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PRINCIPLES AND AREAS OF IMPLEMENTATION OF STATE HOUSING POLICY IN UKRAINE

Abstract. The *purpose of the article* is to investigate the issues of state housing policy, to establish its legal nature, to determine the characteristics and to provide suggestions aimed at updating the legislation in the housing sphere.

Methodology. The dominant methodological approach in the study is a comparative legal approach, which became the basis of understanding the content of such basic legal categories as “state housing policy”, “housing fund”, “housing” and made it possible to identify their specific features and differences. To understand and analyze the content of the norms of existing legislative acts regulating the procedure of providing housing to the population, we used the normative-dogmatic method, and the method of system-structural analysis allowed to find out the place of state housing policy in the system of state policy in general.

Results. It is determined that the Constitution of Ukraine requires the state to create a private-legal basis for the implementation of housing rights, as well as public legal guarantees of protection of socially disadvantaged citizens. The state housing policy is designed to ensure the realization of the rights of an individual to housing. It has been established that inconsistent state housing policy entails the need to apply the norms of civil law, social security law, administrative law in law enforcement activities in relation to housing, rather than directly the norms of the Housing Code of Ukraine. The process of updating the housing legislation of Ukraine requires a scientific justification of the conceptual foundations for the implementation of housing policy in Ukraine, where a number of issues must be defined regarding the concept of housing, housing relationships, their essence and place in the system of legal relations, the ratio of housing legislation with the civil, the status of the participants of housing legal relations, requires determination of compliance with the current legislation of Ukraine the needs of society.

Conclusions. Housing legislation needs to be updated on the basis of established international norms and standards. To do this, it is necessary to take the following measures: 1) to provide socially vulnerable segments of the population with social housing, in particular on the rights of commercial rental (rental housing); 2) create conditions for increasing the level of housing availability for these categories of the population depending on property status, place of residence, social characteristics; 3) to introduce a competitive environment in the housing market; 4) ensure state regulation in monopoly markets for utilities; 5) create financial mechanisms for the purchase of housing for certain groups of the population; 6) create an effective model of housing management. The Housing Code of Ukraine should focus on general civil law provisions, taking into account the features, in particular: obligations arising in the process of managing the housing stock, housing cooperatives, associations of co-owners of an apartment building; features of civil liability of owners and users of apartments (houses), etc. The rights and obligations of the owner of the dwelling, the rights and obligations of the persons living together with the owner in

the dwelling belonging to him, in relation to housing and communal services, must be specially defined. In order to avoid contradictions in the legal regulation in the field of housing relations, it is necessary to repeal the regulations adopted before the adoption of the Constitution of Ukraine.

Key words: housing policy, housing, housing rights, Housing Code of Ukraine, update of housing legislation, social housing.

1. Introduction

The current Housing Code of Ukraine (hereinafter – HC) as a systematized normative act, as well as the legislation adopted on its development, does not meet the changes that have occurred in society during the full-scale war. The housing legislation in Ukraine is characterized by complete legal uncertainty, expressed in fragmentation of legal regulation, the presence of a large number of reference norms and norms that have lost their regulatory influence.

To regulate legal relations in the sphere of housing, the norms of different branches of law are applied: a) civil law establishes the institutions of contractual relations of commercial rent, other transactions with housing, ownership and other proprietary rights to housing; b) social security law – the institution of social housing; c) administrative law – the institutions of registration of residence, housing construction and urban development. The housing legislation of Ukraine should provide a transition from the previous system of distribution of the state housing fund to a system based on the provision of conditions for the restoration of the housing fund.

It should be stated that the system of normative acts, especially those adopted before 1990, is not only obsolete, but also does not meet the changes that have occurred in the socio-economic development of the state, so it requires immediate harmonization with normative acts adopted after the completion of mass privatization of housing in order to bring it to the modern realities of public life.

At different times a lot of attention was paid to the development of housing legislation, in particular by such scientists as I. Biriukov, V. Hopanchuk, O. Dzera, Yu. Zaika, I. Kucherenko, who mostly relied on the existing normative base of the Soviet period. The works of Ye. Michurin, M. Sibilov, S. Slipchenko, O. Sobolev, Ye. Kharytonov are directed to the modern direction of development of civil-legal regulation of housing relations.

The **purpose of the article** is to investigate the issues of state housing policy, to establish its legal nature, to determine the characteristics and to provide suggestions aimed at updating the legislation in the housing sphere.

2. The constitutional foundations of state housing policy

The constitutional formula in Article 47 of the Constitution of Ukraine estab-

lishes the right of every person to housing, which is ensured by the state by creating conditions under which every citizen will be able to build housing, purchase it as property or take it on lease. That is, it is about the private-legal bases of realization of this right. At the same time, the above norm also enshrines the possibility of citizens in need of social protection being provided by the state and local self-government bodies free of charge or for a fee available to them in accordance with the law. Consequently, another direction is the formation of norms of the law of social security, in particular establishing the grounds for determining persons in need of housing, the procedure for providing housing by the state (state housing fund) and local authorities (communal housing fund), as well as the conditions of such provision.

Separately, this norm of the Constitution of Ukraine enshrines the guarantee of the impossibility of forced deprivation of housing other than on the basis of the law by a court decision. This prescription should be scientifically reconsidered with respect to the current regulation of the procedure of eviction from housing without providing other living quarters.

Thus, the Constitutional Court of Ukraine emphasized in its decision that there has to be a fair balance between the guarantee of protection of the right of private property, including against forced alienation without condition of preliminary and full compensation of its value (Part 5 of Article 41 of the Constitution of Ukraine) and the constitutional right of persons living in hostels to an adequate standard of living for themselves and their families, which includes sufficient food, clothing and housing (Article 48 of the Constitution of Ukraine). Such a fair balance derives from the requirements of Article 47 of the Constitution of Ukraine. The legislator is obliged to take into account that the person and the conditions of his life are the purpose and the heart of the constitutional order of Ukraine and are recognized as the highest value (Preamble, part one, article 3 of the Constitution of Ukraine). It follows from the above that the legislator cannot resort to such legislative regulation, which would allow the forcible deprivation of housing exclusively through the change of the owner of the hostel, which could put individuals and members of their families in an extremely difficult social situation, incompatible with their human dignity – one of the basic values

of the constitutional system of Ukraine (Paragraph 8 of the reasoning of the Constitutional Court of Ukraine (Second Senate) of 20 October 2021 № 7-p(II)/2021).

Consequently, the Constitution of Ukraine requires the state to create a private-law basis for the implementation of housing rights, as well as public-law guarantees for the protection of socially disadvantaged citizens. This understanding is based on the fundamental principle of state responsibility to the individual (Article 3 of the Constitution of Ukraine), which consists mainly in the proper regulation of social relations in accordance with the existing socio-economic conditions.

The Constitutional Court of Ukraine has already drawn attention to the fact that the HC was adopted before the Constitution of Ukraine came into force, and therefore a number of its provisions negate the essence of the constitutional right of every person to housing, do not meet the other constitutional foundations of social and economic development of Ukrainian society and the state, exclude the possibility of free acquisition by everyone of the right of private ownership of residential property in accordance with the law; provisions of the preamble of the Code contradict parts one, two of article 15 of the Constitution of Ukraine, according to which public life in Ukraine is based on the principles of political, economic and ideological diversity, no ideology can be recognized by the state as obligatory, so they should be brought in line with the requirements of the Basic Law of Ukraine (Paragraph 3 of Clause 3 of the motivation part of the decision of 20 December 2019 № 12-p/2019).

3. The concept of state housing policy

The state housing policy is designed to ensure the realization of the rights of every physical person to housing. The tasks of housing legislation are to regulate housing relations in order to ensure the guaranteed right of citizens to housing in conditions of its proper use.

The main principles of housing policy include: equality of rights of people in choosing the method of realization of the constitutional right to housing; accessibility of housing; forecasting of directions, measures and ways of solving housing needs; stages of addressing housing needs in accordance with state and regional programs (Kucherenko, Kucherenko, Zapatrina, 2012, p. 290).

Inconsistent state housing policy entails the need in law enforcement activities to apply the norms of civil law, social security law, administrative law, but not directly the norms of the Housing Code to legal relations in respect of housing. Experts suggest that as a consequence the code will cease to exist,

and will be replaced by the Civil Code (the institutions of the contract of commercial rent, other transactions with housing, ownership of housing), social security acts (the institution of social housing) and administrative law (the institutions of management and conservation of housing).

It is believed that in order to bring clarity, it is important to understand that the development of civil law is not to regulate the entire range of social relations in the sphere of housing. It is the new HC that will take into account peculiarities of legal regulation in the housing sphere and determine, in particular: obligations arising during construction of housing, grounds for the transfer of habitable residential apartments to non-residential, legal regime of utilities and societies of co-owners of an apartment building, peculiarities of arising of ownership rights to housing; peculiarities of civil liability of owners and users of apartments (houses), management of housing stock, legal regime of social housing stock, etc.

The current stage of state housing policy is characterized by haphazard elimination of contradictions in the housing legislation, adoption of new laws, changes and additions to the current legislation of Ukraine, without a fundamental change in legislation.

Modern studies emphasize that the need for housing is basic. Societies declare the right to housing and guarantee access to it through the instruments of state housing policy. The reason for the difficulties in ensuring the right to housing is the conflict between housing as a “roof over one’s head” and as an economic asset. The field of housing is also political, with various interest groups defending their vision of what “housing” is, what “housing problems” are, and how to solve them (Fedoriv, Lomonosova, 2019, pp. 8, 18).

We should agree with O. Yuldashev, who notes that “the main problems of public policy that took place in the past and are observed today, first, the lack of theoretical, ideological principles, theoretical and philosophical foundations, strategic guidelines for the formation of public policy – development and adoption of state policy decisions, and, secondly, the lack of development of theoretical framework for the practical implementation of public policy” (Yuldashev, 2005, p. 9). Currently, there must be a reform of housing legislation in order to create equal conditions for the human right to freely choose how to meet housing needs, the formation of civilized market relations, which depends on the stability of Ukrainian society and the future of Ukraine.

Decree of the Verkhovna Rada of Ukraine from December 24, 1999 approved the con-

cept of sustainable development of settlements and proposed to consider it the basis for the development of regulations, programs and projects to regulate the planning and development of settlements.

In addition to the approved normative acts the following was adopted: Decree of the Cabinet of Ministers of Ukraine from December 31, 2004 № 994-p; The order of the Cabinet of Ministers of Ukraine “On approval of the Concept of the State target socio-economic program of construction (purchase) of affordable housing in 2009–2016 years” of November 5, 2008 № 1406-p; Presidential Decree “On measures for the construction of affordable housing in Ukraine and improve the provision of housing for citizens” of November 8, 2007 № 1077/2007; as well as the Resolution of the Verkhovna Rada of Ukraine “On urgent measures to ensure the realization of the right of citizens to housing” of September 22, 2021 № 1766-IX. However, none of them has been finally implemented.

The Law of Ukraine “On Prevention of the Impact of the Global Financial Crisis on the Development of the Construction Industry and Housing” enshrined many important provisions for the further development of affordable housing are built and under construction with state support residential buildings (complexes) and apartments. Thus, in article 4 of this law the state support of affordable housing consists of the payment by the state of 30 percent of the cost of construction (purchase) of affordable housing and/or providing a preferential mortgage loan.

State support in the amount of 50 percent of the cost of construction (purchase) of affordable housing and/or preferential mortgage loan is available to persons covered by Article 10 of the Law of Ukraine “On Status of War Veterans, Guarantees of their social protection”, as well as internally displaced persons, which are covered by the Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons”.

The existing model of housing policy, the basis of which is the Program of construction (purchase) of affordable housing and the mechanism of cheapening the cost of mortgage loans at the expense of the state, is economically and socially inefficient, since it is focused on providing state assistance in solving housing problems of families with relatively high incomes and does not meet the established European criteria of social justice. Such a narrow social orientation narrows the potential range of citizens who can use state assistance in solving their housing problems, does not allow the state to obtain the necessary economic and social effect from the implementa-

tion of the current model of state housing policy. The strategic goal of state housing policy should be to ensure that housing is affordable not only to a narrow stratum of families with high incomes, but also to families with average incomes (Hnativ, 2016).

All of the above concepts are practically non-normative in nature, defining the direction of state policy, the development of the sphere of personal belonging. To them should be added such sources as: Decree of the Cabinet of Ministers of Ukraine “On improvement of ways of youth housing construction” of October 28, 1996 № 1300; The main directions of the provision of housing for 1999–2005, approved by Presidential Decree of July 15, 1999 № 856; Forecast of development of state housing construction for 2000–2004 years, approved by the Cabinet of Ministers of Ukraine from August 27, 2000 № 1347, etc. These issues can only be resolved by law, as an act of supreme legal force binding.

The process of updating the housing legislation in Ukraine requires a scientific justification of the conceptual foundations for the implementation of housing policy in Ukraine, where a number of issues must be defined regarding the concept of housing, housing relationships, their essence and place in the system of legal relations, the ratio of housing legislation with the civil, the status of the participants of housing legal relations, requires determination of compliance with the current legislation of Ukraine the needs of society.

Recent changes that have occurred in the economic and social sphere indicate the need to reform not only housing legislation, but also approaches to the protection of human rights in housing. Modern authors proceed from the fact that human rights is a multidimensional phenomenon, and therefore requires a study of the conceptual foundations of the housing rights of an individual in Ukraine, regardless of whether he is the owner of a dwelling, tenant, uses housing on another civil law basis or is a family member of the relevant person vested with the right.

The transition to the market economy involves a change in the means of satisfying housing needs. If until now the main form of satisfaction of their needs was receiving free housing built at the expense of the state, now the rate is mainly on paid possession of the citizens (Komarovska-Churkina, 2003, p. 420). As rightly noted in the literature, no socio-economic formation has not solved the housing problem – complete satisfaction with housing persons in need of better housing conditions. This is one of the complex social problems, which covers many aspects of social life. However, the transformation of the right to hous-

ing from a declaration into an everyday reality, the implementation of constitutional norms, the realization of the housing rights of citizens, unfortunately, causes considerable difficulties. Some of these are mentioned in the Concept of State Housing Policy. At the same time, researchers draw attention to a number of economic processes that have a negative impact on the social environment (Hopanchuk, Zaika, 2003, p. 7).

Ye. Bersheda and Yu. Mantsevych proposed a model of housing policy in Ukraine according to the following: principles of a market economy; the state's obligations to citizens in terms of providing housing must be fulfilled, and not just declared; social obligations of the state, which do not correspond to market relations and cannot be provided from the budget, should be abandoned as undermining confidence in the state; obligations established by laws to provide citizens with housing from local budgets, which must be accompanied by appropriate transfers of funds from the state budget; peculiarities of providing housing by departmental characteristics, which should take place within the budgets of departments (through the temporary provision of service housing without the possibility of privatization); creation of conditions for the legalization and development of the affordable rental housing market (Bersheda, Mantsevych, 2016, p. 88).

4. Regulatory support for the reforms

The role of the state in the realization by citizens of the right to housing has changed and is not limited solely to the granting of housing. Now the legal regulation is aimed at the possibility of personal satisfaction by citizens of their housing needs on a private-legal basis. Yu. Sazonov and V. Yevsieieva note that the housing stock is distributed: private ownership – 80%, communal ownership – 11%, collective ownership – 6%, state ownership – 3%. That is, the regulatory framework, which is summarized by the housing stock, applies only to 3% of the objects of the housing stock (Sazonov, Yevtieieva, 2013).

At the same time, modern civil legislation determines a person's free choice of how to meet housing needs, the order of possession, use and disposal of housing. However, since the destruction of the state and communal housing fund, the state has been unable to create a full-fledged new legal system aimed at regulating relations in the housing sphere. Addressing the housing needs of citizens is one of the most acute socio-economic problems in Ukraine (Honcharenko, 2003, p. 3).

So far, no set of normative acts has been adopted that would define the procedure for providing housing to citizens of different categories,

either for a fee, free of charge, or for an affordable fee, in various housing funds. At the same time there is no differentiation of the procedure for performing public duties, as well as the responsibility of the state or local self-government bodies for the state of provision of housing, differentiation of conditions and standards, which housing must meet. The focus of state housing policy should be manifested in the development of a single legal mechanism.

The Civil Code of Ukraine regulates the right of ownership and other proprietary rights of natural and legal persons to housing, the conditions of use of housing for hire, the free choice of ways to implement housing rights of citizens on the basis of civil law and the contract, its commercial use and other related liabilities, the subject of regulation which are relations, the object of which is housing. Since the adoption of the Law of Ukraine "On Social Housing" (January 12, 2006), the discussion about the autonomy of the existence of housing legislation (in particular, HC) has not stopped. Formation of the modern code requires defining peculiarities based on combination of private and public legal means of legal regulation in housing sphere.

The implementation of market relations in the housing sphere requires first of all the adoption of a new Housing Code. Drafts of the Housing Code were developed by the Cabinet of Ministers of Ukraine and even published for public discussion back in 2001. To overcome inconsistencies in housing legislation, the new Housing Code adopted by the Verkhovna Rada of Ukraine on July 7, 2005, which was vetoed by the President of Ukraine, proposed to develop a draft law that would fully meet the modern needs of society. The new draft LCD was adopted on November 5, 2010 only in the first reading. Separately, we should note the need for a scientific analysis of the Law of Ukraine "On the De-Sovietization of the Legislation of Ukraine", which amends the Housing Code of the USSR.

The focus of state housing policy should be expressed in: the creation of real mechanisms that provide an opportunity to obtain housing for low-income citizens of Ukraine who do not have housing or have an insufficient amount of housing; legislative guarantee of housing rights to citizens of Ukraine; provision and accessibility of housing; creation of conditions for housing to persons who can meet their housing needs on their own, and further mandatory formation of social purpose funds. In many developed market economies, the housing stock is municipal and private.

The question arises whether it is necessary to establish the legal regime of the state

housing fund, because the state should not act as the owner of housing, and should provide an opportunity for citizens to choose their own legal ways of solving their own housing needs.

In order to achieve the objectives of the LCD should not only regulate the property, but also personal non-property relations in the housing sector in the direction of determining the specifics, providing housing in the context of adaptation of Ukrainian legislation to the EU *acquis* to ensure an appropriate level of protection of human rights and legitimate interests. Subjects of housing relations must be able to establish subjective rights for themselves and assume duties with observance of restrictions established by the Law. Thus, the owner of housing is obliged to respect the moral foundations of society, not to harm the rights, freedoms and dignity of other citizens, the interests of society, not to violate the principles of good faith, fairness, reasonableness, while respecting the limits of the exercise of civil rights.

The trend of the modern period is a reduction of public influence on the private sphere of law. However, a significant part of the modern legislation leaves the norms of public character, determining the order of management of the housing fund, its maintenance, state control over the use and safety of the housing fund, regardless of its type and purpose. Therefore, housing legislation cannot be a mechanical set of norms, but is formed on the basis of legal principles of housing law, which predetermine not the form of existence, but mainly the content and determining the limits of the right, outside of which it is not of a legal nature.

The development of housing legislation involves the establishment of unified methodological approaches, principles and features of different in their legal nature and the purpose of the objects of the housing fund. It is necessary to develop a unified terminological toolkit by specifying the objects of the housing stock, the application of undefined legal concepts: the moral foundations of society, abuse of law, public policy, the principles of justice, good faith, reasonableness, etc. In rulemaking activities quite often concepts are applied without a clear distinction between them and without observing, when applying it in legislative acts, certain identical criteria determining the limits of the exercise of civil rights. This problem

is complex and its solution practically concerns both the substantive private law and the procedural law, which determines the mechanism of its application.

5. Conclusions

The current housing legislation of Ukraine is not effective enough and does not allow to fully protect the rights of citizens for adequate housing needs. Existing legislative and other normative acts on a private law basis are in need of radical changes. It is necessary to update the housing legislation on the basis of established international norms and standards; to provide socially vulnerable segments of the population with social housing, including on the rights of commercial rent (rental housing); creation of conditions for increasing the level of accessibility of housing for categories of the population, depending on property status, place of residence, social characteristics; introduction of a competitive environment in the housing service market; ensuring state regulation on the monopoly markets of public services; creation of financial mechanisms for the purchase of housing for certain population groups; creation of an effective model of housing stock management.

The new Housing Code of Ukraine must take into account all peculiarities of legal regulation of housing legal relations and solve the problem of parallel application of different norms of current legislation. The code should concentrate general civil-law provisions with consideration of peculiarities, in particular, obligations arising during management of housing funds, housing and construction cooperatives, associations of co-owners of an apartment building, peculiarities of civil-law liability of owners and users of apartments (houses) and the like. The rights and obligations of the owner of the residential premises; the rights and obligations of the persons living together with the owner in the residential premises belonging to him for housing and communal services must be specifically defined separately.

In order to avoid contradictions in legal regulation in the sphere of housing legal relations it is necessary to abolish normative acts adopted for adoption of the Constitution of Ukraine. Housing legislation does not allow to ensure the right of citizens to housing. In the absence of a vision to solve the problem of the existence of queues for housing or compensation.

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ЗАСАДИ ТА НАПРЯМИ РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ЖИТЛОВОЇ ПОЛІТИКИ В УКРАЇНІ

Анотація. *Метою статті* є дослідження питань державної житлової політики, з'ясування її правової природи, визначення ознак та надання пропозицій, спрямованих на оновлення законодавства в житловій сфері.

Методи дослідження. Домінуючим у методології у проведеному дослідженні є порівняльно-правовий підхід, який став основою розуміння змісту таких базових правових категорій, як «державна житлова політика», «житловий фонд», «житло», і дав можливість виявити їхні специфічні особливості та відмінності. Для розуміння й аналізу змісту норм чинних актів законодавства, яке регламентує порядок забезпечення житлом населення, використано нормативно-догматичний метод, а метод системно-структурного аналізу дав змогу з'ясувати місце державної житлової політики в системі державної політики загалом.

Результати. Визначено, що Конституція України вимагає від держави створення приватно-правових засад реалізації житлових прав, а також публічно-правових гарантій захисту соціально незабезпечених громадян. Державна житлова політика призначена для забезпечення реалізації прав фізичної особи на житло. Встановлено, що непослідовна державна житлова політика зумовлює необхідність застосовувати у правозастосовній діяльності до правовідносин щодо житла норми цивільного права, права соціального забезпечення, адміністративного права, а не безпосередньо норми Житлового кодексу України. Процес оновлення вітчизняного житлового законодавства

потребує наукового обґрунтування концептуальних засад здійснення житлової політики в Україні, де має бути визначена низка питань щодо поняття житла, житлових відносин, їх сутності та місця в системі правовідносин, співвідношення житлового законодавства із цивільним, статусу учасників житлових правовідносин. Необхідне також визначення відповідності чинного законодавства України потребам суспільства.

Висновки. Оновлення житлового законодавства потрібно здійснювати на основі встановлених міжнародних норм і стандартів. Для цього необхідно здійснити такі заходи: 1) забезпечити соціально вразливі верстви населення житлом соціального призначення, зокрема на правах комерційного найму (оренди житла); 2) створити умови для підвищення рівня доступності житла для цих категорій населення залежно від майнового стану, місця проживання, соціальних ознак; 3) запровадити конкурентне середовище на ринку обслуговування житла; 4) забезпечити державне регулювання на монопольних ринках комунальних послуг; 5) створити фінансові механізми придбання житла для окремих груп населення; 6) створити ефективну модель управління житловим фондом. У Житловому кодексі України мають бути зосереджені загальні цивільно-правові положення з урахуванням особливостей, зокрема: зобов'язань, що виникають у процесі управління житловим фондом, житлово-будівельними кооперативами, товариствами співвласників багатоквартирного жилого будинку; особливості цивільно-правової відповідальності власників і користувачів квартир (будинків) тощо. Окремо мають бути спеціально визначені права та обов'язки власника жилого приміщення, права й обов'язки осіб, які проживають спільно з власником у належному йому жилому приміщенні, щодо житлово-комунальних послуг. З метою уникнення суперечностей правового регулювання у сфері житлових правовідносин варто скасувати нормативні акти, прийняті до ухвалення Конституції України.

Ключові слова: житлова політика, право на житло, житлові права, Житловий кодекс України, оновлення житлового законодавства, житло соціального призначення.

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