

DEFENCE AND PROTECTION OF HOUSING RIGHTS IN A CIVILISTIC (LEGAL) PROCESS

Oleksandra Karmaza¹

Daruna Koucherets²

DOI: <https://doi.org/10.30525/978-9934-588-38-9-42>

Abstract. The relevance of the study is determined by the value of housing as a particularly valuable material good in the life of each person, as well as the fact that housing rights in the state should be provided with an effective legal mechanism. On the basis of the theoretical generalization of scientific opinions, the practice of the European Court of Human Rights focuses on the fact that in the broad sense of housing as the subject of the material world, in respect of which there are civil rights and obligations, has a significant value for every person from birth to death, because it provides the biological need for living, affects the psychological state (provides emotional and spiritual rest), plays an important role in the creation and preservation of family relationships, and from the religious and ethnographic point of view can be certain «awe». In the narrow sense, the housing, as a place of permanent residence – it is proposed to consider as a real estate, intended and suitable for habitation of natural persons, which meets the sanitary and technical rules, other requirements established by the legislation concerning living quarters, has individual characteristics, is the object of civil rights, the right to which Acquired on grounds not prohibited by law but terminates in cases determined by law and subject to state registration.

The following signs of housing are established: 1) legal features arising from the recognition of residential real estate, in respect of which there are civil rights and obligations, and other features established by law; 2) legal fact (recognition of a place of residence), which is associated with the emergence and termination of residential relations. Based on the analysis of legal features of housing, the main (object of civil rights and responsibilities, appoint-

¹ D.Sc. (Law), Professor, Professor Institute of Continuing Education, Taras Shevchenko National University of Kyiv, Ukraine

ORCID: <https://orcid.org/0000-0003-4895-5220>

² D.Sc (Law), Associate Professor, University of Modern Knowledge, Ukraine

ment and suitability for permanent residence, etc.) and additional (property property insurance) features are allocated. In the context of the development of the position of the European Court of Human Rights, the opinion on the extension of the legal regime of housing in court in cases established by law, on movable property and non-residential premises, which are the only permanent place of residence of citizens, is upheld. It is proved that the spread of such a regime is not a restriction of citizens in the implementation of their constitutional right to housing (Article 47 of the Constitution of Ukraine).

It has been established that «the right to housing» and «housing rights» are different concepts. It is proved that the realization by citizens of the constitutional right to housing takes place mainly in public law within the limits, in the manner and procedure established by law, and precedes the emergence, change or termination of residential rights that are guaranteed by the rules of material and procedural private law, protected and protected by the state.

It is proved that the concept of «civilistic process» is a general legal category that unites independent civil legal processes (notarial, civil, executive), connected with the legal purpose – to defense and protect the housing rights of citizens. The theoretical model of the civilistic process in the context of securing housing rights is substantiated by its procedural and legal nature, structure, interconnection and interaction of independent civil legal processes, a special place for the notarial process as a self-regulatory mechanism for securing unquestionable housing rights, enforcing the content housing rights.

1. Introduction

According to Art. 3 of the Constitution of Ukraine, the adoption and enforcement of human rights and freedoms is the main duty of the state. The state creates the conditions under which every citizen will have the opportunity to build housing, acquire property or rent it (Article 47 of the Constitution of Ukraine). In case of violation, non-recognition or contesting the right of citizens to housing, their rights are protected by the court (Article 55 of the Constitution). Thus, at the legislative level, citizens of Ukraine, as well as foreigners and stateless persons in Ukraine are guaranteed and provided with defence and protection of the right to housing.

Citizens of Ukraine, as well as foreigners, who are legally staying on the territory of Ukraine, can exercise their right to housing in the notarial, civil and executive processes of Ukraine. Thus, the protection of the right to housing in

Ukraine is dynamic and is implemented on the will of the person, the availability of the rule of law, as well as other grounds established by the law of Ukraine.

The choice of a specific form of protection of housing rights of citizens is determined by the legal nature of housing rights. So, in the case of the opening of an inheritance, which includes housing, the protection of the rights of heirs is carried out in a notarial process. However, when a dispute arises regarding housing, the dispute is adjudicated. It is advisable to talk about the full restoration of violated housing rights of citizens only when the court decision is not only entered into legal force, but is also voluntarily or forcibly enforced. That is, the protection of housing rights of citizens in the executive process is carried out in close interaction and interconnection with the protection of these same rights in notarial and civil proceedings.

The criterion for combining these legal processes into one civilistic process is the nature of the housing relationship, which is based on the rights and obligations of their entities, and allows to study such relationships comprehensively: their implementation in the notarial process, protection in the civil process and restoration in the executive process and etc.

Consequently, the relevance of the research topic is determined by the importance of housing as a particularly valuable material benefit in the life of every person, as well as the fact that the right to housing in Ukraine is ensured by a special legal mechanism. In addition, according to the modern period of development of the state and Ukrainian law, there is a need to solve housing problems with the help of new conceptual approaches, in particular, by creating at the scientific level a holistic legal institution of a civil law legal process in which independent legal processes (notarial, civil and executive processes) united by a common legal goal to ensure the defence and protection of housing rights of citizens in Ukraine. This study is a continuation of the work of authors [1] and other studies of O.Karmaza on the defence and protection of the right to housing in Ukraine [2; 3], as well as Ukrainian researchers in the field of the civil process (I. Bondar [4], T. Kucher [5], I. Izarova [6], etc.).

The purpose of the work is to carry out a comprehensive analysis of the protection of the right to housing in notarial, civil and executive processes under the legislation of Ukraine. The achievement of the goal involves the solution of the following scientific problems: to carry out the research of the theoretical bases of protection of housing rights in the mentioned legal processes of Ukraine; to analyze the current state of regulation of public

relations regarding housing in the civilistic process; identify the causes that lead to violations of the housing rights of citizens in Ukraine.

The methodological basis of the study is the general scientific, philosophical and special legal methods of scientific knowledge of social phenomena, in particular, those related to the protection of the right to housing in Ukraine.

2. Correlation between Notary, Civil, and Enforcement procedures in the field of protection of Ukrainians' housing rights

According to Art. 15 of the Civil Code of Ukraine (hereinafter – the Civil Code) a person has the right to defend his civil right in case of violation, non-recognition or contestation. That is, the protection of housing rights is proposed in civil proceedings (there is a dispute about law). Therefore, by means of protection of housing rights under Art.16 of this Code is: recognition of the right, invalidation of the transaction, termination of the infringing act, termination of the legal relationship, etc.

In addition, the protection of housing rights is exercised even when the rights are indisputable, in particular, in accordance with Art.18 of the Civil Code in the notarial process is the protection of rights, for example, by executing an executive inscription on the housing debt document, or otherwise.

We believe that protecting the housing rights of citizens requires a comprehensive study: from the exercise of such rights in the notarial process, their protection in the civil process and restoration – in the enforcement process. Therefore, the unification of these independent legal processes with a common legal purpose, namely the realization, protection, defence and restoration of the housing rights of citizens, is proposed at the scientific level in the civilistic (legal) process. The term «civilistic process» is a scientific category and is used to summarize independent civil legal processes, such as notary, civil and executive [7].

It is also worth noting that the legal category “civilistic process” is the subject of research by domestic and foreign scientists (I.Bodnar, O.Karmaza, T.Kucher, M.Kurilo, S.Fursa). Summarizing the scientific views on the civil process [8; 9; 10], we conclude that the civil process in the context of the protection and protection of housing rights is a generalizing legal category that combines independent civil legal processes interconnected by a common legal goal (notarial, civil and executive), in which, within the limits, in the manner and in the manner established by law, the housing rights of citizens are realized, defended, protected and restored.

In accordance with Art. Art. 6 and 19 of the Constitution of Ukraine, it is the law that defines the boundaries, method, order and procedure for the implementation, defence, protection and restoration of housing rights in the civil process. So, protection of rights in the notarial process is carried out on the basis and in the manner determined by the Law of Ukraine “On Notaries”, in the enforcement process – by the Law of Ukraine “On Enforcement Proceedings”, in the civil process – by the Civil Procedure Code of Ukraine (hereinafter – the Civil Procedure Code), etc. In addition, in the event that notarial, civil or executive-procedural relations complicated by a foreign element, the provision of housing rights is subject to the requirements of the Law of Ukraine “On Private International Law” and current international treaties of Ukraine.

We agree with I.Gritsenko and M.Pogoretsky, who argue that “not independence, but unity should characterize the successful interaction of various branches of government” [11, p. 267]. In addition, in the Decision of the Constitutional Court of Ukraine of April 1, 2008 No. 4-rp/2008 (case on the Rules of Procedure of the Verkhovna Rada of Ukraine) draws attention to the fact that “the strict observance by the legislative, executive and judicial authorities of the Constitution and laws of Ukraine ensures the implementation of the principle of separation of powers and is the key to their unity, an important condition of stability, maintenance of civil peace and harmony in the state».

That is, a notary public, a judge and a performer who, by law, defense and protect housing rights, are required to act on the basis, within the powers and in the manner provided for by the Constitution and laws of Ukraine. Thus, the unity of the defense and protection of housing rights in legal processes is achieved through the implementation by the authorized state bodies, their officials of a legislatively defined interaction based on the differentiation of powers and functions between these bodies and individuals, as well as compliance with the requirements of the Constitution and laws of Ukraine when achieving a common goals – the defence and protection of housing rights of citizens.

So, according to Article 124 of the Constitution of Ukraine, as well as the requirements of the Civil Procedure Code and the Law of Ukraine “On the Judicial System and the Status of Judges”, the court takes part in the legislatively defined mechanism for protecting violated, unrecognized or disputed housing rights in the civil process through the administration of justice. That is, in the event of a dispute about the right to housing – the dispute is resolved in court. Thus, the protection of housing rights in the

notarial process is terminated, and further protection of the rights is carried out in the civil process.

In addition, an analysis of Art. 18 of the Civil Code gives reason to conclude the interaction and interconnection of notarial and executive processes in order to protect housing rights. So, for example, in order to satisfy the requirements of the claimant under a housing lease (rent) agreement, the notary, in the absence of a dispute, makes an executive inscription on the recovery of the debtor's money. Moreover, according to Art. 90 of the Law of Ukraine «On Notaries» the collection of funds stipulated by the contract of rental (lease) of housing by executive inscription is made in the manner prescribed by the Law of Ukraine «On Enforcement Proceedings». Thus, in accordance with Art. 3 of the Law of Ukraine «On Enforcement Proceedings», the notarial writ is an executive document, on the basis of which enforcement proceedings are opened and carried out by bodies and persons who enforce decisions in the manner and manner specified by this Law.

So, the defence and protection of housing rights in the civil process is based, in particular, on the principle of comprehensive defence and protection of housing rights. So, notaries defend and protect the indisputable housing rights of citizens within the powers granted to them by the Constitution, the laws of Ukraine «On notaries», «On state registration of rights to real estate and their burdens», «On international private law», etc., and in a manner defined by law, in particular, the Law of Ukraine «On Notaries», the Civil Code, the Housing and Family Codes of Ukraine, etc. Scientific and practical analysis of the norms of the Law of Ukraine «On Notaries» has shown that ensuring the housing rights of citizens in the notarial process essentially viewed through the prism of the commission of a notary public notary proceedings within the notary production of housing in compliance with the material (standards of housing, family and civil law) and procedural rules (norms of legislation in the sphere of notary), enshrined in the laws of Ukraine.

For example, the protection of housing rights in notarial proceedings by: the certificate of indisputable right is that the notary, having carried out a number of notarial procedural actions specified by law, issues, in particular, the certificate of the right to inheritance and carries out the state registration of housing rights (therefore the notarial process interacts with the administrative process in the aspect of providing administrative services), etc. That is, the protection of housing rights in the notarial process is carried out by a notary

(or by another person authorized by law, within the limits of his powers) by legal confirmation, consolidation and state registration of the rights to housing of citizens, as well as by protection of the violated indisputable right.

It is worth noting that the civil process aimed at ensuring housing rights, in practice, may not combine several legal processes, since, for example, the protection of citizens' housing rights, provided they are indisputable, will be carried out only in the notarial process. For example, at the request of the tenant and landlord, a written contract for the rental of housing is certified by a notary public. If during the validity of such an agreement or after its termination the parties do not have a dispute, it is possible to talk about ensuring housing rights only in the notarial process, that is, without further protection in other legal processes that are part of the civil process.

But “full-fledged” protection of housing rights, which are controversial, is possible only if independent legal processes interact in the civil process (for example, the law stipulates the opening of enforcement proceedings (enforcement process) after the entry into force of a court decision (civil process)).

So, in the theory of the civilistic process, we can talk about the relationship and interaction of independent legal processes related to ensuring the same right to housing, and which follow each other, since this order is determined by law, however, the length of the procedural periods in each of these legal processes different and established by law.

Once again, we observe that the observance of the principles of unity and comprehensiveness of the protection of rights is ensured by the exercise of authority by state bodies in the manner and manner provided for by the Constitution and laws of Ukraine. Thus, the protection of housing rights in the enforcement process is carried out within the powers of state executors and in the manner specified by the Law of Ukraine «On Enforcement Proceedings», in compliance with the requirements of the Constitution and other laws of Ukraine, in particular, the Housing Code and the Civil Code, the Law of Ukraine «On Private International Law» acting international treaties of Ukraine.

A scientific and practical analysis of the content of the norms of the Law of Ukraine “On Enforcement Proceedings” gives reason to conclude that the powers of the state executive service and private performers in the field of protection and restoration of housing rights, in particular the enforcement of decisions of courts and other bodies, are subject to enforcement by law execution. But, according to article 5 of the Law of Ukraine «On Enforcement Proceed-

ings», private executors do not have the right to enforce decisions on eviction and resettlement of individuals, as well as other decisions, the list of which is defined in this article of the Law. Please note that the institution of private performers for Ukraine is new, and began to exist in connection with the adoption of the new Law of Ukraine “On Enforcement Proceedings”. In our opinion, at the scientific and theoretical levels, it requires thorough research [12].

Thus, the principle of the unity of the protection of housing rights in the civilistic process, namely in the enforcement process, is manifested in the protection and restoration of such rights through the enforcement of the compulsory measures provided for by this Law, in particular: seizure of housing (Articles 48, 50, 51), seizure of housing (Art. 56), removal of arrest from housing (Art. 59), confiscation of housing (Art. 62), eviction of a debtor (Art. 66), settlement of a person (Art. 67).

For example, in accordance with Art. 26 of the Law of Ukraine «On Housing for Social Purpose» violation by the tenant of the terms of the lease agreement entails the submission by the landlord of a lawsuit for eviction. In the event that a court decision on the eviction of citizens from such housing comes into legal force and its voluntary non-fulfillment by the persons specified in this decision, the contractor shall open enforcement proceedings and carry out procedural actions established by the Law of Ukraine «On Enforcement Proceedings».

That is, the protection of rights in the civil process is ensured by the interaction of civil and executive processes. In addition, the Constitutional Court of Ukraine draws attention to the interconnection of legal processes. In particular, the Court noted that the enforcement of a judgment is an integral part of everyone’s right to judicial protection (Decision of December 13, 2012 No. 18-rp/2012); Failure to comply with the judgment threatens the essence of the right to a fair trial (Decision of April 25, 2012 No. 11-rp/2012). So, the failure of the executor to take legal, full-fledged and timely measures to enforce the court decision, for example, to instill the parents of the employer in the tenant’s housing (art. 161 of Housing Code), in the manner prescribed by law, is a violation of the requirements of art. 3 of the Constitution regarding the fulfillment by the state of its obligations.

Protection of housing rights in the enforcement process may occur “in parallel” with the civil process. For example, in accordance with Art. 4 of the Law of Ukraine «On Enforcement Proceedings» in case of non-compliance of the executive document with the requirements provided for by this article, the recoverer

has the right to apply to the court or other body (official) that issued the executive document to bring it into compliance with the specified requirements.

That is, in the civil process there is a “parallelism” of legal processes aimed at ensuring housing rights, namely: civil and executive or notarial and executive. However, the length of the procedural deadlines in legal processes is different: the civil process ends earlier than the executive process.

We also note that the “parallelism” of the existence of independent civil legal processes is possible provided that there is no duplication of actions in the civil process aimed at defending, protecting and restoring housing rights (for example, to prevent the simultaneous implementation of order proceedings and notarial proceedings to recover funds for utilities, etc.).

A protection of civil rights to a civil loan process is especially small in the middle of sovereign (jurisdictional) forms, I will be clean, the most universal in nature and guaranteed by the Constitution of Ukraine. So, according to art. 124 of the Constitution, judge the judiciary in Ukraine, in the form of an autonomous galaxy of state power, in the context of Art. 55 of the Constitution, in order to preserve the rule of law in ambush, to protect the function of the purge of the main rights and the law of the interests of the legal entities and /or legal entities in the field of legal rights (October 10, 2008). In fact, the court is a single body of sovereignty, some kind of justice, no more justice, no lesser respect for rights, no less rights, no less, no less, no less, no less, no less, no less.

As already noted, protection of housing rights in the civil process is in compliance with the requirements of Art. Art. 19, 124 and 129 of the Constitution and in accordance with the rules of the Civil Procedure Code , according to which, in the exercise of justice, the court protects the housing rights and interests of individuals in the manner determined by the law of Ukraine.

That is, according to Art. 16 of the Civil Code the methods of protection of housing rights in court are: recognition of the right to housing (applicable in case of dispute over the right to housing); invalidation of the housing transaction (takes place in the case of a contested transaction); compulsory in-kind fulfillment (requiring the obliged person to take action or to refrain from acting); termination of the residential legal relationship, etc.

We also note that, in our opinion, the protection of housing rights in the civil process in cases prescribed by law may be exercised after securing such rights in the notarial process. Therefore, we support with some clarification the suggestion of scientists and practitioners to secure at the legisla-

tive level of the Institute of providing evidence by a notary. We believe that in order to effectively protect housing rights in court, a more effective way of protecting rights in the notarial process is to provide evidence by a notary public to initiate civil proceedings in housing cases.

The only state body that resolves the housing dispute in Ukraine is the court. There is no alternative legislatively determined mechanism for resolving such disputes in Ukraine. However, foreign countries (e.g. Germany, France, Switzerland) have regulated the mediation procedure. Therefore, an alternative method of resolving housing disputes in the civilistic process without going to court is proposed – negotiation of the parties to the dispute, which will take place with the participation of a notary as mediator in the notary process, provided that this issue is resolved at legal, organizational and professional levels. Thus, the issue of mediation in the notarial process is relevant and needs additional research.

Please note that a further direction of legal intelligence may be a comprehensive study of the civilistic process, since it is reasonable to conclude that the civilistic process combines both civil and economic processes (judicial form of state protection of rights and interests of individuals and legal entities), and executive and notarial processes (extra-judicial form of state protection). In addition, when it comes to the protection of rights in an arbitral tribunal or the resolution of a dispute resulting from the involvement of a mediator, procedural «tools» are used to resolve the case on the merits. For example, the process of mediation consists of procedural stages (stages), each of which through procedural actions achieves the goal and task, the transition from one stage to another is possible only if the complete task (goal achievement) of each stage of the process. That is, the process of mediation, the procedure for considering a case in an arbitral tribunal are characterized by the procedural content and form, the sequence of procedural actions in achieving the goal, and so on. At the same time, unlike the arbitration process of a case, which is carried out in compliance with the provisions of the Law of Ukraine “On Arbitration Courts”, the procedure of consideration of cases in the mediation process has no legal basis in Ukraine.

Thus, the civilistic process encompasses both judicial and extrajudicial forms of state defense and alternative non-state forms of protection of the rights and interests of individuals and legal entities. Therefore, the modern concept of the protection of rights in the civilistic process involves several independent legal processes as well as alternative processes (mediation process, arbitration process).

3. The concept of “right to housing” and “housing rights”

On the basis of a theoretical generalization of scientific thoughts and the practice of the European Court of Human Rights in previous studies, we have proved that in a broad sense housing is the subject of a material world in which civil rights and obligations arise, has significant value for every person from birth to death, as it provides biological need for living, affects the psychological state (provides emotional and mental relaxation), plays an important role in creating and maintaining family relationships, and religious and ethnographic point of view can be a kind of «talisman». In the narrow sense, housing is a place for permanent residence – it is proposed to consider it as real estate intended and suitable for living by individuals, meets sanitary and technical rules, other requirements established by the legislation on residential premises, has individual characteristics, is the subject of civil rights, the right for which it is acquired on grounds not prohibited by law, but terminated in cases specified by law, and is subject to state registration.

The rights of a natural person related to housing are guaranteed by the Constitution and are enshrined in the laws of Ukraine, included in the system of general human rights, and are the subject of scientific research, etc. Since civil rights are exercised and implemented around an object-housing, they can be conventionally grouped into a group of housing rights. United in this way, housing rights do not have particular features but are only a conditional combination of various rights around the object – housing. Such an association leads to the fact that the doctrine of social relations in relation to housing is considered as complex [13]. We believe that in case of realization by citizens enshrined in Article 47 of the Constitution, rights to housing within the limits provided to them by law, this gives rise to, change and termination of residential rights. Therefore, we agree with the scientists who consider «housing rights» and «the right to housing» as different concepts, and housing rights as derivatives from the constitutional right to housing.

It should be noted that from the point of view of the theory of natural law, the right to housing is a natural and inalienable right without which a person can not exist in a society. This right is closely intertwined with the social economic policy of the state. Providing the state with proper conditions for the implementation of the right to housing and guaranteeing the inviolability of the law points to the level of development of democracy in the country. Ensuring the right to housing is carried out at the interstate and

national levels. Thus, the Universal Declaration of Human Rights stipulates that everyone has the right to a standard of living, including housing, which is necessary to maintain the health and well-being of himself and his family (Article 25). The rules on the right to housing as part of the right to an adequate standard of living are contained in Article 11 of the International Covenant on Economic, Social and Cultural Rights. This right is proclaimed in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter. In addition, the right to housing is guaranteed by the constitutions of foreign states.

For example: by the Constitution of Bulgaria (Article 33), Honduras (Article 178), Ecuador (Article 19), Estonia (Article 33), Spain (Article 47), Lithuania (Article 24), Macedonia (Article 26), Moldova (Article 29), Germany (Article 13), Slovenia (Article 36), Russia (Article 40), Finland (Article 15 (a) (4)), Croatia (Article 34), etc.

In the Constitution of some foreign states, in addition to the general right of citizens to housing, the children's right to housing is specifically enshrined (Article 203 of the Constitution of Brazil, Article 123 of the Constitution of Honduras, Article 199 of the Constitution of Bolivia). We believe that the protection of the rights of the child to housing is the most important issue for each country. The future of the state is manifested in guaranteeing the rights of the child and their proper implementation in various spheres of public life, as well as the protection, protection, and restoration of these rights. In this regard, the child's right to housing, as well as the right to adequate living conditions for its development in Ukraine, may be enshrined in Article 47 of the Constitution of Ukraine.

The constitutional right to housing in Ukraine is enshrined in Section II «Rights, Freedoms and Responsibilities of a Person and Citizen», belonging to a person, a citizen, and not to state bodies or legal persons. The constitutional right to housing is not a «gift» from the state; it arises in a person from his birth, is inalienable, and terminates with the death. This right is closely linked to other human rights, such as – the right to a family, to health care, to a safe environment, etc. Therefore, in practice, there are not surprising cases in which the obstacle to the creation or preservation of an existing family is the housing problem – the inability of citizens to realize the right to housing as a result of many factors, which, in particular, do not depend on the will of the person.

The main responsibilities that follow from the constitutional right to housing are the state itself. After analyzing the norms of Ukrainian legislation, we come to the conclusion that the duties that are the result of the citizens' realization of the constitutional right to housing include: implementation of a number of measures aimed at the legislative recognition of all components of this right; development and implementation of effective housing construction programs; provision of housing in accordance with the law to all those who need it; guarantee of equality of realization of the right throughout the territory; ensuring the right to adequate living conditions of citizens, etc.

There is no unambiguous definition of «the constitutional right to housing» definition in legal science. For example, I. Spasibo-Fateeva notes that the constitutional right of an individual to housing is the right to such a blessing through which he can realize his immediate needs for physical and spiritual life. In relation to housing there is a dichotomy of rights – property and non-property. The property right to housing is the ability to reside in a suitable home for this property; personal non-property rights – this right to the inviolability of housing [14].

In our opinion, in the broadest sense of the constitutional right to housing is a guarantee at the level of the Constitution, consolidation in legislative acts and the realization in practice of such conditions in which a person will have a sufficient standard of living for himself and his family, including gaining social or affordable housing, creation of proper and sufficient living conditions by the state that affect its physical, mental and social well-being, as well as his development as an individual in society. In the narrow sense, it is an opportunity for an individual to own or own a housing in accordance with the contract of hire (lease), use of housing and demand from obliged entities to ensure the realization of this right in full, as well as apply to the state authorities for protection and the restoration of their housing rights.

Article 47 of the Constitution stipulates that the state creates conditions under which each citizen will be able to build housing, purchase it or lease it. The housing is provided by the state and local governments free of charge or at affordable for them according to the law for citizens in need of social protection. That is, at the constitutional level, there is a model of the possible behavior of subjects for implementing in practice the constitutional right to housing. The implementation of this right, as well as other rights related to housing, gives rise to, change or termination of subjective hous-

ing rights. So, the citizens implement the right to housing (in the context of Article 47 of the Constitution) by individual construction; housing privatization; provision of housing for hiring a social contract; the acquisition of the right to housing at their own expense, as well as the fee payable to them, etc. In our opinion, in Ukraine, the need for a transparent mechanism for the formation, financing, distribution, and management of social housing, which is provided to citizens, incapable of resolving their own housing problem. In addition, it is proposed, taking into account the solvency of citizens, to provide citizens with affordable housing, that is, housing for their affordable payment (with the possibility of payment of the amount of housing in several stages).

It is also worth noting that the implementation of the constitutional right to housing and housing rights has certain limits established by law, is carried out in compliance with material and procedural norms, in accordance with the procedure established by law, is protected and protected by the state. Choosing a way to implement residential rights depends on the purpose, as well as legal and financial aspects. For example, the receipt of official housing will be denied if the person does not confirm its classification as a category of persons who may be provided with the official housing (Articles 119 and 126-1 of the Housing Code of Ukraine). Considering that the citizen owns a land plot granted to him for construction, he can realize the right to housing by means of individual housing construction by acquiring the ownership of such housing in accordance with the procedure established by law.

In the objective sense, the content of residential rights is reduced to a combination of general (constitutional) and specifically (sectoral) norms for satisfying a citizen's need for housing. Thus, objective housing law is a model of the possible behavior of subjects, and subjective housing law is a model of permissible or permissible behavior.

We draw attention to the fact that housing rights also have other features. Objective housing law is static and can not be in dynamics, whereas subjective housing law is from the moment of its occurrence in the state of implementation (dynamics). Thus, the fact that in the norms of objective housing law the possibility is transformed into reality by means of legal facts, voluntary acts of the subjects, and as a result, there arises subjective housing right.

When implementing the constitutional right to housing by some own will and having the requisite legal capacity and capacity, an individual acquires ownership of the housing (as a result of privatization, donation, sale, etc.) or use (on the basis of a housing and employment contract) on the basis of an authority approved by the state power or local government decision and receives a title document (for example, a certificate of ownership). In the case when this right is realized in the notarial process, the person acquires the right to housing: by concluding civil-law contracts, as well as contracts, although not provided for by law, but which are consistent with the general principles of civil law, etc. In the civil procedure, the basis for the rights to housing is a judicial decision that has come into legal force.

The implementation of housing rights is possible to investigate: as acts – established by law procedural actions (inaction) of the subject in a particular legal process, which are aimed at achieving the legal and actual result (for example, to solve the housing problem); as the «laid down» in the housing law the purpose – the acquisition of the right to housing. Having observed the legal nature of residential rights, we note that the implementation of subjective housing law is not the choice of a possible mode of behavior from the provided by a law the volume of opportunities (this is only part of the possibilities provided by the subjective right), but directly itself the behavior of a person, as a result of which the constitutional right to housing is implemented. Therefore, the choice of behavior within existing within the subjective right of authority, is a volitional decision of the subject.

At the same time, it should be noted that such a voluntary decision of the subject to implement housing rights shall be authorized by the state (proper form, procedure, content, content), based, in particular, on the principles of the rule of law, legality, etc. In case of non-compliance by the subject of housing relations, the algorithm of behavior (actions or inactivity) enshrined in the norms of law, in practice, will not achieve the goal (for example, the acquisition of ownership of housing). To date, there are not surprising cases when citizens violate the principle of law and implement the constitutional right to housing, in violation of the law, in particular, the notarization of a contract and state registration of the right to housing. For example, in violation of the principle of legality, citizens exercise their right to housing by entering into a stock exchange agreement

that, as rightly pointed out in court decisions, is not a title document on housing, and the parties thus failed to comply with the notarial form of the contract (case № 22-и/490/7771/12 dated September 10, 2012; the case № 22и-2257/11 dated August 31, 2011) [15].

So, the «right to housing» and «housing right» are different concepts. The exercise by citizens of the constitutional right to housing takes place mainly in public law within the limits, manner and procedure established by law, and precedes the emergence, amendment or termination of housing rights provided by substantive and procedural private law, are protected and protected by the state.

4. Conclusions

Summarizing the above, we note that the concept of “civilistic process” is a generalizing legal category that combines independent civil legal processes (notarial, civil, executive) related by a legal goal – ensuring the defence and protection of citizens’ housing rights. The theoretical model of the civilistic process in the context of ensuring housing rights is justified by its procedural and legal nature, structure, interconnection and interaction of independent civil legal processes, the special place of the notarial process as a self-regulatory mechanism for ensuring indisputable housing rights, and the provision of civil and executive processes for the protection and restoration of housing rights.

The legal functionality of the interaction and interconnection of notarial, civil and executive processes in the model of the civilistic process aimed at ensuring housing rights is revealed in a combination of the constituent elements of the notarial, civil and executive processes: one legal process leads to the emergence of another legal process, and when the offense continues, to its forced recovery. In addition, the protection of housing rights in court is a guarantee of eliminating errors and offenses committed by the subjects of notarial procedural relations in the notarial process.

The modern concept of the defence and protection of housing rights in the civil process must simultaneously include three processes – notarial, civil and executive, unless otherwise provided by law, since their associations justify the completion of the civil process to ensure housing rights at a doctrinal level, although the potential of notarial and characteristic properties of the executive process is still poorly understood.

The civilistic process can cover not only judicial and extrajudicial forms of state protection, but also alternative non-state forms of protection of the rights and interests of such persons (mediation process, arbitration process).

Summarizing the above, we note that the concept of «housing» should be considered in a narrow and broad sense. In the broadest sense, housing is the thing or subject of the material world, for which there are civil rights and obligations, has value for everyone from birth to death, because it provides its biological need for living, the psychological state (provides emotional and spiritual rest), plays an important role in the creation and preservation of family relationships, and from a religious and ethnographic point of view can be a certain «awe», etc. In the narrow sense, the housing is an immovable thing that is designed and suitable for the living of individuals, complies with sanitary and technical regulations, as well as other requirements established by residential property law, has individual characteristics, is subject to civil rights, the right to housing is acquired on grounds not prohibited by law, but terminates in cases determined by law and subject to state registration.

The constitutional right to housing and housing rights are different legal categories. The realization of a person's rights in housing depends on the manner in which he has chosen the implementation of the constitutional right to housing and the rights and obligations conferred upon him by the contract or law. The implementation of housing rights must comply, in particular, with such principles as the guarantee of the implementation of housing rights, legality, freedom of choice, reasonableness, fairness, the inadmissibility of abuse of housing rights, etc.

The implementation of the constitutional right to housing takes place mainly in public law within the limits, in the manner and in accordance with the procedure established by law, and precedes the emergence, change or termination of residential rights, which are guaranteed by the rules of material and procedural law in private law, are protected, protected and restored by the state. The classification of residential rights can be made on the basis of different criteria: the division of the legal system; on a branch basis; by number of subjects; by subjects; the time of occurrence; on the grounds of occurrence, etc.

References:

1. Karmaza O.O., Koucherets D.B. (2018). The ensuring the right to housing according to the legislation of Ukraine. *Theoretical and practical mechanisms of development of legal science at the beginning of the third millennium*: Collective monograph. Tbilisi: Izdevnieciba "Baltija Publishing", p. 197–214.
2. Karmaza O.O. (2013). Koncepciji okhorony ta zakhystu zhytlovykh prav v Ukraini: materialjnyj ta procesualjnyj aspekty: monohrafija [Conceptions of housing rights protection in Ukraine. Material and procedural aspects. Monograph]. Myronivka, 400 p.
3. Karmaza O.O. (2018). The correlation of "The right to housing" and "Housing rights" definitions to the legislation of Ukraine. *The International Scientific Periodical Journal «Modern Technology and Innovative Technologies»*, issue № 5, vol. 2, pp. 8–11.
4. Bondar I.V. (2019). Osobysti nemajnovi pravovidnosyny: notariat, sud, vykonavche provadzhenja. Monohrafija. Kyiv, 366 s.
5. Kucher T.M. (2016). Teorija dovedennja u cyvilistychnomu procesi. Dys. ... d-ra juryd. nauk. Kyiv, 510 s.
6. Izarova I.O. (2015). Teoretychni zasady cyviljnogho procesu Jevropejskoghogo Sojuzu: monohrafija. Kyiv, 355 s.
7. Karmaza O.O. (2013). Koncepciji okhorony ta zakhystu zhytlovykh prav v Ukraini: materialjnyj ta procesualjnyj aspekty: monohrafija [Conceptions of housing rights protection in Ukraine. Material and procedural aspects. Monograph]. Myronivka, 400 p. (in Ukraine)
8. Safyn Z.F., Fetjukhyn M.V. (2012). Recenzija na monohrafiju profesora V.V. Jarkova «Jurydycheskye fakty v cyvylstycheskom processe». *Vestnyk ghrzhdanskogho processa*. № 6. S. 238–241.
9. Jarkov V.V. (2011). Razvytye cyvylstycheskogho processa v Rossyy: ot deljnye voprosy. *Vestnyk ghrzhdanskogho processa*. № 1. S. 17–53.
10. Sakhnova T.V. (2012). Procedurnostj cyvylstycheskogho processa: metodologhija budushhego. *Vestnyk ghrzhdanskogho processa*. № 1. S. 9–24.
11. Ghrycenko I.S., Poghoreckyj M.A. (2012). Sudova vlada u systemi ghilok vlady v Ukraini. *Visnyk Kharkivskoghogo nacionaljnogho universytetu imeni V.N. Karazina. Serija «Pravo»*. № 11. S. 264–268.
12. Karmaza O.O. (2016). Novaciji u sferi vykonavchogho processu: analiz dejakykh norm zakonoproektiv u sferi vykonavchogho provadzhenja. Materialy mizhnarodnoji naukovo-praktyčnoji konferenciji «Notariat, advokatura, sud, vykonavche provadzhenja: aktualjni problemy». Kyiv, s. 333–335.
13. Karmaza O.O. (2014). Koncepciji okhorony ta zakhystu zhytlovykh prav u cyvilistychnomu procesi: avtoref. dys. ... d-ra juryd. nauk. Kyiv, 36 s.
14. Konstytucija Ukrainy. Naukovo-praktychnyj komentar (2012). Redkol.: V.Ja. Tacij (gholova redkol.), O.V. Petryshyn (vidp. sekretar), Ju.Gh. Barabash ta in.; Nac. akad. prav. nauk Ukrainy. Kharkiv: Pravo, s. 356.
15. Jedyjnyj derzhavnyj rejestr sudovykh rishenj. URL: <http://reyestr.court.gov.ua/>