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THE POSITIVE OBLIGATIONS OF THE STATE TO PROMOTE THE REALIZATION OF THE RIGHT TO HOUSING IN THE CONDITIONS OF FULL-SCALE WAR IN UKRAINE

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Abstract. The right to housing is a person's constitutional right, a component of the right to a proper (sufficient) standard of living; the responsibility for creating the conditions for its implementation rests with the state. The state has a positive obligation to a person to create appropriate conditions for exercising and protecting the right to housing. In the need for a full-scale war, these obligations of the state transformed.

The state, adhering to the principles of private law, cannot interfere in civil (personal) relations except for exceptions established by law. In this connection, there is a need to create new and improve existing legal mechanisms to promote realizing the right to housing.

Forms of assistance in realizing the right to housing should include: 1) provision of preferential mortgage loans by state financial institutions at the expense of grant funds; 2) provision of preferential mortgage loans at the expense of budget funds; 3) formation of a housing fund for temporary residence of internally displaced persons; 4) compensation of costs for temporary accommodation of internally displaced persons; 5) compensation on the current account or financing of construction or acquisition of new real estate in case of destruction or damage of individual real estate objects.

Key words: residential relations, the right to housing, civil legal concerns, property rights, and the right to use accommodation.

Introduction. In the conditions of a full-scale war of the Russian Federation against Ukraine, the question of the state of Ukraine fulfilling its positive obligations to the owners remains relevant. It is, in particular, about realizing constitutional rights and, first of all, the right to housing. According to Art. 47 of the Constitution of Ukraine (The Constitution of Ukraine, 1996) imposes positive duties on the state, which include creating appropriate conditions for exercising the right to housing by building, purchasing, or renting it. Given the full-scale war, the damage to the housing stock is constantly increasing. According to estimates of the Kyiv School of Economics, the losses of the housing stock of Ukraine as of the end of May 2023 amount to 54 billion US dollars (Over \$54 billion..., 2023). A full-scale war against Ukraine does not release the state from its positive obligations to create appropriate conditions.

Analysis of recent research and publications. Scientists from different countries studied selected segments of this topic. Thus, D. Birchall examines two forms of international obligations in human rights: obligations to regulate the market and responsibilities in human rights protection (Birchall, 2022). However, these obligations of the state can have a negative nature. In particular, the state must prevent violations of the property rights of other subjects; that is, it must not abuse its power (Strydom, Viljoen, 2014). In addition, the issue of affordable housing in the example of the Republic of Azerbaijan was studied by Veliyev and Redkin (Veliyev, Redkin, 2022). According to Moreno, housing cooperatives are one of the forms of realizing the right to affordable housing (Moreno, 2020).

Separate issues of creating conditions for ensuring the constitutional right to housing were highlighted in Ukrainian legal and economic literature. In particular, consumer lending for housing was

considered mainly from a financial point of view. In particular, N. Tkachenko thoroughly disclosed the peculiarities of the Ukrainian mortgage lending model in general, which made it possible to determine the main directions for its improvement (Tkachenko, 2012). At the same time, M. Guba and O. Guba indicated the dependence of the affordable housing mortgage lending program on economic and political conditions since the state should act as a guarantor of the implementation of such programs (Guba M., Guba O., 2018).

The peculiarities of lending under the «Affordable Housing» program from the standpoint of legal doctrine were studied by O. Sudarenko, who pointed out the different levels of implementation of the «Affordable Housing» programs (state, local) and also noted the short-term nature of the state program, which was limited to the first contribution of an individual to the authorized banking institution (Sudarenko, 2010).

In her monograph, O. Avramova only briefly mentions the problems of returning housing to internally displaced persons from Donetsk and Luhansk regions and persons deported from them by the Russian Federation (Avramova, 2021). However, the author needs to indicate ways to solve this problem.

The mentioned scientific research was carried out before the full-scale attack on Ukraine. Therefore, they must reflect the directions of studying the right to housing in the specified conditions. Moreover, in connection with this, they do not indicate ways to solve them.

The article's purpose consists in describing forms of assistance by the state in realizing the right to housing in the conditions of a full-scale war in Ukraine.

Research methodology. To write the article, primary sources were worked out, including international acts and the legislation of Ukraine and the practice of its application (court decisions). The article analyzes the scientific works of foreign and Ukrainian authors, which are devoted to certain aspects of the investigated problem.

In carrying out the research, the authors used the Aristotelian (philosophical) method and general scientific methods (systemic, structural-functional, ascent from the concrete to the abstract, ascent from the abstract to the concrete). Considering the article's topic, the authors used special (developed by non-legal sciences, in particular, analysis of written sources) and separate (developed by legal sciences: dogmatic method, methods of interpreting legal norms) methods. The basis of the research was the dialectical method, which made it possible to analyze the topic holistically and determine the primary forms of promoting the realization of the right to housing in Ukraine.

The method of autopoiesis was also used to study the influence of economic, legal, and political factors on the state's fulfillment of its obligations to ensure the right to housing. It made it possible to reflect the mutual influence of economic, legal, and political components, as well as to demonstrate the importance of each of them. When writing the article, the comparison method was used, which made it possible to distinguish the features of each of the forms of assistance in realizing the right to housing in the conditions of a full-scale war.

The scientific research was carried out in several stages, considering the volume of the studied material and the need to justify the conclusions drawn. In the first stage, the analysis of scientific works of foreign and Ukrainian scientists, as well as other published materials, was carried out. In the second stage, the forms of promoting the realization of the right to housing in the conditions of a full-scale war were defined. In the third stage, an attempt was made to reveal the proposed forms contributing to the realization of the right to housing in conditions of full-scale war.

They are presenting the main material. The right to housing is one of the fundamental constitutional rights of a person, an integral part of the right to a decent life. During constant rocket and artillery attacks, not only do people die, but residential buildings are destroyed, which are often the only shelter. Whole settlements are being destroyed. In such conditions, the state must fulfill its positive obligations to ensure a person's right to housing. Not all internally displaced

persons and other persons whose accommodation has been destroyed can independently purchase or rent new housing.

The state's positive duties consist of providing an individual with opportunities to provide housing. These duties are both regulatory and protective in nature. Regulatory responsibilities are creating legal and economic mechanisms to ensure adequate living conditions. In the need for a full-scale war, these duties transformed. The state, adhering to the principles of private law, cannot interfere in civil (personal) relations except for exceptions established by law. This approach corresponds to the European tradition of state participation in private associations. It is entrusted with the duty to regulate relations that arise in the state to participate in them on an equal basis with other participants in personal concerns. Still, the state's intervention in these relations is limited. That is why the state can regulate the prices of essential goods, but it cannot set the maximum amount of rent for housing, regardless of the form of ownership.

This became the basis for using existing and the need to create legal mechanisms that could relatively quickly create suitable conditions for permanent or temporary residence for persons who do not have the funds to provide housing for themselves and their families. Among the existing legal mechanisms, the state and territorial communities, through local self-government bodies, use bilateral contractual cooperation with charitable foundations, companies, and governments of foreign countries. Such examples are the RE:Ukraine Housing project, which includes the construction of a modular town in Vorzel (A modular town for immigrants..., 2023) or the provision of loans for internally displaced persons at the expense of grant funds from the German government provided through the KfW Development Bank (A credit for internally displaced persons..., 2022). The provision of these loans is based on the Procedure for preferential mortgage lending to internally displaced persons at the expense of grant funds provided by the Credit Institution for Reconstruction (KfW), Resolution of the Cabinet of Ministers of Ukraine (2021).

Such cooperation involves the availability of means of control over the use of funds, as well as considering the requirements of charitable funds and foreign financial institutions and governments regarding the documents necessary for granting credit or assistance, determining the list of persons who can apply for them. In addition, the provision of credit funds provided by benefactors requires the approval of relevant state programs at the national level. However, these existing forms of facilitating the realization of the right to housing have transformed because the range of subjects needing accommodation has changed, as well as objects that can be granted loans or provided to persons needing housing.

To provide internally displaced persons with housing, the government initiated the formation of housing funds intended for the temporary residence of internally displaced persons (Resolution of the Cabinet of Ministers of Ukraine «Some measures for the formation of housing funds..., 2022). It seems that this Resolution of the Cabinet of Ministers of Ukraine, like other acts, must comply with the Constitution of Ukraine and the laws of Ukraine, i.e. comply with the Law of Ukraine «On Housing Fund for Social Purpose» (2006), since the definition of housing fund for social purpose also includes cases of providing housing to internally displaced persons persons who need it. After all, the said Resolution should contain a definition of the term «modular house.» Moreover, in general, the legislator must indicate that modular houses are placed temporarily on land plots, except for cases when the land plot owner places a modular home for permanent residence of individuals.

In connection with the growth of housing prices in the regions that are located far from the zone of direct hostilities and the decrease in the solvency of the majority of the population, the program of affordable mortgage lending has transformed. This led to the adoption of the Resolution of the Cabinet of Ministers of Ukraine: «Some issues of providing affordable mortgage lending to citizens of Ukraine by the private joint-stock company «Ukrainian Financial Housing Company» (2022). The difference between this credit program and the provision of loans to internally displaced persons at the expense of KfW funds is that the list of categories of persons who can initiate the conclusion of

a credit agreement has been expanded, and financing is carried out at the expense of budget funds. Both programs operate in parallel and aim to provide housing to different population segments. An indisputable positive point of both programs is a preferential loan rate, which provides an individual with a real opportunity to acquire his own home in conditions of economic instability.

One of the new forms that contributed to the realization of the right to housing is the «Shelter» social program, which operates by the Decree of the Cabinet of Ministers of Ukraine (Resolution of the Cabinet of Ministers of Ukraine «On approval of the Procedure for compensation of costs...», 2022). In essence, «Shelter» is a state platform that provides interaction between persons who need housing and those willing to offer it, with subsequent compensation of part of the costs. It also demonstrates the use of modern technologies in implementing government programs to facilitate communication between different entities. It also shows that state bodies are looking for opportunities to involve individuals and legal entities in social projects in conditions where the state cannot directly, without outside help, implement the social functions assigned to it in conditions of a full-scale war.

Another form of promoting the realization of the right to housing is compensation for the cost of destroyed or damaged housing. Such payment is carried out based on the Law of Ukraine «On compensation for damage and destruction of certain categories of immovable property as a result of hostilities, terrorist acts, sabotage caused by the armed aggression of the Russian Federation against Ukraine, and the State Register of property damaged and destroyed as a result of hostilities, terrorist acts, sabotage caused by the armed aggression of the Russian Federation against Ukraine» (2023). This Law allows for receiving funds as compensation for a current account or financing the construction or purchase of new real estate. The existing account to which the payment is transferred is limited to a particular purpose, i.e., funds can be spent only on materials necessary for construction.

Both cases involve the simultaneous conclusion of an agreement on ceding to the state or territorial community the right to demand compensation for damages for destroyed, damaged real estate. In the future, the owner who received compensation at the expense of budget funds cannot apply for a lawsuit or claim compensation for damages at the cost of seized assets of the aggressor since this right was transferred to the state or territorial community based on the contract.

At the same time, the Law defines a list of real estate objects, the cost of destruction or damage of which can be compensated at the expense of budget funds. We are talking about residential and construction things, both after being put into operation and those not put into operation but for which the right to perform construction work has been obtained. In other words, the owner of the object of unfinished construction can receive compensation, provided that it has been started with the documents specified by law in the manner prescribed by law.

Regardless of the definition of the priority right to receive compensation in the mentioned Law (Article 9), the questions regarding the order of consideration of applications in the event of their receipt from a person who is the owner of the only destroyed property and a person who has another home for living remain unresolved. This problem arises when the owner has several residential premises, part of which he rents out, and can provide himself with housing. Still, the person who lost only housing belongs to someone other than the list of persons with the priority right to receive compensation.

Moreover, the legislation of Ukraine does not contain a direct prohibition of combining several forms of facilitating the realization of the right to housing in conditions of full-scale war. Exceptions are cases when loans at preferential loan rates are determined under the terms of the competition. Moreover, the existing forms of assistance in realizing the right to housing in the vast majority concern internally displaced persons. However, due to the rocket attacks, the problem of ensuring the right to housing also affected those who do not belong to the category of internally displaced persons.

Conclusions. In the conditions of a full-scale war, the state's positive obligations to ensure the realization of the right to housing transformed. As a result of the conducted research,

the forms of assistance in realizing the right to housing include 1) provision of preferential mortgage loans by state financial institutions at the expense of grant funds; 2) provision of preferential mortgage loans at the expense of budget funds; 3) formation of a housing fund for temporary residence of internally displaced persons; 4) compensation of costs for temporary accommodation of internally displaced persons; 5) compensation on the current account or financing of construction or acquisition of new real estate in case of destruction or damage of individual real estate objects. Each of these forms needs improvement and further implementation.

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