

ENSURING THE TRANSFORMATION OF PUBLIC RELATIONS
IN THE SPHERE OF HOUSING AND COMMUNAL SERVICE

Annotation

The problematics of functioning and development of housing sphere in Ukraine is defined. The legal provision of ensuring the state management of the development of housing service is studied.

Keywords: public policy, housing and communal services, legal support, market transformation.

Анотація

Визначено проблеми функціонування і розвитку житлово-комунальної сфери в Україні. Досліджено правове забезпечення державного управління розвитком житлово-комунального господарства.

Ключові слова: державна політика, житлово-комунальна сфера, правове забезпечення, ринкова трансформація.

Аннотация

Определены проблемы функционирования и развития жилищно-коммунальной сферы в Украине. Исследовано правовое обеспечение государственного управления развитием жилищно-коммунального хозяйства.

Ключевые слова: государственная политика, жилищно-коммунальная сфера, правовое обеспечение, рыночная трансформация.

Introduction

Because of the absence of a clear view in the scientific literature on the current state of housing and communal services of Ukraine, which determines the nature of socio-economic problems and the market reform, in this article the overwhelming attention is paid primarily to financial, social, economic, political and legal basis of the functioning of this institution, the strategy, ideology and practice of its reformation. Featuring the system-dialectical relationship of the initial positions with the aim of transforming the housing sector, we pursued the goal to provide an interdisciplinary foundation for the detection of nodal points of the processes in this area of government.

Analysis of resent research

On the relevance of the problem of public administration of the modernization processes in housing and communal service indicate numerous theoretical studies and synthesis of both local and foreign scholars, including: V. N. Amitan, A. V. Babak, L. V. Bezzubko, P. Y. Belyenko, I. K. Bystryakov, B. M. Borschevsky, M. P. Butko, B. M. Danylyshyn, O. I. Datsiy, V. M. Inyakin, B. T. Kliyanenko, N. Y. Konysheva, M. H. Koretsky, G. O. Kramarenko, V. I. Kutsenko, Y. V. Makogon, Y. M. Mantsevych, L. V. Melnyk,

N. I. Oleinik, Y. V. Ostapenko, T. N. Strokan and others.

Statement of research objective

– to identify the problematic of functioning and development of housing and communal sphere in Ukraine;

– to examine the legal framework for the influence of public administration on the development of housing and communal service in Ukraine.

Results

While implementing the methodology of historical and systematic approaches, we try to identify the causes, objective and subjective dependence of the apparent failures of ongoing reform of housing and communal services based on market mechanisms, which are being consistently accomplished in it, and, above all, establish the historical roots of a number of basic contradictions in the Ukrainian municipal sphere, which are causing the urgent need for its reformation with the help of an algorithm of evolutionary and transformational type. The factors that led to the unsatisfactory progress of the formation of a radical transformation of the concept of housing and communal services were due to the imperfection of the concept of contradiction in the processes carried out on the preceding the current stage of reform

of housing and communal sphere and justified the need for more complete account of the social and structural conditionality of the governmental transformation of municipal sphere which is underestimated by the reformers.

Of course, the chosen method of investigation of any specific issue as expressions of the contradictions cannot be used autochthonic because it expresses only one, although the leading edge of the methodology of a classical analysis of the system. But since we are talking about the social institution, the original in this analysis should be the legal basis of the formation of housing and communal services as a social institution and the transformation of the institutional framework of its structural organization.

The initial meaning for the market transformation of the housing and communal sector has a degree of completeness and perfection of legislation regulating communal relationships of its subjects with the population and society in regards to these relations. On practice we have a lot of evidence that the population is currently prevailing doubts about the relevance of these points of the social policy, the constitutional characteristics of the country as a social state, which is generating sharp criticism of the current norms of the civil law with the orientation on housing and communal sphere and, accordingly, special legislation which is regulating relations in the provision of public utilities. However, the analysis leads to the conclusion that the system design of the legal bases of the functioning of a market of housing and communal sector in Ukraine is almost formed. And we can talk only about the degree of systemic completeness of these bases and their level of excellence.

However, the evaluation of the noticed issues is not easy, as it is traditional for the Ukrainian society in the face of the majority of the population, moreover, not only the masses but also the ruling elite, to ignore the legal aspects of its functioning, poor knowledge and weak discipline in following the laws which makes it difficult to develop the criteria for such evaluation in regards to many circumstances of the confusion of the legal status of the present society and the state and its authorities and management at all levels. Out of this situation may become, as it seems, a comprehensive analysis of not only the legislation but the process of its formation, as, on the one hand, the most important factors of transforming the housing sector, on the other - the original date for further systematic review of the theoretical aspects, results and

practical application of the existing housing and utilities laws in Ukraine.

Let us first of all concentrate on some of the constitutional foundations of the legal regulation of the relations of provision housing and communal services. They have actually been created anew, as radical-liberal economic and socio-political transformation of the country, which was taken at the beginning of market reforms, came into open conflict with the valid at the time legal framework that provided the legal regulation of relations in the housing sector. In order remove these contradictions that due to their severity gave rise to a significant social protest movement of the population, it was necessary to create a fundamentally new legal framework that can meet the needs for rooting market forces in life and yet be acceptable by most citizens, including ensuring the provision of utilities. Therefore, market reforms in housing and communal sector began to develop the constitutional foundations of legal regulation of relations in the housing and communal services, recognizing the Constitution of Ukraine as a priority before all current housing and municipal laws. It is also applicable to civil law, industry, limited of other regulatory legal acts and purely official role of the so-called departmental regulations.

At the constitutional level the initial point for market transformation of housing utilities are provisions that define the economic foundations of society by providing the recognition of equality before law of all subjects of property rights and their protection (Article 13 of the Constitution of Ukraine), competition in the business, consumer protection, control over the quality and safety of products and services (Article 42 of the Constitution of Ukraine). They serve as the constitutional basis for the establishment and proper functioning of the state, municipal and private systems of ensuring housing and communal services, providing fair competition and free choice of housing and communal services, which should stimulate real improvement of their quality. Particular constitutional basis for the functioning of the municipal housing and public service are articles that define the role of local governments, non-system of public authorities (Section XI of the Constitution of Ukraine) [3].

The adoption of the current Constitution created in the Ukrainian society, particularly in housing and communal sector, a brand new legal situation as an entirely different set of subjects towards the issue of constitutional responsibility.

The essence of this problem arose from the fact that the current Constitution, unlike the former ones, holds no propaganda for the reason they it doesn't possess the status of direct action and thus condemns society to live by special laws. According to it the party and government decisions and departmental instructions received the status of a Charter of the Fundamental law of direct action (Article 8 of the Constitution of Ukraine), that has a central role in the life of every citizen of the country [1, p. 48].

The constitutional foundations of the legal regulation of relations in the housing and utilities sector, particularly in connection with the provision of public utilities, are of both practical and theoretical significance. From the standpoint of management it is essential for the approval of his subjects the rule of law regulating all areas of society, in terms of theory and practice of constitutional responsibility, particularly relating to housing and communal services, in terms of application of constitutional law and the legal rights coming from it.

The real constitution of the statute of the Basic Law, the highest legal standards stipulated under the imperative nature of it all norms of another, regardless of time of its adoption, the law. They lose their strength if conflict with the legal provisions of the Basic Law. This explains why some revision of existing laws more Soviet origin and is often the practice of rejecting bills initiated. This is mainly due to the contradictions of a sex or just draft the Constitution of Ukraine.

Giving the Constitution the status of a basic law-the highest legal standards stipulated under the imperative nature of all norms, regardless of time of its adoption. They lose their strength if they come into conflict with the legal provisions of the Basic Law. This explains the reasons for the revision of the existing laws from the Soviet era and also often the practice of rejecting the bills which are being initiated. This is mainly due to the contradictions of either one single article or draft law with the provisions of the Constitution of Ukraine.

The above considered circumstances have a particular relevance to the problems of legal regulation of the domestic housing sector, particularly concerning housing and communal services. Very often they become the why there is incompleteness and imperfection of current legislation. Completeness of it is far from the necessarily legal regulation of many contradictions, which is continuously generated by both objective and subjective circumstances exercised by the market of transformation utilities. As stipulated

above the absence of the relevant provisions of this situation is almost always possible with using a factor of direct action with relation to these constitutional provisions that is directly based on the rules of law provided for them.

As regards to the civil regulation, it is based on the specification of special laws, especially on the Civil Code of Ukraine, the constitutional provisions that qualify the private side of the current stage of market development of Ukrainian society [5]. First of all, it is associated with the development of market economy. The central point of this process is for reformers to transfer the standards and regulations of civil law into the aspects of real life in a consistent market condition in which such social benefits as housing and utilities, education, medical help and other similar services would be included into the economic system of prices and begin to be regulated by civil law.

The initial basis of the whole modern state policy of market transformation of the Ukrainian housing sector is to put it on the base of the sequence of economic relations, an important place in which to take the conversion of all utilities paid in full, mostly people, goods that legal terms means the distribution of these relations the priority of the civil law. Consistent implementation of this policy involves annihilation of any circumstances caused by demographic, ideological, political or other reasons directly related to the operation and development of this institution, and therefore ignoring the humanistic side of public administration and the transformation of the housing and municipal sector is needed.

Radical-liberal reformers turned the market of transformation of the housing sector with the aim of improving the structural organization of this institution by inhumane means of extracting profit, which is fundamentally changing its nature. Accordingly, the distribution on the housing and communal sphere the mechanisms of civil regulation designed to ensure the transformation of social relations of housing and communal services to the population by a total economic cost while excluding the fact that the effectiveness of it depends on the state of various subsystems of the housing sector, various climatic and other conditions of their operation and development of appropriate regional character, etc.

The process of distribution of the norms of civil law on the relations in the housing and communal sphere began with the approval of the Law of Ukraine «On Privatization of State Housing

Fund» on 19 June 1992 [4], which received its development in the Law of Ukraine «On Housing Services» [2]. They have step by step decreased the target conditioning of operation of social and humanistic factors, the development of housing and municipal sphere and intensified their economic grounds, increased the role of the contractual relationship and therefore the civil rights without regard to the need for the interdependence of economic, social, cultural and other elements of the system of the analyzed institutions, which are threatening the stability of the Ukrainian society.

The danger of such deformation increases under the condition of exclusive competence of the government of central level, and when civil law together with law-making activity is not corrected to the field, which therefore cannot affect the above mentioned terms of efficiency and other consequences of the establishment in municipal spheres of economic dominance, cost relations.

Currently the system of civil law rules governing relations in the housing and utilities sector includes, first of all, the property relations in the various subsystems of housing, and secondly, property and contractual relationships based on legal equality of the economically independent participants in housing turnover, including regulatory agreements between housing agencies and the public on reimbursed provision of utility services, etc. Thirdly, there is the issue of the responsibility of all participants of these relations in providing utility services, whereas not only for the failure or improper performance of its contractual obligations, but also for moral damages for causing damage by the means of irrational provision of utility services.

The positive side of the inclusion of housing and communal services into the system of civil law jurisdiction is that nowadays the relations connected with the rights of citizens to a decent existence may be a subject of a judicial protection. And any decisions, actions and inaction of officials from the system of housing and utilities sector may be appealed in the court. But in order to understand and appreciate the social significance of the practice of application of civil law is often impossible without special legislation relating to housing and communal services. This is due to the fact that only a special law is designed to regulate in detail a particular group of public relations. However, many public relations require complex regulation, namely the special laws are usually rules relating to various areas of law. Therefore, the provisions of

the Civil Code of Ukraine not only prevent but on the opposite-stimulate providing special legislation with the aim of making a better use of the legal norms.

For these reasons, at the state level regulations that form the basis of the mechanism of ensuring constitutional rights in the housing and communal sphere up to an adequate standard of living and quality of housing and utilities carry out many special laws. The main law is the Housing Code of Ukraine. We should keep in mind that the nature and effectiveness of social transformation of the housing sector as the effective functioning of housing depends not only on the completeness and perfection of the legal framework, but also on the process of its formation: transparency and coordination of public opinion and other subjects of enforcement facilities, etc. Ignoring the side processes of forming legislative base, particularly transformation of the character can be fraught with negative consequences, particularly beyond the functioning of the housing sector.

Regardless of the subjective assessments of the current Ukrainian legal framework in municipal sphere it should be emphasized that the big importance for the theory and methodology of transformation of this institution has the fact that in this area the system of statutory rules and regulations is already functioning, allowing to measure housing as a transition into a market system based on other than ever before, legal, economic and organizational bases.

Pondering the first results of radical-liberal transformation of the national housing and communal services, resource and technological state of housing, the current economic situation the attention should be paid to the imbalance that has developed to this point between the legal system which was established to regulate the housing and resource capabilities, which has continued in the transformation of a society according to the basics of the radical-liberal housing strategy. This imbalance puts into question the possibility of this basic in preserving medium-term social and political stability of a society, without which all the strategy of socio-economic recovery of the country will be put under attack.

However, preliminary analysis of the lawmaking process by completing the regulatory system of transforming the housing sector shows that it obviously did not have time to adapt to rapidly changing political, economic and social situations. Even before the act is passed special laws demanded

to a conceptual change operate. With the regard to special laws, they already have several versions that reflected the very significant processing. This algorithm of improving the regulatory framework is allowed only in the times of a stable social order, effective information security, high capacity of public authorities at all levels, and under the condition of local authorities and the population responding quickly to any changes in the legislation. Legislation and legal system determines the nature and essence of the formation of social norms. The first is possible only in the evolution of this process. So we cannot say that universal rules exhaustively regulating the sphere of relations and providing activities transformed in the inutilities and housing sector exist, while that would be clearly premature.

The problems with the operation and development of housing and communal services of Ukraine always had lack of resources for expanded reproduction in the right volume and with the required quality of its material basis in the form of housing. Factors and the content of this deficiency in different periods of history are different, which determines the specific direction and content of public policy in this area.

One of the outwardly similar factors which was in the Soviet period and now is also existent is the intense population growth in large cities. Sources and drivers of growth of the urban population in the past years and today differ. Since the beginning of the XX century till the end of the 1980s industrialization and urbanization became the main reasons for the movement of rural population. These processes are characteristic of all developed countries and the result of it is the same: increase in the number and share of urban population.

Today, the influx of population in large cities has not reduced, but the difference is that not only the rural migrants, but also many inhabitants of

the doomed by the market economic decline small and medium-sized Ukrainian cities. Many of these cities became victims of the market, devastating and creating a system of settlement and resettlement in their laws that leave no room for illusions. Processes like deindustrialization, closing mines, factories, the crisis of science, culture, health care and others displace the population's settlements, and with that people are directed to large cities with more developed labor market and better conditions for survival.

Conclusions

Therefore, the housing problem was for a long time mainly solved through providing «beds» or dorm rooms, and settling the multi-family communal apartments. Millions of citizens for years stood in line to get some furnished apartments or to improve living conditions through public consumption funds. It has formed the persistent social dependency syndrome, when only a few people wanted to take the initiative and spend their money on resolving personal housing problems. In addition, the population was proletarianized with the system of limits of its profits, with the quantity and size of living spaces which should suit one separate person or family, paralyzed by organizational difficulties and were unable to participate in mass housing processes.

Thus, the system itself, suppressing every initiative in solving the housing problem, led to the creation of an infinite queue for public housing, which artificially stimulated its deficit.

These circumstances forced the paternalist principles on fundamental decisions in solving housing problems and stimulated individuals to start looking for the mechanisms of transferring the residential areas on the principles of market economy.

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