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LEGAL NATURE OF THE CONTRACT FOR HOUSING AND UTILITY SERVICES

Abstract. Purpose. Housing legislation in Ukraine is characterized by complete legal uncertainty, which is manifested in fragmented nature of legal regulation, a bulk of reference rules and norms that have lost their regulatory effect. The right of a tenant to receive housing and utility services shall be implemented by concluding various civil law contracts. The concept and legal nature of housing and utility services, their features and varieties, correlation between concepts of “housing and utility services” and “utility services” are studied. Housing and utility services may be included in a subject matter of a contract, or a contract for housing and utility services may regulate the whole complex of utility services.

Research methods. General scientific and special methods of cognition were used to accomplish the tasks of the work.

Results. The classification features of contracts for housing and utility services are specified. It is proved that contracts for housing and utility services belong to public contracts. In particular, contracts for heat, hot water and centralized water supply, sewerage and household waste management, as well as relations arising in the process of providing services for the supply and distribution of electricity and natural gas in apartment buildings meet the characteristics of public contracts. It is argued that the classification of contracts for services by the criterion of the subject matter of the contract requires disclosure of characteristics of legal regulation of certain types of contracts for utilities and housing services.

Conclusions. Inconsistencies between norms of civil and housing legislation concerning the provision of housing and utility services can be eliminated by unification, systematization of regulations, building a system that regulates the housing sector. The suggestion to define the concept of “housing and utility services” in the Civil Code of Ukraine is substantiated.

Key words: housing, housing legislation, housing code, use of housing, housing and utility services.

1. Introduction

Contracts in the field of housing and utility services are among the most common types of civil contracts. The legal nature of any civil contract requires studying the grounds for distinguishing the relevant contract in the system of civil contracts, which will contribute to detecting its correlation with a specific group of civil contracts or establishing its independence. Such grounds constitute particular classification criteria for dividing contracts into types within a single system of contractual structures (Sevriukova, 2011, p. 63). The Civil Code of Ukraine (hereinafter referred to as the CC of Ukraine) mentions the concept of “service” as an object of legal relations. The lexical meaning of article 177 of the Civil Code of Ukraine allows concluding that services are an independent group of objects of civil rights together with the property, which comprises items, money, securities, including property rights, work outcomes, results of intellectual and creative activity, information, as well as other tangible and intangible benefits (Borisova, Spasybo-Fateeva, Yarotsky, 2011, p. 397).

“Cambridge Advanced Dictionary” defines utility as a service that is used by the public, such as an electricity or gas supply (Cambridge Advanced Dictionary, 2021). “Legal encyclopedia” interprets housing and utilities as the services provided by specialized enterprises and organizations supplying water, gas, electricity and heat to the owners of apartments, houses, and tenants (Shemshuchenko, 1998).

A housing and utility service is a performance result, which entails a beneficial social effect that satisfies an individual’s spiritual, physiological, psychological, and other non-property benefits. Thus, art. 9 of the Law of Ukraine “On State Social Standards and State Social Guarantees” stipulates that state social regulations on housing and utility services are set to determine state social guarantees on housing and utility services and the costs of renting, property management and payment for utility services, which ensure the exercise of the constitutional right of a citizen to housing.

The state should establish social standards to which the above Law attributes: 1) the marginal standard of costs for property management and utilities, provided by the Law of Ukraine “On Housing and Utility Services”, depending on the income; 2) the social norm of housing and social standards for utilities due to the payment of which the state provides benefits and gives citizens subsidies; 3) quality indicators of apartment block management and the provision of utilities.

Analysis of recent research and publications. The provision of housing and util-

ity services at different times was paid much attention, in particular, by such scientists as O. Dzera, V. Zolotar, I. Kucherenko, V. Maslov, M. Sibilov and other. However, they mainly relied on the available regulatory framework of the Soviet era. The modern development trend in civil regulation of housing and utility services are considered in the contributions by O. Karmaza, O. Michurin, S. Slipchenko, O. Sobolev, E. Kharytonov, O. Bernaz-Lukavetska (Karmaza, 2013; Slipchenko, Michurin, Sobolev, 2003; Kharytonov, Bernaz-Lukavetska, 2019), a collective monograph “Property Ownership in Ukraine: Doctrine and Implementation” (Krupchan, Luts, 2016). Compared to the Soviet period, the state’s role in exercising the right to housing and utilities by citizens has changed: it is reduced not to almost free provision of housing and utility services but the personal satisfaction by citizens of their housing needs on a private (commercial) basis. New trends in the legal regulation of housing and utility services should be reflected in modern recodification.

The research purpose is to study a civil contract for housing and utility services; to clarify its legal nature; to identify features and varieties and provide proposals for updating laws on housing and utilities.

2. Methodological bases for understanding housing and utility services

To analyze prospects for the further development of housing and utility legislation, the authors studied the best practices in the domestic doctrine of contractual law, processed the acts of civil legislation of Ukraine, revealed the main trends in its development, which make it possible to identify both theoretical and practical challenges given the steps taken by Ukraine towards the adaptation of domestic civil legislation to the civil legislation of EU countries.

The structure of the conducted scientific research contains traditional elements: task statement, presentation of the initial provisions and their theoretical development, collection and analysis of empirical data, justification of the conclusion, and formulation of issues that need to be further resolved (Bezklubiyi, Hrytsenko, Koziubra, 2017, p. 451).

The main tasks while investigating housing and utility relations are to define the concept and legal nature of housing and utility services and their correlation with the concept of utilities; to identify features and particularities of social relations arising in housing and utility services, as well as their structural elements; to determine the ratio of public and private control mechanisms in the housing and utility sector; to detect the peculiarity of civil law con-

tracts, the conclusion of which allows meeting the needs in housing and utility services. Such a research sequence permits a comprehensive analysis of legal categories and phenomena and the achievement of the specified goal.

The comparative-legal method is a dominant methodological approach in the research. It became the basis for defining such basic legal categories as “services”, “utilities”, and “housing and utility services” and contributed to the identification of their specific features and differences.

The formal dogmatic approach was used to understand and analyze the norms of current civil legislation, in particular, a set of laws regulating the provision of specific types of housing and utility services, and the system-structural analysis facilitated clarifying the place of housing and utility services in the service system in general.

The systematic approach, taking into account the abundance of housing and utility services and the peculiarities of their legal nature (provision of services for gas, heat, electricity and pot water supply, household rubbish removal, etc.), was used as a universal method of understanding and assessment of legal phenomena, the influence of individual elements of one phenomenon on another, the possibility of establishing a common denominator and allowed identifying the interrelation between legal norms that regulate the grounds and provision of housing and utility services and determine their legal regime and the relationship of subjects of legal relations as a whole.

Forecasting and modeling were the basis for justifying possible areas of harmonization of national heritage legislation with the EU *acquis* and allowed arguing proposals and recommendations for improving civil legislation and its practical application in the housing and utility sector.

3. The legal nature of housing and utility services

Almost all kinds of useful activities that do not create tangible value are considered services. At the same time, the main criterion is the intangible nature of the product developed during its provision. Therefore, service is beneficial not as an item but as an activity. Consumption usually occurs synchronically with the process of its creation.

The definition of service is available in the current legislation of Ukraine: according to para. 17 of art. 1 of the Law of Ukraine “On Consumer Protection”, service is the contractor’s activity to provide (transfer) the consumer with relevant tangible or intangible benefits specified by the contract, which is implemented under the customer’s request to meet his per-

sonal needs. Pursuant to article 1 of the Law of Ukraine “On Standards, Technical Regulations and Conformity Assessment Procedures”, service is an economic performance that does not create goods but is sold and bought during trade transactions. The given features of service are also inherent in housing and utility services.

According to article 901 of the CC of Ukraine, under a service contract, one party (the contractor) is obligated at the request of the other party (the client) to provide a service consumed when performing some actions or conducting an activity, whereas the client is obliged to pay the contractor for the mentioned service, unless otherwise is established by the contract. However, the CC of Ukraine lacks the concept of housing and utility services as an object of civil rights that, in our opinion, generates problems in the formulation of the contract for housing and utility services.

Housing and utility services are the object of civil rights – since it is governed by the rules of civil (private) law – arising between legally equal subjects (the contractor and the customer) of the contract. In practice, the field of utilities is a set of many branches of activity, which results in a significant variety of services regulated by the specific legislation of Ukraine.

The Law of Ukraine “On Housing and Utility Services” determines the legal regulation of contracts for housing and utility services, the basic rights and obligations of the parties to such a contract, given the peculiarities established by the laws governing relations in the supply and distribution of electricity and natural gas, heat energy supply, centralized hot water supply, centralized water supply and sewerage, and municipal waste management based on the Laws of Ukraine “On the Peculiarities of the Exercise of Ownership in an Apartment Building”, “On Drinking Water, Drinking Water Supply and Disposal”, “On Housing and Communal Services”, “On State Regulation of Public Utilities”, “On Commercial Metering of Heat Energy and Water Supply”, “On Heat Supply”, “On the Electricity Market”, “On Waste Management”, and subordinate regulations. However, it remains relevant to state that the main shortcomings of the current legislation and its application include uncertainty in the priority of legislative acts, numerous amendments, and additions to already adopted laws; the internal contradiction of legislative acts and individual norms between each other (Kuznetsova, 2013, p. 654).

The legislator classifies the service of “household rubbish removal” as a utility. Pursuant to article 35-1 of the Law of Ukraine “On Waste Management”, the contractor ensuring household rubbish removal enters into contracts for

waste disposal services with consumers. But such action concerns the performance of works, not the performance of services, and the person who produces solid and liquid waste cannot be referred to as the consumer, only as the customer. In this case, as A. Kazantseva notes, establishing the ratio of goods and services in the field of utilities does not settle the problem (Kazantseva, 2018, p. 154–155).

We believe that the CC of Ukraine must clearly define the housing and utility service, thereby distinguishing between the related concepts in the housing and utility sector: the performance of works and provision of services, delimitation of the concept of block management from the provision of services.

4. General characteristics of contracts for housing and utility services

Contracts for housing and utility services are diverse, and housing and utility services are separated. Under the law and the terms of the contract for housing and utility services, homeowners have the right to receive adequate housing and utility services timely (Kharytonov, Bernaz-Lukavetska, 2019, p. 24). Thus, according to article 5 of the Law of Ukraine “On Housing and Utility Services”, a housing service is a service for residential block management, and utilities are services for the supply and distribution of natural gas and electricity, supply of thermal energy, hot water, centralized water supply and disposal, and household rubbish management.

R. Heints proposes to divide utilities into: a) maintenance services (maintenance of general household systems, elevators, fire automation systems, etc.); b) sanitary services (cleaning of stairways, basements, attics, household rubbish removal, etc.); c) beautification services (cleaning and removal of snow, watering of yards, beds and lawns, etc.). By provision period: a) permanent utilities (provided throughout the year); b) seasonal utilities (provided during a certain period). By the service provider’s expertise: a) ordinary utilities, which can be provided by persons who do not have specialized skills (cleaning of staircases, adjacent territories, etc.); b) qualified utilities, which can be provided by persons with expertise (preventive maintenance of buildings, elevator maintenance service, maintenance of fire-protection equipment, general utilities, etc.) (Heints, 2011). The remark of V. Skrypnyk that a contractor is an essential characteristic of the service that determines its value seems relevant (Skrypnyk, 2020, p. 223).

Housing and utility services are realized by entering into various sale, work and service contracts. Therefore, the electricity supply is associated with the electricity purchase

and sale through the connected network. By its legal nature, it is not a service under the CC of Ukraine, as well as the supply of water and gas to the end-user through the connected network. For example, in accordance with art. 19 of the Law of Ukraine “On Drinking Water, Drinking Water Supply and Sewerage”, a drinking water supply company provides consumers with centralized drinking water supply services under a contract on drinking water supply and/or sewerage services. Along the same lines, in accordance with art. 19 of the Law of Ukraine “On Heat Supply”, the heat-generating organization is entitled to supply the produced heat directly to the consumer as per the contract of sale.

Housing and utility services are regulated by the system of contracts, which are the basis for the emergence of particular civil obligations. Within this system, a contract for housing and utility services is only a generalized name that combines different types of contracts. The systematization of contracts for housing and utility services is essential for determining the type of the mentioned contracts. O. Dziubenko believes that standpoints on the separation of some service contracts are ambiguous due to the choice of different criteria and the lack of a unified approach to understanding service particularities (Dziubenko, 2012, p. 297).

5. Classification of contracts for housing and utility services

The classification of service contracts can be carried out by different characteristic features (criteria). The classification of contracts based on the following grounds is most common in civil law: the allocation of responsibilities between the parties; *qui pro quo*; the moment of the contract occurrence (Brahynskyi, Vytrianskyi, 2001, p. 384).

Depending on the allocation of responsibilities between the parties, the contract for housing and utility services is bilateral: both parties are endowed with rights and obligations in relation to each other. Depending on the moment of the contract occurrence, this is a unilateral contract, which is considered to be concluded not from the moment the parties reach an agreement but from the moment of taking actions. A contract for housing and utility services generally refers to contracts for services. However, it becomes a mixed contract when work is performed in addition to services (Heints, 2011, p. 4). Maintaining the common property of an apartment building, i. e., the performance of sanitary engineering works, repair of elevators, and repair of the common property of an apartment building, entails the performance of works if such activities include the terms and conditions of the contractor’s agreement.

The residential property management contract takes the form of a mixed one. L. Baranova states that this contract is a kind of a service contract, which comprises elements of the property management contract and the agency contract. The parties have the right to conclude a contract involving elements of different contracts (a mixed contract) (part 2 of art. 628 of the CC of Ukraine). Moreover, the parties' relations under a mixed contract are subjected to the application of civil laws on contracts, the elements of which are available in the mixed contract, unless otherwise established by the contract or follows from the essence of the mixed contract (Baranova, 2017, pp. 184–185).

The classification of contracts for housing and utility services is usually based on the classification of the very services: supply and distribution of electricity, natural gas, heat supply, centralized hot water supply, centralized water supply and centralized sewage, and household waste management. Some authors have a controversial opinion that a contract for property management services can be preliminary and principal depending on a completion degree (Myrza, 2017, p. 235), because the purpose of such a contract is to obtain service. We consider the position of E. Kharytonov and O. Kharytonova, who believe that a preliminary contract does not give rise to rights and obligations, most relevant. It only creates an obligation to conclude a new contract (art. 635 of the CC) after the expiration of a certain period (or after a certain period), that is, it is an agreement on the conclusion of a future agreement (Kharytonov, Kharytonova, 2021, p. 557).

When classifying utility service contracts, we set the diversity of a group of contracts for housing and utility services. A housing and utility service may be the subject of one contract, e. g., a power supply contract. A contract for housing and utility services may regulate the entire range of utilities, e. g., a contract for residential block management.

Housing and utility services are designed to ensure the living conditions and stay of individuals in residential and non-residential premises, buildings and facilities, and complexes of buildings and facilities following regulations, norms, standards, procedures, and rules. Under the special laws of Ukraine, contracts for housing and utility services are concluded under standard contracts approved by the Cabinet of Ministers of Ukraine or other state bodies authorized by law. For example, they are the Rules for the provision of centralized heating, cold and hot water supply and sewage services and the standard contract for the provision of centralized heat-

ing, cold and hot water supply and drainage services (Resolution of the Cabinet of Ministers of Ukraine dated July 21, 2005 № 630), the Rules for residential block management services, and the Standard contract for residential block management services (Resolution of the Cabinet of Ministers of Ukraine dated September 5, 2018 № 712), etc.

It should be noted that the above classifications of contracts are not exclusive and contain only some of the most common classification features since the legislation lacks an exclusive list of housing and utility services. Classification of civil contracts for services by the criterion of the contract subject is also impossible, and monopolists independently impose it. The existing problems of current legal regulation also involve the inconsistency between the lists of utilities, which are fixed in the normative act (Kazantseva, 2018, p. 154–155).

We believe that the classification of service contracts by the contract subject requires the elucidation of the characteristic features of legal regulation in terms of specific types of contracts for utility and housing services. Civil (private) law science puts forward other classification types of contracts for housing and utility services.

6. Publicity of the contract for housing and utility services as a separate classification feature

It is proposed to additionally use publicity as a criterion for classifying service contracts. The use of this classification feature is advisable, although the contract for housing and utility services is not directly included in the group of public contracts under part 1 of art. 633 of the CC of Ukraine. However, the list is not finalized. In our opinion, contracts for housing and utility services belong to public ones.

Art. 633 of the CC of Ukraine is the general rule containing fundamentals on a public contract. It is supplemented by special rules that regulate specific types of public contracts. Special laws and by-laws enacted to develop public contract rules thoroughly regulate the most important provisions for some contracts. The following are proposed to be considered as signs of a public contract: one of the parties to the contract is an entrepreneur; the scope of the entrepreneur's activity is the sale of goods, performance of works, or provision of services; the entrepreneur complies with such mandatory conditions: a) enters into a contract with each counterparty; b) does not give preference to one person over another, except in cases provided for by law and other legal acts; c) sells goods, performs works, and provides services on the same terms for all consumers, except for cases when the law and other legal acts allow

the provision of benefits for particular categories of consumers (part 2, 3 of Article 633 of the CC of Ukraine); the contract's terms must comply with the rules established by law and other regulatory acts; violation of the requirements established by law for the entrepreneur causes negative consequences in the form of compensation to the counterparty for losses caused by unjustified refusal to enter into the contract.

In our opinion, a group of contracts for utility services, for the supply of thermal energy, hot water, centralized water supply, centralized sewerage and household waste management, as well as the relations arising in the process of providing services for the supply and distribution of electricity and natural gas in apartment buildings correspond to the signs of public contracts.

For example, one of the aforementioned is an energy supply contract. The energy supply system has undergone changes: according to the Law of Ukraine "On the Electricity Market", since January 1, 2019, two separate companies – the electricity supplier and the distribution system operator (DSO) – provide the population with electricity in each region. The DSO is engaged in the technical distribution of electricity, and the supplier sells it to customers. In accordance with paragraphs 11, 12, part 1 of Art. 4 of the aforementioned Law, the electricity market participants conduct their activities in the electricity market on a contractual basis. To ensure the electricity market's functioning, contracts are concluded, among which are a transmission connection contract and a contract for connection to the distribution system.

Following para. 6 of Art. 6, among the main tasks of the Regulator (the National Commission for State Regulation of Energy and Public Utilities) in the electricity market are to guarantee common and unencumbered conditions for connection and access to electricity networks for new users of the system, in particular, the removal of barriers that may prevent access of new buyers and producers of electricity, including those producing electricity from alternative energy sources, by establishing the procedure for the generation of fees for connection to the transmission system and distribution systems pursuant to the relevant Law. In accordance with para. 13 of the Transitional provisions of the above law, the fact of the consumer's adherence to the terms of the contract for the supply of universal services (contract acceptance) is the commission by the consumer of any actions confirming his desire to conclude a contract, in particular, the provision

of a signed application for accession, payment of the bill of the universal service provider and/or the fact of electricity consumption (Verkhovna Rada of Ukraine, 2017).

The distinction between private and public has always been a scientific problem of civil law science, which kept its relevance over time (Drishliuk, 2006, p. 155). Private law cannot do without using a set of imperative rules, including prohibitions, somewhat limiting the independence and initiative of the parties to the relationship. Such restrictions may be imposed in the interests of individual groups of persons and the general interests (Sukhanov, 2004, p. 27). Art. 633 of the CC of Ukraine, which regulates the conclusion and fulfilment of a public contract, is one of the cases limiting the entrepreneur's private interests for protecting and guaranteeing the rights of the economically weaker party to the contract – the consumer.

The public nature of some civil business contracts modifies the civil principles of regulation of relevant social ties, limiting the dispositiveness and proactivity of economic entities (Drishliuk, 2007, p. 157). A public contract acts as a set of civil law rules governing contractual relations arising in the housing and utility sector, which is characterized by economic inequality between the parties that requires the establishment of additional legal guarantees for the weaker party – the consumer.

7. Conclusions

Modern housing legislation is insufficient and does not allow fully protecting the rights of citizens to adequate housing and public utility services. The current legislative and other normative acts adopted in different years need to be drastically changed following the civil law principles defined by the CC of Ukraine.

The Housing Code of Ukraine should consider all the features of the legal regulation of housing relations and solve the problem of parallel application of various norms of the current legislation. The Housing Code of Ukraine should comprise general civil provisions given the particularities that were not reflected in the CC of Ukraine, incl. obligations arising in the management of the housing stock, housing associations, condominium associations; peculiarities of civil liability of owners and users of apartments (houses), etc. The rights and obligations of a residential property owner; the rights and obligations of persons living together with the residential property owner in terms of housing and utility services should be specified.

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ПРАВОВА ПРИРОДА ДОГОВОРУ ПРО НАДАННЯ ЖИТЛОВО-КОМУНАЛЬНИХ ПОСЛУГ

Анотація. Мета. Для житлового законодавства в Україні характерна повна правова невизначеність, що виявляється у фрагментарності правового регулювання, наявності великої кількості відсілюючих норм та норм, які втратили регулюючий вплив. Право наймача на отримання житлово-комунальних послуг реалізується шляхом укладення різноманітних цивільно-правових договорів. Досліджується поняття та правова природа житлово-комунальних послуг, їхні ознаки й різновиди, співвідношення понять «житлово-комунальні послуги» та «комунальні послуги». Житлово-комунальна послуга може входити до предмета одного договору або ж договір про надання житлово-комунальних послуг може унормовувати весь комплекс комунальних послуг.

Методи дослідження. Для реалізації завдань роботи використано загальнонаукові та спеціальні методи пізнання.

Результати. Запропоновано класифікаційні ознаки договорів на надання житлово-комунальних послуг. Доведено, що договори про надання житлово-комунальних послуг належать до публічних договорів. Зокрема, договори з постачання теплової енергії, постачання гарячої води, централізованого водопостачання, централізованого водовідведення та поводження з побутовими відходами, а також відносини, що виникають у процесі надання послуг із постачання й розподілу електричної енергії та природного газу в багатоквартирних житлових будинках, відповідають ознакам публічних договорів. Аргументовано положення, що класифікація договорів про надання послуг за критерієм предмета договору потребує розкриття характерних особливостей правового регулювання окремих видів договорів надання комунальних і житлових послуг.

Висновки. Неузгодженості між нормами цивільного та житлового законодавства в частині надання житлово-комунальних послуг можуть бути усунені шляхом уніфікації і систематизації нормативних актів, побудови системи, що регулює житлову сферу. Обґрунтовується пропозиція визначити поняття «житлово-комунальна послуга» в Цивільному кодексі України.

Ключові слова: житло, житлове законодавство, житловий кодекс, користування житлом, житлово-комунальні послуги.

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