

UDC 349.444

DOI <https://doi.org/10.32849/2663-5313/2022.3.02>**Mykola Haliantych,**

Doctor of Law, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine, Head of the Department of Private Law Problems, Academician F. H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine, 23-a, Rayevsky Str., Kyiv, Ukraine, postal code 01042, halyantych@gmail.com

ORCID: orcid.org/0000-0003-0346-5308**Scopus ID:** 57217736289**Volodymyr Kochyn,**

PhD in Law, Senior Researcher, Leading Researcher at the Department of Private Law Problems, Academician F. H. Burchak Scientific Research Institute of Private Law and Entrepreneurship of the National Academy of Legal Sciences of Ukraine, 23-a, Rayevsky Str., Kyiv, Ukraine, postal code 01042, volodymyrkochyn@gmail.com

ORCID: <https://orcid.org/0000-0003-2468-0808>**Scopus ID:** 57217825458

Haliantych, Mykola, Kochyn, Volodymyr (2022). De-Sovietization of housing legislation: current challenges in martial law. *Entrepreneurship, Economy and Law*, 3, 14–20, doi: <https://doi.org/10.32849/2663-5313/2022.3.02>

DE-SOVIETIZATION OF HOUSING LEGISLATION: CURRENT CHALLENGES IN MARTIAL LAW

Abstract. Purpose of the study. The purpose of the article is the study of the current state and prospects of scientific research on the regulation of housing relations, the substantiation of the foundations that will be laid in the new wording of the Housing Code, the legal characteristics of housing as an appropriate and affordable, as well as their relationship with the state guarantees of property rights to housing conditions of military aggression of the Russian Federation.

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 for providing housing to the population, used the normative-dogmatic method, and the method of system-structural analysis allowed to clarify the place of state housing policy in the system of state policy in general.

Results. Analysis of the Law of Ukraine "On the Desovietization of Ukrainian Legislation" indicates two directions of "desovietization": a) change of the word combination indicating state authorities of the USSR period; b) redistribution of powers between state authorities and local self-government bodies for the management of the housing stock. Along with the decentralization of housing management, the so-called "privatization" of public relations should occur when it is impossible to adequately influence public relations in order to adequately regulate them through the regulation of relations. Housing ownership and affordability standards should be established at the level of housing. It is right to carry out a housing reform, based on the dual nature of housing (social and economic good). The priority for Ukraine is to support the system of repair of damaged housing stock. Draft № 7198 does not directly pursue the goal of compensation for housing, thus creating a dual understanding of security within the property relationship and within the housing relationship. The science of housing law should establish the scope of state compensation guarantees for damaged and destroyed property, taking into account the attributes of adequate and affordable housing.

Conclusions. Desovietization of housing legislation did not enshrine new norms, even to a certain extent affirmed certain communist principles. The new wording of the Housing Code should be based on private law principles of realization of housing rights of persons, in particular in terms of improving the existing methods of acquiring ownership and other proprietary rights to housing. It is necessary to specify an exhaustive list of housing (social dormitories), social standards of restored housing, the boundaries of compensation. The relationship of the construction of social housing, which is not subject to privatization and is provided to resettlers for long-term use, needs to be

studied. It is essential not only to restore the state and communal housing fund but also establish new mechanisms for the legal realization of everyone's housing rights. Housing conditions for those deprived of housing must be provided additionally. Providing IDPs with housing in new settlements is temporary in nature and should not be considered a solution to housing needs.

Key words: housing policy, right to housing, housing rights, Housing Code, desovietization of housing legislation, social housing.

1. Introduction

Analysis of the current Housing Code of Ukraine (hereinafter – HC) and other legal acts allows to assert that the housing legislation still remains a legal field *hic sunt dracones* (from the Latin "here live dragons" – a constant expression, which means dangerous or unexplored areas), because it almost unites the provisions of working acts, "purified" from Soviet features, without forming a new legislative concept of regulation of housing relations.

The new edition of the Housing Code ("Proekt Zhytlovoho kodeksu Ukrainy [Draft Housing Code of Ukraine]," 2021) as a proposal to update the housing legislation of Ukraine should be based on the constitutional norm of Art. 47 of the Law of Ukraine, as a result of which must necessarily receive regulatory and legal development: a) conditions under which every citizen will be able to build housing, acquire ownership or rent it (private-legal component); b) implementation of the needs of citizens for social protection, in particular, for the provision of housing by the state and local authorities free of charge or at an affordable fee for them in accordance with the law (social component).

The main shortcomings of the current legislation include uncertainty in the priority in the adoption of legislative acts, a huge number of configurations and additions to the already adopted laws; instability and internal contradictions of legislative acts and individual norms; lack of legal regulation of many public relations, which is due to the lack of state housing policy.

The aim of the article is to investigate the current state and prospects of scientific research in the sphere of regulation of housing relations, the substantiation of the foundations that will be laid in the new wording of the Housing Code, the legal characteristics of housing as an appropriate and affordable, as well as their relationship with the state guarantees of ownership rights to housing conditions of military aggression of the Russian Federation.

2. A new stage in the codification of housing legislation

The need to codify housing legislation has repeatedly been the subject of various scientific and practical discussions. Nowadays there is no doubt about the existence and development in domestic jurisprudence the doctrine of housing law (Haliantsch, 2013). The main problem

is not even in the formation of a single normative-legal act regulating housing relations, but in the real possibility of implementing the inter-related economic, social and legal guarantees that will be declared by the state in this act.

It is a matter of implementing the well-known idea of enshrining general as well as economic, social and cultural rights. S. P. Holovatyj draws attention to the division of international prescriptions into those containing the principles of human rights (the Universal Declaration of Human Rights) and those containing prescriptions of a legally binding nature (the International Covenant on Economic, Social and Cultural Rights) (Holovatyj, 2016, p. 267). Incidentally, this very division was accompanied by a deepening ideological confrontation between East and West during the Cold War, because in the consolidation of state social guarantees the United States saw a threat in their socialist nature, while the USSR considered liberalism as "one should not let a fox mind the henhouse" (Holovatyj, 2016, p. 268).

In actual conditions of the state ownership of only 3% of housing, there is an urgent need to reform the housing legislation, adapted to modern conditions, in particular, the subject of legal regulation of the new Housing of Ukraine should be the arising relations in the process: a) realization of the right to housing; b) provision of a physical person with housing for use; c) possession and use of housing; d) management of the housing fund; e) operation and protection of the housing fund; f) exclusion from the housing fund of houses and premises unfit for habitation; g) consideration of housing disputes, etc. (Haliantsch & Pyzhova, 2019, p. 149).

The Law of Ukraine "On the Desovietization of the Legislation of Ukraine" of 21.04.2022, № 2215-IX aims to "reflect acts of Ukrainian legislation, both by making appropriate changes to existing laws, and by recognizing some regulatory legal acts (or their provisions) of public authorities and administration of the USSR and the USSR not applicable in Ukraine, which, while formally retaining their force, have no regulatory impact or, on the contrary, are now regulating a certain range of social relations, although the terminology used in them and the approaches to the subject regulation are outdated, irrelevant and conceptually incompatible with the legislation of Ukraine" (explanatory note). The Housing Code of the Ukrainian

SSR, 1983, which will be referred to as the Housing Code of Ukraine, has undergone significant changes in legal regulation.

The analysis of the changes indicates 2 directions of "desovietization": a) change of the phraseology containing an indication of the state authorities of the USSR period; b) redistribution of powers between state bodies and local self-government bodies for the management of the housing stock. Along with this comes a logical question: *has the HC become non-Soviet?* A certain rhetorical quality to this question is given by the norm of the final transitional provisions, which establishes the obligation of the Cabinet of Ministers of Ukraine "within one year from the date of entry into force of this Act to develop and submit to the Verkhovna Rada of Ukraine projects of the Housing Code of Ukraine ..."

One gets the impression that "desovietization" was a public rejection of the acts listed in the annexes to this Law, which constitute a kind of *mappa mundi* (Latin for "world map" – the common name for geographical maps of the European Middle Ages, which was intended to graphically illustrate the Christian picture of the world), i.e., documents that cannot be a priori normative legal, due to the provision of Part 2, Article 8 of the Constitution of Ukraine (e.g. Decree № 62/503 of the Central Executive Committee of the USSR and the Council of People's Commissars of March 27, 1933 "On improvement of housing conditions of scientific workers" or the Fundamentals of housing legislation of the USSR and Union republics of June 24, 1981 № 5150-X).

Desovietized Housing in the new wording of Art. 1 enshrines the right of citizens of Ukraine to housing, leaving the reproduction of the prescription of Art. 42 of the Constitution of USSR, 1978, as amended by Law № 1510-VI of 11.06.2009. Separately, it is worth noting the norms of the desovietized HC, which have signs of "building socialism and communism", in particular, articles 134 (registration of citizens wishing to join a housing and construction cooperative), 137 (procedure of organization and activities of housing and construction cooperatives), 138 (control over activities of housing and construction cooperatives), 141 (provision of housing and construction to members), 154 (control over maintenance of houses (apartments) belonging to citizens); 178 (assistance to citizens in current repairs of residential premises).

Undoubtedly, the new Housing Code of Ukraine shall regulate a wider range of social relations – arising, changing and terminating housing legal relations only in relation to the finished house or other premises suitable for

permanent residence of an individual; besides, it shall take into account all features of legal regulation of housing legal relations, remove the problem of parallel application of legislative norms (Haliantykh & Pyzhova, 2019, p. 149).

Along with the decentralization of housing management, which consists in the transfer of powers from state bodies to local governments, there must be the so-called "privatization" of public relations in the impossibility of proper public influence on public relations to regulate them adequately by regulating relations, given the need for proper management of housing that is in private ownership (reform of relations within housing societies; legal regime of dormitories and housing that belongs to legal entities of private law, etc.).

This model of social relations is market-oriented privatization model, which implies that the legal norms are eventually crystallized as a result of the desire of individuals to regulate themselves (Fisher, 2021, p. 179; Kochyn, 2021, p. 6). It is about the need to enshrine corporate norms that will ensure the housing rights of individuals, as well as a model of private-public partnership for the implementation of social guarantees.

3. Adequate and affordable housing

Legislative consolidation of the concept of "housing" (in addition to its functional purpose) requires the implementation of Article 48 of the Constitution of Ukraine, which established the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing. This right correlates with the State's obligation to take appropriate measures to ensure the exercise of this right in accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights.

According to the Guiding Principles on the Right to Adequate Housing (Report of the UN Special Rapporteur of 26.12.2019), this object of the relationship should not only be considered as physical shelter or housing in the form of goods, but also be linked to the concept of dignity, the due person (paragraph 15). As a result, the measures of this right include features such as availability of services, affordability, accommodation, physical accessibility, proper location, and cultural adequacy, among others (subparagraph "b" of paragraph 16).

M. V. Bernatskyi determines that among the list of objects enshrined in Articles 379–382 of the Civil Code of Ukraine (types of housing), only the apartment by its properties meets the definition of housing; others are either parts of the housing, or complex things within which the housing is located; therefore, the absence of one of the elements of housing suggested

by the author to ensure its habitability, such an object cannot be recognized as a housing (Bernatskyi, 2016, p. 3).

Currently, the legislation operates with different concepts: "norm of living space", which is 13,65 m² per person (Art. 47 of the HC); temporary "minimum standards of social housing" – 6 m² of living space per person (in social dormitories) and 22 m² of common area for a family of two and an additional 9,3 m² of common area for each additional family member (in apartments, homestead (single-family) houses) (Decree of the Cabinet of Ministers of Ukraine "On the establishment of temporary minimum standards of social housing" from 19.03.2008 № 219); the "sanitary standard" is 21 m² of total space per tenant and each member of his family and an additional 10 m² per family (Art. 3 of the Law of Ukraine "On privatization of the state housing fund").

Next to this uncertainty, let's highlight building code B.2.2-15:2019: "Residential buildings. Basic Provisions" (Order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine of 26.03.2019 № 87), containing other technical properties of housing, establishing, depending on the type of housing minimum common room area (14 and 16 m²), bedroom (8 and 10 m²), kitchen (5 and 8 m²), mediated by a minimum acceptable level of comfort (Section 5.19).

Thus, it is reasonable to establish standards of ownership and affordability of housing at the level of housing, which will be the initial element of state policy on the provision of individuals with housing.

Circumstances that have led to changes in housing policy are: the transition to market relations in general and the need to give the right of dynamism to a faster and more realistic provision of housing migrant labor force; reorientation of the solvent population to market ways of their satisfaction; the housing market is a universal mechanism for redistribution of housing; the inability of the state to solve the housing problem on its own. These circumstances are objective in nature, and in shaping housing policy, it must be borne in mind that the state is not in a position to assume the obligation to meet the housing needs of all its citizens without compensation, large-scale housing distribution programs are illusory (Nahorniak, 2000, p. 19).

It is correct to carry out a housing reform based on the dual nature of housing (social and economic good). From this point of view it is quite logical to recognize the realization of the right of citizens to housing construction with state support of affordable housing – given its cost, which citizens with low income who need to improve their housing conditions are able to purchase.

Today, the legal, organizational and social basis of state policy to ensure the constitutional rights of socially vulnerable population groups in Ukraine regarding obtaining housing is determined by the Law of Ukraine "On the social housing stock." The above law requires appropriate scientific rethinking in accordance with the proposed housing policy, in particular, in terms of enshrining provisions regarding adequate and affordable housing.

In Canada, housing is considered "affordable" if it costs no more than 30% of total family income, with costs including mortgage repayment and servicing, property tax, utility bills for owners, rent and utility bills for renters (Kovalenska, 2013).

In German law there are no concepts of "getting", "providing" an apartment, because low-income people are allocated financial aid for independent renting of housing in the private sector. More than half of the country's population rents apartments or houses, and in major cities such as Berlin, Hamburg, the proportion of renters is more than 80%. The contract for renting an apartment is agreed upon by the welfare office, which pays the rent and part of the cost of utilities. Social housing can only be changed with the consent of the social welfare office in the case of special circumstances, most of which are stipulated in legislation or bylaws. No assistance is payable if the total area of the rented apartment exceeds the set minimum (Kharechko, 2016).

In Canada, the directions of housing policy correlate with the level of government support for citizens in solving the housing problem as follows:

- in the segment of "market housing" there is no direct support of the state, the policy of the state is aimed at the development of the general market environment, in particular in the segment of housing construction, the financial sector and the income sphere of the population;
- in the "affordable housing" segment, some level of public subsidy is assumed to be provided by the federal government, provincial governments and municipalities;
- in the segment of "social housing" provided for rent, the level of state subsidy is the highest, the rent rate is set according to the level of income (rent geared to income or RGI housing) (Omelchuk, 2016).

4. Compensation for damage to and destruction of housing as a result of military actions, terrorist acts, sabotage caused by military aggression of the Russian Federation

Recovery for damage and destruction of housing as a result of military actions, terrorist acts, sabotage caused by military aggression of the Russian Federation depends on

the existence and effective operation of a legal mechanism to ensure them. On the territory of Ukraine, a significant number of citizens, having the right of ownership to housing located in the liberated territories, cannot use it, and having left for other regions of Ukraine, are forced to live, in particular, in rooms of sanatoriums, which in some cases are not suitable for living (i.e., have no signs of proper housing).

The draft of the Law of Ukraine "On compensation for damage and destruction of certain categories of real estate as a result of military actions, terrorist acts, sabotage, caused by military aggression of the Russian Federation" dated 24.03.2022 № 7198 (hereinafter – the Draft) was adopted as a basis. The need to adopt such a bill is extremely necessary, as evidenced by foreign experience of providing housing and compensation for damaged/destroyed housing in Armenia, Azerbaijan, Georgia, Cyprus, Colombia, Moldova, etc. The process of restoration of housing rights implies certain stages: restitution and then compensation. This approach makes it possible to include all persons affected by the war, regardless of their belonging to categories under Ukrainian law. In war time, providing compensation is complicated during the active phase of the conflict in the absence of a peace agreement.

The Supreme Court expressed the legal position that "in the case of application of the 'tort exception' any dispute arising on its territory from a citizen of Ukraine, even with a foreign country, including the Russian Federation, can be considered and resolved by a court of Ukraine as a proper and competent court." ("Postanova Kasatsiinoho tsyvilnoho sudu u skladi Verkhovnoho Sudu [Resolution of the Civil Court of Cassation of the Supreme Court]. 14.04.2022 № 308/9708/19," 2022) Consequently, compensation for damage and destruction of certain real estate (in particular, housing) caused by military aggression of the Russian Federation is considered in accordance with the principle of "general tort," that is, on private law principles.

The first priority for Ukraine is to support the system of repair of damaged housing stock as a response to the housing problems of people affected by war. It is proposed to compensate for the lost housing in Ukraine by compensating the property damage for the damaged and/or destroyed real estate, caused by military actions, terrorist acts, sabotage, caused by military aggression of the Russian Federation in the envisaged way. Compensation is provided by: monetary compensation or financing of construction works to restore the damaged common property of the apartment building (Art. 4 of the Draft).

Foreign experience shows that, as a rule, 10% of victims receive state funding to solve their housing problems. However, if the burden of proof shifts to the state, it significantly reduces the time for restitution and compensation. Compensation is determined for each piece of real estate separately. At the same time as receiving compensation, the recipient of compensation concludes an agreement on the assignment to the state of the right of claim against the Russian Federation for compensation for damage to or destruction of real property resulting from military actions, terrorist acts, sabotage, caused by military aggression of the Russian Federation. Such a treaty shall be concluded by accession to the treaty. The form of such contract shall be established by the Cabinet of Ministers of Ukraine (Art. 7 of the Draft).

In fact, the provision of compensation depends on international donors and organizations, the amount of such aid, and not on the order of receipt of applications for compensation, as proposed: 1) each locality (for damaged and destroyed objects of immovable property, which are (were) outside the locality – in the context of the territory of each territorial community); 2) the method of compensation within the relevant locality (territory of the relevant territorial community) (Article 8 of the Draft).

The Draft under study does not directly pursue the goal of compensation for housing, thus creating a dual understanding of security within the property relationship and within the housing relationship. For example, the limit amount of compensation in the form of an object of immovable property cannot exceed the value of 150 m² per object of immovable property (Part 2 of Art. 6). That is, the science of housing law should establish the scope of state compensation guarantees for damaged and destroyed property, taking into account the characteristics of adequate and affordable housing.

5. Conclusions

1. The Law of Ukraine "On the De-Sovietization of Ukrainian Legislation" did not enshrine new norms of housing legislation, moreover, it even approved certain communist principles to a certain extent. The new wording of the Housing Code should be based on private law principles of realization of housing rights, in particular in terms of improving the existing methods of acquiring ownership and other proprietary rights to housing. In addition, the norms of housing, which will establish social guarantees for citizens in view of existing social standards and the state's ability to implement these guarantees, require appropriate harmonization.

2. The difficult economic situation in the country, the lack of a clear housing policy, the lack of reforms in the sphere of housing provision for socially vulnerable citizens, all this creates legal problems in the realization of the housing rights of each person who has lost their housing. The legislation needs to be improved, the exhaustive list of housing (social dormitories), social standards of restored housing, the limits of compensation should be specified.

3. The relationship between the construction of social housing, which is not subject to privatization and is provided for long-term use to resettle, needs to be studied. It is believed that the provision of housing for temporary use should be in compliance with the constitutional right of citizens to an adequate standard of living (Article 48 of the Constitution of Ukraine), as well as providing such persons with benefits for the cost of housing and communal services.

4. The housing legislation that has been applied to date is extremely ineffective and fails to ensure the right of citizens to housing, both in the absence of a vision for solving the problem of the existence of waiting lists for housing and in the absence of compensation for it. It is necessary not only to restore the state, communal housing fund, fix the mechanism of legal implementation of housing rights, but also to fix new mechanisms of legal implementation of everyone's housing rights, which is an urgent need in the science of housing law.

5. Housing conditions for the dispossessed should be provided additionally, such as the construction of temporary settlements, which are already being established at the expense of foreign sponsors. Providing IDPs with housing in new settlements is temporary in nature and should not be seen as a solution to housing needs.

References:

- Bernatskyi, M. V.** (2016). Zhytlo yak ob'iekt prava vlasnosti [Housing as an object of property rights] *Extended abstract of candidate's thesis*. Kyiv: The Academician F. H. Burchak Scientific-Research Institute of Private Law and Entrepreneurship of National Academy of Law Sciences of Ukraine (in Ukrainian).
- Fisher, T.** (2021). Privatization of Legal Institutions. In A. Dorfman & A. Harel (Eds.), *The Cambridge Handbook of Privatization* (pp. 177–194). Cambridge University Press.
- Haliantykh, M. K.** (2013). Rozvytok doktryny zhytloвого prava [Development of the doctrine of housing law]. In N. S. Kuznietsova, R. A. Maidanyk, & Y. O. Kharytonov (Eds.), *Pravova doktryna Ukrainy [Legal Doctrine of Ukraine]: u 5 t. T. 3: Doktryna pryvatnoho prava Ukrainy [Doctrine of Private Law of Ukraine]* (pp. 642–665). Kharkiv: Pravo (in Ukrainian).
- Haliantykh, M. K., & Pyzhova, O. V.** (2019). Problemy kodyfikatsii zhytloвого zakonodavstva Ukrainy [Problems of codification of housing legislation of Ukraine]. *Private Law and Entrepreneurship*, (19), 146–150. <https://doi.org/https://doi.org/10.32849/2409-9201.2019.19.31> (in Ukrainian).
- Holovatiy, S. P.** (2016). *Pro liudski prava. Lektsii [About human rights. Lectures]*. Kyiv: DUKh I LITERA (in Ukrainian).
- Kharechko, D.** (2016). Zarubizhnyi dosvid u sferi derzhavnogo upravlinnia zabezpechennia prava hromadian na zhytlo [Foreign experience in the field of public administration ensuring the right of citizens to housing efficiency of public administration]. *Efficiency of Public Administration*, (4(49)). Retrieved from http://nbuv.gov.ua/UJRN/efdu_2016_4_14 (in Ukrainian).
- Kochyn, V. V.** (2021). Tsyvilni vidnosyny u nepidpriemnytskykh tovarystvakh ta ustanovakh: teoretyko-pravovi zasady adaptatsii zakonodavstva Ukrainy do acquis YeS [Civil relations in non-entrepreneurial societies and institutions: theoretical and legal principles of adaptation of the legislation of Ukraine to the EU acquis] *Extended abstract of Doctor's thesis*. Kyiv: The Academician F. H. Burchak Scientific-Research Institute of Private Law and Entrepreneurship of National Academy of Law Sciences of Ukraine (in Ukrainian).
- Kovalevska, O. P.** (2013). Svitovyi dosvid rozvytku derzhavnoi zhytlovoi polityky [World experience in the development of public housing policy]. *Public Administration: Improvement and Development*, (2) (in Ukrainian).
- Nahorniak, V. A.** (2000). Tsyvilni pravochyny z pryvatyzovanyim zhytloom [Civil transactions with privatized housing]. *Extended abstract of candidate's thesis*. Kharkiv: University of Internal Affairs affairs (in Ukrainian).
- Omelchuk, V. O.** (2016). Zhytlova polityka v Kanadi v sferi dostupnoho ta sotsialnoho zhytla [Housing policy in Canada in the field of affordable and social housing]. *Economy and State*, (12) (in Ukrainian).
- Postanova Kasatsiinoho tsyvilnoho sudu** u skladi Verkhovnoho Sudu [Resolution of the Civil Court of Cassation of the Supreme Court]. 14.04.2022 № 308/9708/19. (2022). Retrieved from <https://bit.ly/3N7SrDM> (in Ukrainian).
- Proekt Zhytloвого kodeksu** Ukrainy [Draft Housing Code of Ukraine]. (2021). Retrieved from <https://bit.ly/3zdwNKK> (in Ukrainian).

Микола Галянтч,

доктор юридичних наук, професор, член-кореспондент Національної академії правових наук України, завідувач відділу проблем приватного права, Науково-дослідний інститут приватного права і підприємництва імені академіка Ф. Г. Бурчака Національної академії правових наук України, вул. Раєвського, 23-а, Київ, Україна, індекс 01042, halyantych@gmail.com

ORCID: orcid.org/0000-0003-0346-5308

Scopus ID: 57217736289

Володимир Кочин,

кандидат юридичних наук, старший дослідник, провідний науковий співробітник відділу проблем приватного права, Науково-дослідний інститут приватного права і підприємництва імені академіка Ф. Г. Бурчака Національної академії правових наук України, вул. Раєвського, 23-а, Київ, Україна, індекс 01042, volodymyrkochnyn@gmail.com

ORCID: <https://orcid.org/0000-0003-2468-0808>

Scopus ID: 57217825458

ДЕРАДЯНІЗАЦІЯ ЖИТЛОВОГО ЗАКОНОДАВСТВА: СУЧАСНІ ВИКЛИКИ В УМОВАХ ВОЄННОГО СТАНУ

Анотація. Мета. Метою статті є дослідження наявного стану та перспективи наукових пошуків у сфері регулювання житлових відносин, обґрунтування основ, які закладатимуться у нову редакцію ЖК, правові особливості характеристики житла як належного та доступного, а також їх взаємозв'язок із державними гарантіями реалізації права власності на житло в умовах військової агресії Російської Федерації.

Методи дослідження. Домінуючим у методологічному підході 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 дозволив з'ясувати місце державної житлової політики у системі державної політики взагалі.

Результати. Аналіз Закону України «Про дерадянізацію законодавства України» свідчить про 2 напрями «дерадянізації»: а) зміну словосполучень, які містять вказівку щодо органів державної влади періоду СРСР; б) перерозподіл повноважень між державними органами та органами місцевого самоврядування щодо управління житловим фондом. Поруч із децентралізацією управління житловим фондом має відбутися так звана «приватизація» суспільних відносин за умов неможливості належного публічного впливу на суспільні відносини з метою їх адекватного регулювання шляхом регламентації відносин. Слід встановити стандарти належності та доступності житла на рівні ЖК. Правильним є проведення житлової реформи, виходячи із двоякої природи житла (соціального та економічного блага). Першочерговою для України є підтримка системи ремонту пошкодженого житлового фонду. Проект № 7198 безпосередньо не має на меті компенсацію за житло, чим створює подвійне розуміння гарантування в межах відносин власності та в межах житлових відносин. У межах науки житлового права слід встановити обсяг державних гарантій компенсацій за пошкоджене та знищене майно з огляду на ознаки належного та доступного житла.

Висновки. Дерадянізація житлового законодавства не закріпила нових норм, навіть певною мірою утвердила окремі комуністичні принципи. Нова редакція ЖК має ґрунтуватися на приватноправових засадах реалізації житлових прав осіб, зокрема в частині удосконалення вже наявних способів набуття права власності та інших речових прав на житло. Слід конкретизувати вичерпний перелік житла (соціальні гуртожитки), соціальні стандарти відновленого житла, межі відшкодування. Потребують дослідження відносини будівництва соціального житла, яке не підлягає приватизації та надається переселенцям у довготривалі користування. Слід не лише відновлювати державний, комунальний житловий фонд, а й закріпити нові механізми правової реалізації житлових прав кожного. Житлові умови для осіб, які втратили житло, мають бути забезпечені додатково. Забезпечення вимушених переселенців житлом у нових поселеннях має тимчасовий характер і не повинно розглядатися як вирішення житлової потреби.

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

The article was submitted 08.04.2022

The article was revised 29.04.2022

The article was accepted 20.05.2022