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PRINCIPLES OF MODERN HOUSING LAW IN THE CONDITIONS OF PRIVATE LAW CODIFICATION

The housing need is one of the most essential for a human and is constantly intensifying, taking into account the existing socio-economic conditions in the state. Another aspect is the state of normative regulation of housing relations, in particular, the implementation of the constitutional provision that enshrines everyone's right to housing, as well as the current stage of reforming housing and civil legislation. This causes the primary need to focus on the conceptual principles of modern housing law, to update the legal understanding of the legislative implementation of the concepts "idea of law", "principle of law", "grounds of legislation". The result of scientific activity should be the development of a system of principles of modern housing law aimed at the realization of the human right to housing, the definition of their individual components.

The purpose of the article is to define the system of principles of modern housing law in the context of updating civil and housing legislation. It is possible to master the set goal by solving the following tasks: to form the concept of the principles of housing law; to reveal the peculiarities of the principles of housing law in comparison with the principles of civil law.

In the scientific literature, principles are

characterized as fundamental provisions, the original grounds, the most essential basis of a certain concept or theory [8, p. 231], the most general requirements relating to social relations and their participants, as well as the initial guiding principles, the initial provisions that express the essence of law and stem from the idea of justice and freedom, determine the general direction and the most essential features of the current legal system [16, p. 197].

Under the principles of civil law, it is proposed to understand the basic provisions of civil law specified by legal consciousness, which reflect the objective patterns of development and needs of society, which exist in several planes in the form of: 1) legal ideas; 2) normatively established principles of civil law and in accordance with which legal regulation of civil relations is carried out [4, p. 5].

The general principles of civil law, in accordance with the provisions of Article 3 of the Civil Code of Ukraine (which is due to the deep content of natural law [5, p. 12]), are: 1) the inadmissibility of arbitrary interference in the sphere of a person's personal life; 2) inadmissibility of deprivation of property rights, except for cases established by the Constitution of Ukraine and the law; 3) freedom of contract; 4) freedom of

entrepreneurial activity, which is not prohibited by law; 5) judicial protection of civil law and interest; 6) justice, good faith and reasonableness.

The main source of principles of law is politics, economics, morality, ideology and social life. Normative-legal consolidation of principles gives them an objective character, takes them beyond doctrinal or ideological understanding. Their materialization are determined by the problem of the formation of civil society and the rule of law, which, according to theorists, involves their textual consolidation, their transition from the abstract to the real [10, p. 67].

The principles of law ensure the functioning of all components of the legal system. As an example, Ye. O. Michurin draws attention that the system of principles of restrictions on the natural persons property rights is based on the fact that each of them complements the other, and the systematic application of the principles of restrictions on the natural persons property rights is capable of contributing to the protection of the rights of natural persons, ensuring their proper implementation and observance in the legal state [12, p. 182–183].

The implementation of the right into a normative act is carried out by authorized bodies on the basis of socially acceptable principles of interaction, based on the essence of Ukraine as a social, legal state (Article 1 of the Constitution of Ukraine). V. Ya. Tatsiy has pointed out that “due to the constitutional uncertainty of the content of the welfare state, the reference to this principle as a directly applicable norm is extremely rarely used in judicial practice. The social state is manifested through the principles of human dignity, social justice, social obligations, which act as a form of social consciousness that determines the extent of people’s behaviour, acts as a measure of awareness of their rights and responsibilities. Law is not so much a mechanical collection of norms, but also legal principles inherent in housing law and determine not the form of existence, but mainly the content and development of social relations” [3, p. 13].

S. P. Pogrebnyak singles out the main principle – the rule of law “as a valuable fusion

of the ideas of justice, equality, freedom and humanism, the rule of law forms the appropriate image of the legal system and determines the conditions that make it possible to turn this image into reality” [14, p. 41].

The understanding of legal norms is connected with the use of such concepts as morality, social life, justice, good faith, reasonableness, custom, public order, etc. They are not regulated by legislation in accordance of their essence, which can lead to an expanded understanding of the legal norm, or narrowing the content of constitutional individual rights, which due to Article 22 of the Constitution of Ukraine are not exhaustive.

Legal principles should be applied under the condition that they are aimed at achieving the goal set by the law, did not violate the rights of the individual and did not go beyond the norms and principles defined by the law. We believe that law enforcement can be carried out not only by combining a specific legal norm with legal principles, which should be enshrined in the law itself, as is done in practice, but on the contrary, legal principles are aimed at the correct understanding and application of the legal norm, should be applied directly, as norms of direct action.

In this aspect, it should be refer to the legal positions of the Constitutional Court of Ukraine. In accordance with Article 8 of the Constitution of Ukraine in its relations with the provisions of the third part of Article 22, the first part of Article 64 of the Constitution of Ukraine, the rule of law (*правовладдя*) requires that interference in constitutional human rights and freedoms have always been assumed; and “restrictions on the realization of constitutional rights and freedoms cannot be arbitrary and unfair, they are established exclusively by the Constitution and laws of Ukraine, they must meet a legitimate goal, be determined by the social need to achieve this goal, reasonable; in case of restriction of the constitutional right (freedom), the legislator is obliged to introduce such regulatory regulation, which will enable the optimal achievement of the legitimate goal with minimal interference in the realization of this right

(freedom) and will not violate the essence of this right” (subparagraph 2.2 of paragraph 2 of the motivational part of the Decision on 19 of April 2023 No. 4-r(II)/2023 [17]).

The urgency of fulfilling the task of rebuilding destroyed urban planning objects of the most diverse, (primarily housing) purpose, which has been set before the state of Ukraine, necessitates the determination of the fundamental principles of building an appropriate mechanism of legal regulation [7; 11]. The latter, given the multi-sectoral nature of the legal means involved, there can be safely attributed to the issue of a harmonious combination of public and private interests, coordinated action of the norms of public and private legislation. Moreover, in the conditions of war and European integration, the specific weight of the public-legal component of the outlined relationship is constantly growing including in view of the objective priority of building compensatory mechanisms for the restoration of territorial and urban development objects on the basis of state monetary funds, as well as taking into account the expectations on the effectiveness of international legal efforts to implement the property responsibility of the aggressor state and the probable multiplicity of international sources of funding for the reconstruction of Ukraine.

The state’s activities in the reconstruction of housing, as well as ensuring the housing needs of certain social strata of the population, must be carried out in accordance with the constitutional limits of state intervention in the economy of Ukraine regarding to “the protection of the rights of all subjects of the right of ownership and economic entities, the social orientation of the economy” (the first sentence of the fourth part of Article 13 of the Constitution of Ukraine). However, in the conditions of a market economy, the social orientation of profit maximization is not a priority. Thus, according to the European legal understanding, the implementation of mandatory social standards is manifested, in particular, in corporate, labour, and environmental law [2, p. 452].

It should be noted, that legal principles might have practical significance only in the case of their implementation in practical activities. Legal principles are not only an integral part of the worldview, but create a basis for a unified understanding of the provisions of housing legislation, determine the general principles and content of housing law, contribute to the awareness of the law, and thus provide the opportunity for the same interpretation of these provisions. They are primarily legal categories characterized by housing legislation and must be directly related to the conditions that determine, for example, the validity of contracts related to housing.

O.V. Basai has devoted his research to the general grounds (principles) of civil legislation. He believes that the relationship between these concepts boils down to the following: each principle of law is a concretized idea, however, not every legal idea is concretized in a legal principle, and the principles of civil legislation are also a reflection principles of civil law, however, not every principle of civil law is fixed by the legislator among the principles of civil law. At the same time, it is quite permissible to interchange the concepts of “principles of civil law” and “grounds of civil law”, since in this case it is talking about the use of synonymous concepts to denote one legal category [4, p. 7].

In national jurisprudence, the category “principles of law” is quite common (despite the fact that earlier the term “principle” was practically not used in the Ukrainian language), therefore, in a general sense, principles (grounds) are fundamental ideas according to which relations are regulated, namely: 1) fundamental principles (principles-ideas) and 2) regulatory principles (principles-norms) [6, p. 45].

Nowadays, it is possible to codify the housing legislation simultaneously with updating the civil legislation, the principles of which are definitely interconnected. Recodification of the Civil Code of Ukraine according to the modern “European scenario” requires the transformation of society for the formation of a true and effective market

economy as an integral component of civil society [9, p. 30].

The above-mentioned principles of civil law (legislation) should be reflected to a certain extent among the principles of housing law (legislation), taking into account the needs of social institutions. Social changes and transformation occur mainly within the dynamics of social institutions that are subject to legal regulation. In this regard, transformation can occur in the legal system when a change in legal norms that support a certain social institution can lead to a change in the way this institution is organized and functions in the economic system [1, p. 752].

Therefore, it is a question of combining the conditions of the market economy and the social orientation of the state. In addition, the application of the principles of law, which can be embodied in the basic principles of legislation, is associated with certain difficulties in practice. I. V. Spasybo-Fatieieva rightly points out that there is an attitude towards the principles of law as too high scientific matters that cannot be taken literally, a widespread view of the principles of law as vague, abstract and uncertain, which prevents their direct application [15, p. 141–142].

O.O. Pervomaiskyi states that, recognizing the fact of differences between such phenomena and concepts as “grounds of legislative” and “principles of law”, in practice a generalizing approach to their interpretation has become widespread, as a result of which general principles are considered simultaneously both as grounds and as principles, in particular not only regarding civil legislation, but also civil law in general [13, p. 31].

That is why for regulation of housing relations legislator uses the dispositive and imperative methods, and not in its pure form, but in their combination or taking into account the influence of, for example, the principles of social security.

The state, in the form of specially created bodies, adopts legislative acts based on certain attitudes, social justice, which act as a form of social consciousness that determines the extent of people’s behaviour, acts as a measure of

awareness of their rights and responsibilities. Legal principles determine the limits of the exercise of the right, beyond which it has an illegal character or exists in the form of abuse of the right, and therefore they must be enshrined in the law, constitute an integral part of the law. Of course, the limits of the exercise of housing rights are not exhausted by the principles that have found their consolidation or reflection in the legislation. Law enforcement can be carried out only in combination of a specific legal norm with legal principles that must be enshrined in the law itself, which will lead to its correct understanding and application.

Taking into account the above-mentioned, the importance of the principles for housing law lays out of reflection the main idea – the satisfaction of housing needs, which forms its most characteristic features: the general focus on ensuring human rights, the social essence and humane of housing law nature as a whole.

The principles of housing law are formed in accordance with the implementation of: the socio-economic policy of the state (in particular, with regard to certain categories of citizens and objects in order to establish the principle of appropriateness and social justice); systematicity of all constitutional human rights and their unity in implementation; the availability of mechanisms for the realization of the right to housing, which is embodied in the appropriate legal regulation.

Conclusions. It is necessary to note the trend according to which the legislation of Ukraine goes along the path of giving state bodies more and more powers in decision-making. In the process of interpretation of specific legal norms, officials use such concepts as morality, social life, justice, good faith, reasonableness, custom, public order, which legislation cannot give an exact explanation due to its essence. Due to their nature, vague legal concepts can lead to an expanded understanding of the norm or a narrowing of the content of citizens’ rights. Legal principles must be applied with the condition that they will be aimed at achieving the goal set by the law, individuals will not violate or go beyond

the norms and principles defined by the law.

The state housing policy of Ukraine should be embodied in the following norms and principles: ensuring the safety of citizens' residence and the proper quality of housing and communal services; joint responsibility of co-owners for proper housing maintenance and management; guaranteeing ownership rights to housing, coexistence and development of housing stock of state, communal and private forms of ownership; protection of socially vulnerable sections of the

population by providing them with social housing according to the standards established by the state on the terms of employment; compliance with the established standards, norms, norms of the quality of the housing stock and housing and communal services, regardless of the social, property status, age and place of residence of the person; creation and maintenance of a competitive environment in the field of housing construction, repair and maintenance; ensuring a person's right to choose the way to manage his home.

Summary

The article is devoted to the definition of the system of principles of housing law in the conditions of renewal of civil and housing legislation. The closeness of the scientific definitions of «grounds of housing law» and «grounds of private law» is emphasized. Emphasis is placed on the debatable issue of the system and classification of the relationship between the principles of housing law with the principles of civil law. In contrast to the principles of civil law, principles of housing law are aimed at: 1) meeting the housing needs of an individual only; 2) making a profit. A long-term problem that needs to be normalized is the reconstruction of housing, as well as the provision of housing needs of certain social strata of the population on the basis of constitutional guarantees of the protection of the rights of all subjects of the right of ownership and economic entities, as well as the social orientation of the economy. The regulation of housing relations is carried out using dispositive and imperative methods, and not in its pure form, but in their combination or taking into account the influence of the principles of social security. It is proposed the authors' system of principles of housing law: ensuring the safety of citizens' residence and the proper quality of housing and communal services; joint responsibility of co-owners for proper housing maintenance and management; guaranteeing ownership rights to housing, coexistence and development of housing stock of state, communal and private forms of ownership; protection of socially vulnerable sections of the population by providing them with social housing according to the standards established by the state on the terms of employment; compliance with the established standards, norms, norms of the quality of the housing stock and housing and communal services, regardless of the social, property status, age and place of residence of the person; creation and maintenance of a competitive environment in the field of housing construction, repair and maintenance; ensuring a person's right to choose the way to manage his home.

Key words: housing, principles of housing law, housing law, housing policy, principles of civil law, private law codification.

Галянтич М.К., Кочин В.В. Принципи сучасного житлового права в умовах кодифікації приватного права

Стаття присвячена визначенню системи принципів житлового права в умовах оновлення цивільного та житлового законодавства. Підкреслено близькість наукових дефініцій «засади житлового права» та «приватноправові засади». Акцентовано на дискусійності питання системи та класифікації співвідношення принципів житлового права та їх взаємозв'язку із принципами цивільного права. Принципи житлового права на відміну від принципів цивільного права спрямовані на: 1) задоволення житлової потреби виключно фізичної особи; 2) отримання прибутку. Тривалою проблемою, що потребує унормування є відбудова житла, а також

забезпечення житлових потреб окремих соціальних верств населення на основі конституційних гарантій захисту прав усіх суб'єктів права власності і господарювання, а також соціальної спрямованості економіки. Регулювання житлових відносин здійснюється за допомогою диспозитивного та імперативного методів, причому не у своєму чистому вигляді, а в їх поєднанні або з урахуванням впливу, наприклад, принципів соціального забезпечення. Запропоновано авторська система принципів житлового права: забезпечення безпеки проживання громадян та належної якості житлово-комунальних послуг; солідарна відповідальність співвласників за належне утримання житла та його управління; гарантування прав власності на житло, співіснування та розвиток житлового фонду державної, комунальної та приватної форм власності; захист соціально вразливих верств населення шляхом надання їм соціального житла за встановленими державою стандартами на умовах найму; дотримання встановлених стандартів, нормативів, норм якості житлового фонду та житлово-комунальних послуг незалежно від соціального, майнового стану, віку та місця проживання людини; створення та підтримання конкурентного середовища у сфері будівництва, ремонту та утримання житла; забезпечення права вибору людиною способу управління своїм житлом.

Ключові слова: житло, принципи житлового права, житлове право, житлова політика, принципи цивільного права, кодифікація приватного права.

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