

UDC 342

DOI <https://doi.org/10.26661/2414-0287-2025-2-66-21>

THE ROLE OF LOCAL GOVERNMENT BODIES IN ENSURING THE EFFECTIVENESS OF THE STATE PROGRAM FOR COMPENSATION OF COSTS FOR HUMANITARIAN DISTRIBUTION: LEGAL AND MANAGEMENT ANALYSIS

Botnarenko O.M.

*Kharkiv National University of Internal Affairs
Ukraine, 61080, Kharkiv, 27 Lev Landau Avenue
botnarenko.alex@gmail.com
ORCID: 0009-0008-0776-8828*

Key words:

mine action, cost compensation, local governments, land relations, humanitarian demining, state agrarian register.

The article is devoted to the study of the legal, institutional and management aspects of the participation of local governments in the implementation of the state budget program for compensation of costs for humanitarian demining of agricultural lands. In the conditions of post-war reconstruction of Ukraine, this Program is one of the key mechanisms for returning potentially explosively contaminated lands to economic circulation, especially in communities that have suffered the direct consequences of hostilities. The article substantiates the relevance of expanding the role of local governments in this process, given their proximity to the needs of the population, the availability of information on the structure of land use and the ability to perform local coordination functions. The author analyzes a number of management barriers, in particular the so-called “chess fragmentation” of fields, restrictions on access to the Program of individual landowners who are not registered in the state agrarian register, and the absence of a mechanism for representing their interests. The methodological basis of the study is the comparative legal, functional and systemic approaches, as well as an analysis of the practice of applying the Resolution of the Cabinet of Ministers of Ukraine No. 284 of March 12, 2024. As a result, two options for a normative solution to the identified problems were formulated: 1) authorization of local governments to submit applications for the inclusion of additional areas in the specifications of contracts with mine action operators; 2) ensuring the right to consolidated participation of individual landowners through the representation of local governments.

РОЛЬ ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ У ЗАБЕЗПЕЧЕННІ ЕФЕКТИВНОСТІ ДЕРЖАВНОЇ ПРОГРАМИ КОМПЕНСАЦІЇ ВИТРАТ ЗА ГУМАНІТАРНЕ РОЗМІНУВАННЯ: ПРАВОВИЙ І УПРАВЛІНСЬКИЙ АНАЛІЗ

Ботнаренко О.М.

*Харківський національний університет внутрішніх справ
Україна, 61080, м. Харків, проспект Льва Ландау, 27*

Ключові слова:

протимінна діяльність, компенсація витрат, органи місцевого самоврядування, земельні відносини, гуманітарне розмінування, державний аграрний реєстр.

Стаття присвячена дослідженню правових, інституційних та управлінських аспектів участі органів місцевого самоврядування у реалізації державної бюджетної програми компенсації витрат за гуманітарне розмінування земель сільськогосподарського призначення. В умовах післявоєнного відновлення України дана Програма є одним із ключових механізмів повернення до господарського обігу потенційно забруднених вибухонебезпечними предметами земель, особливо у громадах, які зазнали безпосередніх наслідків бойових дій. У статті обґрунтовано актуальність розширення ролі органів місцевого самоврядування в цьому процесі з огляду на їхню близькість до потреб населення, наявність інформації про структуру землекористування та можливість виконання функцій локальної координації. Автор аналізує низку управлінських бар'єрів, зокрема так звану «шахматну фрагментацію» полів, обмеження доступу до Програми індивідуальних землевласників, які не зареєстровані в державному аграрному реєстрі, та відсутність механізму представництва їх інтересів. Методологічну базу дослідження становлять порівняльно-правовий, функціональний та системний підходи, а також аналіз практики застосування постанови Кабінету Міністрів України № 284 від 12 березня 2024 року. У результаті сформульовано два варіанти нормативного вирішення ідентифікованих проблем: 1) уповноваження органів місцевого самоврядування на подання клопотань про включення додаткових ділянок до специфікацій договорів з операторами протимінної діяльності; 2) забезпечення права на консолідовану участь індивідуальних землевласників через представництво органів місцевого самоврядування.

Statement of the problem

In the context of the full-scale armed aggression of the Russian Federation against Ukraine, the issue of humanitarian demining has acquired critical importance not only as an element of national security, but also as a prerequisite for the economic and social recovery of the affected territories. According to the Ukrainian government, as of the beginning of 2025, more than 139 thousand square kilometers of territory are potentially contaminated with mines and explosive devices [5]. About a third of these territories are agricultural lands, which poses a serious threat to the agricultural sector, the state's food security and the livelihoods of rural communities.

In response to these challenges, the Government of Ukraine has introduced the program "Compensation of Expenses for Humanitarian Demining of Agricultural Land" (hereinafter referred to as the Program), approved by the Resolution of the Cabinet of Ministers of Ukraine dated March 12, 2024 No. 284 "On Approval of the Procedure for the Use of Funds Provided in the State Budget for Compensation of Expenses for Humanitarian Demining of Agricultural Land", which allowed for increased participation of national mine action operators. However, an analysis of the practical experience of implementing the Program reveals a number of legal and managerial problems that limit its effectiveness.

Formulation of the article's objectives

The purpose of this study is to determine the place and potential role of local governments in the implementation of the Program, analyze legal conflicts arising in the area of the distribution of powers, as well as formulate proposals for improving the regulatory model with the participation of territorial communities in the implementation of mechanisms for compensating for humanitarian demining costs.

The main material of the research

As noted, a separate subject of mine action whose competence will be focused on within the framework of the study is local governments.

Competence is one of the main properties of state executive bodies, local self-government and their officials. As is known, partial compliance or non-compliance with these constitutional principles during the formation and exercise of state power entails political and legal instability caused by contradictions and conflicts between the branches of power, higher, central and local authorities. The importance of qualitatively and precisely defined competence of state authorities and local self-government is undeniable [6, p. 32].

Executive and local self-government bodies are the largest group of public authorities that carry out executive and administrative activities in managing economic, administrative-political and socio-cultural sectors in the state, in order to ensure the rights and legitimate interests of citizens in various spheres of public life. The peculiarity of the executive branch of government is that it is in the process of its implementation that the real implementation of laws and other regulatory acts of the state, the practical

application of all levers of state regulation and management of important processes of social development takes place [3, p. 22].

When analyzing the competencies of mine action subjects, it is necessary to focus especially on the specifics of determining the relevant powers of local state administrations and local self-government bodies.

As noted by V. Sokolov and D. Khyzhnyak, the Constitution of Ukraine has established two systems of local government, which is an established fact: local state administrations, which are local executive bodies, and local self-government as a public authority of territorial communities. These are different in their legal nature of local government systems, primarily in terms of functions and powers. The Constitution of Ukraine guarantees local self-government and thus does not allow its replacement by local state administrations [10, p. 144].

However, in the process of lawmaking, this distinction between local state administrations and local self-government bodies was ignored and as a result, local state administrations and local self-government bodies are endowed with the same competencies, in particular, the latter, in cooperation with central executive bodies, other state bodies and the national mine action body within the limits of their powers:

- 1) facilitate training in the risks associated with explosive objects;
- 2) facilitate the provision of medical care to injured persons and their medical rehabilitation;
- 3) inform the population about possible threats from explosive objects and measures that must be taken to avoid danger to the life and health of the population;
- 4) inform the population about the hazardous area marking systems installed in the relevant territories and the measures that must be taken to avoid danger to the life and health of the population, as well as monitor the condition of the installed hazardous area marking systems and their maintenance and inform the mine action center and the humanitarian demining center about cases of their damage, destruction, theft or other cases that make it impossible to further effectively use the hazardous area marking systems [9].

We, in turn, support the position I. V. Georgievsky, who indicates that before determining and consolidating the competence of state executive bodies and local self-government bodies, a theoretical model of the distribution of management functions should be developed, because only doctrinal analysis is able to take into account objective phenomena that affect and influence the transformation of the functional structure of these bodies. When determining the range of management functions that should be assigned to state executive bodies and local self-government bodies, it is advisable to take into account their affiliation with functions aimed at ensuring regional self-government, or functions that are delegated. The latter is associated with the process of decentralization of management, and the development of self-government functions means the redistribution of powers between central and regional subjects of management on a contractual basis [1, p. 35]. In general, the list of tasks indicated above contains duplication, unclear formulations and overlap

of competencies of various authorities. Competencies in the field of training on the risks of explosive objects and general public information about threats partially overlap, so it would be advisable to define their boundaries, for example: training as organized activities, and information as the dissemination of general information. Similarly, information about threats and about hazardous area designation systems belong to related competencies and can be combined to avoid repetition.

The wording “facilitate” is too general and does not specify the mechanisms for implementing the competencies, which makes these tasks declarative. It is worth clarifying how the relevant competencies are implemented - through financing, organizing events, information support, etc.

The competence for providing medical care and rehabilitation belongs to the field of health care, so it is necessary to determine what exactly the role of local authorities is - in coordination, ensuring access, etc.

The implementation of the competence for monitoring hazardous area designation systems should include a clearly defined mechanism for its implementation. In particular, the procedure for transmitting information about damage or absence of marking signs should be standardized. For effective monitoring, it is necessary to provide access to relevant registers or databases containing information about the locations of such signs.

In fact, the Unified State Civil Protection System [4] already provides for the implementation of measures to identify, designate dangerous areas, inform the population about risks and maintain relevant warning signs in good condition. If the above measures are carried out precisely within the Unified Civil Protection System, it is worth assessing the need to separate this issue in the Law of Ukraine “On Mine Action in Ukraine”. In general, the analyzed competencies potentially coincide with the tasks of the civil protection system, which indicates duplication of norms and the need to harmonize legislation to avoid legal uncertainty.

Thus, the study of the competencies of local governments in the field of mine action reveals not only regulatory uncertainty and duplication of powers with other public authorities, but also the absence of clearly defined mechanisms for the implementation of these powers in practice. These problems are especially evident in the process of implementing state policy within the framework of the budget Program implemented by the Ministry of Economy of Ukraine as the main administrator of budget funds, and at the executive level - through the Humanitarian Demining Center. It has already proven itself as one of the effective tools for supporting the agro-industrial complex in the field of humanitarian demining.

The cumulative effect of the specified Program is not only in restoring the economic capacity of the agrarian sector, which is strategically important for Ukraine, but also stimulates the socio-economic recovery of the territorial communities of Ukraine affected by military aggression.

Another important result of the Program is that it stimulated the active formation of the Ukrainian national sector of mine action operators and the Ukrainian industry for the production of equipment and supplies for demining.

In a short period of time, an effective part of the national mine action operators have proven their organizational, technological, financial capacity and efficiency.

At the same time, the analysis of the practice of its implementation allows us to identify a number of organizational and institutional barriers that prevent the achievement of the full effect.

One of such obstacles is the so-called fragmentation (“chess”) of territories submitted by agricultural producers for demining work within the framework of the Program.

It is generally known that the cultivation of land plots by agricultural producers is carried out in whole arrays (fields), which almost always include land plots of several landowners or land users. This specificity of agricultural activity is taken into account in most legislative acts regulating land row, lease or sublease relations between land users and allow agricultural producers to exchange land plots to optimize and consolidate production efforts. At the same time, not all such consolidation actions undergo registration processes in the State Register of Real Rights to Real Estate (hereinafter – SRRE) [7] and, as a result, in the State Agrarian Register (hereinafter – SAR) [2; 8]. Thus, within the geographical boundaries of specific fields cultivated by one land user, there may be land plots registered under several other landowners or land users.

The process of non-technical survey of territories to determine areas suspected or contaminated with explosive objects (hereinafter referred to as NTO) does not depend on these circumstances, since NTO is focused on the presence of direct or indirect evidence of contamination of the territory and is carried out within the boundaries of the landfill contours (arrays, fields), which include all land plots that are “geographically” located on the corresponding landfill (field, array), without identifying certain land users. Such landfills may include not only cadastral land plots, but also the adjacent territory (field roads, ravines, forest belts, unidentified land plots without cadastral numbers, etc.).

At the same time, the work on demining (clearing) of land plots, which is provided for by the terms of the Program, is built on the principle of accurate identification of land users by means of SAR and SRRE. Agricultural producers can apply for inclusion in the Program only for those plots that are registered directly under them in the SAR (clause 9 of the Procedure). Thus, only a part of the land plots that are geographically located within the boundaries of one field (polygon, array, etc.) can be included in the application for demining.

For example, the geographical boundaries of a field with a total area of 20 hectares include 6 plots within the specific cadastral numbers of one land user and 4 - of another, while only one of these land users expressed a desire to participate in the Program. As a result, only a part (in our example - 6 out of 10) of the land plots that are actually located within the boundaries of one field (polygon, array, etc.) fall into the specification of the Demining Agreement with the relevant operator. In most cases, these “program” plots do not even always border each other, which creates the so-called “chess” effect.

In the above case, even after the complete completion of demining/clearance works, the field as a whole may

remain unusable, since the demined areas actually border and alternate with the contaminated areas.

Given the above, it is possible to come to an obvious conclusion that a certain part of the lands that were demined within the framework of the Program are actually not returned to full-fledged use, or their use poses a threat to the life and health of at least the workers of the agricultural producer who cultivate it.

Thus, the goal of the Program to restore agricultural production on demined land plots is not fully achieved.

In turn, in order to fully achieve the goal of the Program, it is necessary to resolve the issue of finding a legal mechanism for including land plots located within the geographical boundaries of the field, but whose land users are persons who do not participate in the Program, among the areas included in the Specifications of contracts with mine action operators.

Taking into account the above, we propose to consider possible ways to resolve this issue, providing for the involvement of local governments in the Program, in particular:

1. Provide for the possibility of submitting applications by the executive body of local government to include land plots located within the geographical boundaries of the field, but whose land users are persons who do not participate in the Program, among the plots included in the Specification of Agreements with Mine Action Operators.

Organizationally, such an application can be sent in the form of scanned copies attached to the application of a specific land user in the SAR system, by direct submission by the local government to the Center or in response to the Center's request.

The basis for the formation of a petition from the executive body of local self-government may be a corresponding appeal of the land user, with justification of the belonging of the land plots to the boundaries of the relevant field (local self-government bodies have the necessary information for the unambiguous identification of each land plot, its belonging to the relevant field (polygon, array) and its relation to cultivation by a particular land user).

2. Provide the opportunity for an agricultural producer participating in the Program to enter "in manual mode" in the SAR system (requires technical refinement of the SAR system interface) additional land plots located within the geographical boundaries of the field, but the land users of the latter are persons who do not participate in the Program, to the number of plots included in Specifications of contracts with mine action operators (a document confirming this fact can be attached to the materials submitted for participation in the program, a certificate

issued by the relevant executive body of local government confirming the location of individual plots within the relevant field).

In addition, involving local governments in participation in the Program can solve another important problem.

Today, many land plots (landfills, fields) are cultivated by landowners (so-called "shareholders") who are not agricultural producers or persons qualified for inclusion in the SAR.

According to official statistics, as of the end of 2024, almost 18 percent of agricultural land is cultivated by individual or family landowners, who, in turn, are not included in the number of entities that can participate in the Program. In addition, even if such an opportunity were provided to them, it would lead to the formation of a large number of applications for demining of areas with a total area of no more than 2-5 hectares.

In our opinion, the individual participation of such entities in the Program has a dubious organizational and economic feasibility, as it would lead to a significant increase in the cost of demining work. At the same time, this category of persons should not be deprived of the right to participate in the Program.

Summarizing the above, we consider it reasonable to foresee the possibility of consolidated participation of individual landowners who are not agricultural producers or persons qualified for inclusion in the SAR in the relevant Program. The representative entity of such consolidated participation may be the executive body of local government.

Conclusion

Thus, the effective implementation of state policy in the field of humanitarian demining requires not only the technical capacity of mine action operators and the availability of funding, but also an established mechanism of interaction between public authorities, in particular local governments. The analysis showed that these bodies can play a significant role in overcoming barriers associated with fragmentation of the land fund, limited access to the Program for individual landowners, and the lack of comprehensive coverage of fields. The proposed expansion of the powers of local governments — by granting them the right to submit petitions and represent the interests of persons who are not formally covered by the Program mechanisms — corresponds to the logic of decentralization and will contribute to a more complete achievement of its goals. Such an approach will not only increase the efficiency of the use of budget funds, but also ensure the real return of demined territories to economic use and the restoration of community life.

References

1. Georgievsky Yu. V. On the definition of the competence of state executive bodies and local self-government bodies as a legal phenomenon [Electronic resource] / Yu. Georgievsky // Scientific Bulletin of the International Humanitarian University. – 2016. – P. 34-36. (Jurisprudence). – Access mode: <https://surl.li/fzkgeu> (access date: 01.02.2025).
2. Some issues of the functioning of the information and communication system "State Agrarian Register" [Electronic resource]: Resolution of the Cabinet of Ministers of Ukraine dated May 13, 2025 No. 549: as of May 17, 2025. – Access mode: <https://surl.li/wxynpj> (access date: 19.05.2025). – Screen title.

3. Kovalev M. V. Peculiarities of the administrative and legal status of executive bodies [Electronic resource] / M. V. Kovaliv, I. B. Stakhura // Bulletin of the National University "Lviv Polytechnic". Legal Sciences. – 2014. – No. 807. – P. 22-26. – Access mode: <https://surl.li/auedyf> (access date: 07.10.2024). – Screen title.
4. Civil Protection Code of Ukraine [Electronic resource]: Code of Ukraine dated 02.10.2012 No. 5403-VI: as of October 10, 2024. – Access mode <https://surl.li/rcbcgo> (access date: 07.10.2024). – Screen title.
5. Marchenko O. Humanitarian demining of Ukraine: a problem for 30 years [Electronic resource]. Ukrainian energy. 01/18/2025. – Access mode: <https://surl.li/qjgqrk> (access date: 05/19/2025). – Screen title.
6. Potin M. Regarding the essence of the competence of state executive bodies and local self-government / M. Potin // Law and Society. – 2012. – Issue 6. – P. 32-35.
7. On state registration of real rights to real estate and their encumbrances [Electronic resource]: Law of Ukraine dated 07/01/2004 No. 1952-IV: as of April 09, 2025. – Access mode: <https://surl.li/pqdxlr> (access date: 05/16/2025). – Screen title.
8. On the information and communication system "State Agrarian Register" [Electronic resource]: Law of Ukraine dated 19.09.2024 No. 3980-IX: as of January 18, 2025 – Access mode: <https://surl.li/mvqxsg> (access date: 16.05.2025). – Screen title.
9. On mine action in Ukraine [Electronic resource]: Law of Ukraine dated 06.12.2018 No. 2642-VIII: as of January 01, 2024 – Access mode: <https://surl.li/pnqoyl> (access date: 07.10.2024). – Screen title.
10. Sokolov V. Local state administrations and local self-government bodies: interaction and demarcation of powers [Electronic resource] / V. Sokolov, D. Khyzhnyak // Scientific Notes. I. F. Kuras Institute of Informatics and Computer Science of the National Academy of Sciences of Ukraine. – Issue 44. – P. 144-150. – Access mode: <https://surl.li/ccumrbtp> (access date: 01.02.2025). – Screen title.