulations established for protection of forests against predatory exploitation and extermination, as well as forest management in a manner inconsistent with the established plan; hunting and fishing in unauthorized*

*times, in unauthorized places and by unauthorized ways and techniques; sampling of stones, sand etc. without the permission of the relevant authorities, as well as mining operations with violation of the established rules” (Mykhailenko, 1966).*

The similar criminal prohibition was contained in Article 82 of the Criminal Code of the USSR of 1927, which stated:

*“violation of laws and rules established for the protection of forests from theft and extinction, if the damage, calculated at normal fees, exceeds fifteen rubles or it is was committed by the persons, who have already been imposed administrative measures for forest offenses” (Mykhailenko, 1966).*

At the same time, the increase in the number of offenses in the area of land use necessitated the introduction of amendments to the current version of the Criminal Code of the Ukrainian SSR. In particular, in 1928 the Criminal Code of the USSR was supplemented by Article 125-1, which provided for criminal liability for violation of the established procedure for land transactions (Ukrainian Soviet Socialist Republic, 1992).

Subsequently, the legal protection of land was headed in one direction of increasing responsibility for offenses, which subject is State’s title to the land. For example, on April 3, 1940, the Plenum of the Supreme Court of the USSR, in its Resolution *“On the qualification of cases of unauthorized use of lands of collective farms and state farms for private purposes”*, emphasized that the unauthorized cultivation of lands, which are the property of collective farms or state farms for private purposes should be characterized as arbitrariness (Menshahyn et al., 1957). On September 19, 1946, the Council of Ministers of the USSR and the Central Committee of the All-Union Communist Party adopted a joint Decree *“On the measures to eliminate violations of the Charter of agricultural artel in collective farms”*, which established responsibility for violations of the provisions of such Charter, including theft of public lands (Menshahyn et al., 1957). Criminal violations of the Charter (in particular, unauthorized seizure of collective farm land), committed by ordinary collective farmers and citizens, who were not members of collective farms, bore criminal responsibility according to the Decree of the Presidium of the Supreme Soviet of the USSR of June 04, 1947 *“On criminal liability for theft of State and public property”* (Menshahyn et al., 1957).

## Conclusion

Thus, the analysis of legal acts adopted during the studied period demonstrates that the assertion of the Soviet authorities was accompanied by increased criminal liability for violations in the area of land use. At the same time, the increase of liability was only due to the criminalization of the increasing number of acts, while the administrative responsibility for land offenses was not envisaged. As a result, it should be noted that the legislation of the USSR has had the greatest influence on the development of modern Ukrainian legislation on administrative liability in the area of land use and has

significantly influenced its content at the beginning of development of the independent Ukraine.

## References

Beliaiev, N.A., Hlistin, V.K., & Oriekhov, V.V. (1992). *Criminal law at the present stage : problems of crime and punishment* . St. Petersburg: St. Petersburg University.

Klunnyi, G.V. (1926). *Land legislation of counter-revolutionary governments during the revolution in Ukraine*. Kharkiv: Radyansky peasant.

Menshahyn, V.D., Romashkyn, P.S., & Trainyn, A.N. (1957). *Soviet criminal law: Special Part*. Moskow: Moscow State University.

Muzychenko, P.P. (2008). *The history of state and law of Ukraine*. Kyiv: Knowledge.

Mykhailenko, P.P. (1966). *Fight against crime in the Ukrainian SSR*. Kyiv: Higher School.

Penal Enforcement Code. (1845). *St. Petersburg: Printing houses of the Second Department of the Chancellery of His Own Imperial Majesty*.

Tatsii, V.Y., Rohozhyn, A.Y., & Honcharenko, V.D. (2003). *The history of state and law of Ukraine*. Kyiv: In Yure.

Ukrainian Soviet Socialist Republic. (1992). *The land code of the Ukrainian SSR*. Kharkiv: Narkomzem.

Vislobokov. (1992). *The code of Malorossiya rights*. Kyiv: Science. Dumka.

Volokh, O.V. (2002). *History of criminal legal fight against property encroachment in Ukraine (1917-1920)*. Published PhD dissertation. Taras Shevchenko National University of Kyiv.