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THE OWNERSHIP RIGHT TO HOUSING ACQUIRED BY ONE OF THE SPOUSES DURING MARRIAGE DUE TO PRIVATIZATION

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Yurkevych Yu.M., Zabzaliuk D.Ye. The ownership right to housing acquired by one of the spouses during marriage due to privatization.

In Art. 47 of the Constitution of Ukraine, everyone is guaranteed the right to housing. The current legislation of Ukraine is generally aimed at assisting citizens in realizing their right to housing. For example, in Art. 4 of the Law of Ukraine "On preventing the impact of the global financial crisis on the development of the construction industry and housing construction" dated 12.25.2008 the features and mechanisms for providing individuals with affordable housing were introduced. At the same time, it is worth noting that a large part of the housing stock became the property of citizens in connection with privatization. Similarly, the national law also provides for the possibility of privatization of land plots. Despite this, family law, in terms of determining the legal regime of ownership of such objects, has undergone changes and in different periods of time provided for the presumption of joint compatible or personal private property of the spouses. Therefore, taking into account that, when considering disputes regarding the division of marital property, the determination of the regime of ownership is carried out on the basis of the legislation that was in effect at the time of acquisition of such ownership, the study of the problems of legal regulation of ownership of privatized housing during the period of marriage still remains relevant.

Privatization of the state housing stock is the expropriation of apartments (houses), residential premises in dormitories intended for families and single persons, rooms in apartments and single-apartment houses where two or more tenants live, and the economic buildings and premises belonging to them (basements, barns, etc.) of the state housing fund for the benefit of citizens of Ukraine. Based on the analysis of the legislation of Ukraine, it is possible to conditionally distinguish three periods in the regulation of the legal regime of ownership of "privatized" property: 1) until February 8, 2011; 2) since February 8, 2011 – till June 12, 2012; 3) since 13.06.2012 – until now.

Key words: housing, affordable housing, privatization, property, joint compatible property, personal private property, land plots.

Юркевич Ю.М., Забзалюк Д.Є. Право власності на житло, набуте одним із подружжя за час шлюбу внаслідок приватизації.

У ст. 47 Конституції України кожному гарантовано право на житло. Чинне законодавство України загалом спрямоване на сприяння громадянам щодо їхньої реалізації права на житло. Наприклад, у ст. 4 Закону України «Про запобігання впливу світової фінансової кризи на розвиток будівельно галузі та житлового будівництва» від 25 грудня 2008 року було запроваджено особливості та механізми забезпечення фізичних осіб доступним житлом. Поряд з тим, варто зазначити, що значна частина житлового фонду перейшла у власність громадян у зв'язку з приватизацією. Подібно, у національному праві передбачена також можливість приватизації земельних ділянок. Незважаючи на це, сімейне законодавство, у частині визначення правового режиму власності на такі об'єкти, зазнавало змін та у різні періоди часу передбачало то презумпцію спільної сумісної, то особистої приватної власності подружжя. Відтак, зважаючи, що, при розгляді спорів щодо поділу майна подружжя, визначення режиму права власності здійснюється на підставі законодавства, яке діяло у момент набуття такого права власності, дослідження проблем правового регулювання власності на приватизоване житло у період шлюбу залишається актуальним.

Приватизація державного житлового фонду – це відчуження квартир (будинків), житлових приміщень у гуртожитках, призначених для проживання сімей та одиноких осіб, кімнат у квартирах та одноквартирних будинках, де мешкають два і більше наймачів, та належних до них господарських споруд та приміщень (підвалів, сараїв тощо) державного житлового фонду на користь громадян України. У підсумку, на підставі аналізу законодавства України, можна умовно виокремити три періоди в регулюванні правового режиму власності на «приватизоване» майно: 1) до 08.02.2011 року; 2) 08.02.2011 року – 12.06.2012 року; 3) 13.06.2012 року – по даний час.

Ключові слова: житло, доступне житло, приватизація, власність, спільна сумісна власність, особиста приватна власність, земельні ділянки.

The actuality of the topic. In Art. 47 of the Constitution of Ukraine, everyone is guaranteed the right to housing, and the state is tasked with creating conditions under which everyone can build, purchase or rent housing. Also, citizens in need of social protection are provided with housing by the state and local self-government bodies free of charge or at an affordable price in accordance with the law [1]. The current legislation of Ukraine is generally aimed at assisting citizens in realizing their right to housing. For example, in Art. 4 of the Law of Ukraine "On preventing the impact of the global financial crisis on the development of the construction industry and housing construction" dated 12.25.2008 [2] the features and mechanisms for providing individuals with affordable housing were introduced. At the same time, it is worth noting that a large part of the housing stock became the property of citizens in connection with privatization. Similarly, the national law also provides for the possibility of privatization of land plots. Despite this, family law, in terms of determining the legal regime of ownership of such objects, has undergone changes and in different periods of time provided for the presumption of joint compatible or personal private property of the spouses. Therefore, taking into account that, when considering disputes regarding the division of marital property, the determination of the regime of ownership is carried out on the basis of the legislation that was in effect at the time of acquisition of such ownership, the study of the problems of legal regulation of ownership of privatized housing during the period of marriage still remains relevant.

The analysis of scientific publications. Many scientists have devoted their works to the study of these issues, among them: V.M. Kossak, O.O. Kot, Kh.V. Maikut, M.O. Mykhayliv, V.I. Tsytulskyi and others. Despite this, there is a need for further analysis of the problems of its legal regulation.

The purpose of this article is to carry out a theoretical analysis of the issues of regulation of ownership rights to housing, which was acquired during marriage by one of the spouses as a result of privatization, as well as to highlight the author's vision of the prospects for further regulation of these relations.

Presenting the main material. M.O. Mykhayliv noted that the residential relations are complex by their legal nature and closely related to constitutional, civil, administrative and the other legal relations. However, due to the specificity of the subject of housing law and the scope of legal regulation of the residential legal relations, it cannot be covered by them. Therefore, the proper realization of the right to housing and the protection of housing rights are currently possible only through the use and combination of legal norms of various branches of law [3, p. 105].

According to Art. 1 of the Law of Ukraine "On the Privatization of the State Housing Fund" dated June 19, 1992, the privatization of the state housing fund is the alienation of apartments (houses), residential premises in dormitories intended for families and single persons, rooms in apartments and single-family houses where people live two or more tenants, and the economic buildings and premises belonging to them (basements, sheds, etc.) of the state housing fund for the benefit of citizens of Ukraine [4]. In accordance with Part 3 of Art. 9 of the Housing Code of Ukraine, citizens have the right to privatize apartments (houses) of the state housing fund, residential premises in dormitories owned by territorial communities, or to purchase them from housing cooperatives, at stock market auctions, through individual housing construction or acquisition of ownership on the other grounds provided for by law [5]. At the same time, it is worth agreeing that the current Housing Code of Ukraine, regardless of the legislative changes made to it, does not correspond in content to modern social realities in the conditions of harmonization of the legislation of Ukraine with the law of the European Union [6, p. 119]. For some reason, the opinion about the expediency of developing a new legislative act that would regulate residential legal relations, and in the nearest future – about the need to remove legal concepts of the soviet period from the current law [7, p. 138]. At the same time, the strengthening and development of the institutions of civil society and the rule of law should take place under the slogan of comprehensive protection and defence of property and the other real rights to property [8], and, as of now, the closed list of ways to protect civil rights and legitimate interests does not correspond to the current level of civil development – legal relations, their rather high level of dynamics [9, p. 209].

Joint compatible ownership of property acquired during marriage is presumed. Calling exclusively for data in accordance with the entry in the State Register of Property Rights to immovable property will not be of decisive importance, because there is Art. 41 of the Constitution of Ukraine, which guarantees the inviolability of the right to private property. At the same time, members of the owner's family can live in one of the premises both with the owner and in his absence [10, p. 70].

As of today, in accordance with Art. 57 of the Family Code of Ukraine [11] the personal private property of each spouse is the property privatized by him (a plot of land, an apartment, etc.). However, such changes were made to the Family Code of Ukraine on the basis of epy Law No. 4766-VI dated 05/17/2012, which entered into force on 06/13/2012.

Prior to that, the norm of Part 5 of Art. 61 of the Family Code of Ukraine, that the "privatized property" is joint property of spouses. Part 5 of Article 61 of the Family Code of Ukraine was supplemented on the basis of the Law of Ukraine No. 2913-VI dated January 11, 2011, which entered into force on February 8, 2011.

Until now, the issue of the legal regime of ownership of "privatized" property was not separately regulated in the Family Code of Ukraine. At the same time, the Family Code of Ukraine entered into force on January 1, 2004. In turn, the Marriage and Family Code of Ukraine [12] also did not separately define the legal regime of "privatized" property, but its Art. 22 determined that property acquired by spouses during marriage was their joint property.

Thus, three periods can be conditionally distinguished in the regulation of the legal regime of ownership of the "privatized" property:

1) until 08.02.2011: undefined regime at the level of a special norm. Therefore, in our opinion, when clarifying the question of whether one of the spouses had joint compatible ownership of privatized property during the marriage in this period, it is worth starting from what method of privatization was used. In other words, if the method was the free transfer of the corresponding area of the apartment, land plot, then the legal regime of personal private property arose. In the event that surplus property was purchased, the second spouse should claim a share in the privatized property, but not necessarily half. On the other hand, the argument of the opponents of this approach, who believe that before 08.02.2011, the property acquired as a result of privatization by one of the spouses during the period of marriage should be considered joint compatible property on the basis of the general norms of family legislation of Ukraine, deserves attention.

2) since 02/08/2011 – till 06/12/2012: the regime of joint co-ownership is extended to property privatized by one of the spouses during the period of marriage;

3) since 06/13/2012 – to the present: the legal regime of personal private property is extended to property privatized by one of the spouses during marriage.

At the same time, it is necessary to take into account that the so-called norms of free privatization are established by special legislative acts.

Thus, it is worth noting that, according to Art. 121 of the Land Code of Ukraine [13], citizens of Ukraine have the right to free ownership of plots of land from state or communal lands in the sizes determined by the land legislation of Ukraine (for example, for the construction and maintenance of a residential building, farm buildings and structures (homestead) in villages – no more than 0.25 hectares, in towns – no more than 0.15 hectares, in cities – no more than 0.10 hectares).

In turn, in accordance with Art. 3 of the Law of Ukraine "On the Privatization of the State Housing Fund" dated June 19, 1992 it has been stipulated that the privatization is carried out by: a) free transfer of apartments (houses), residential premises in dormitories to citizens based on the sanitary standard of 21 square meters of total area per tenant and each member of his family and an additional 10 square meters per family; b) sale of surpluses of the total area of apartments (houses), residential premises in dormitories to citizens of Ukraine who live in them or are in the waiting list for improvement of living conditions. At the same time, the transfer of residential premises in dormitories to the ownership of citizens is carried out with the simultaneous transfer to them of joint shared ownership of auxiliary premises (common use premises). Accordingly, in order to avoid misunderstandings, the legislation should regulate in more detail the legal consequences of privatization by selling to one of the spouses the surplus of the total area of apartments (houses), residential premises in dormitories to citizens of Ukraine who live in them or are in the waiting list for improvement of housing conditions.

Conclusions. Summarizing the above, we believe it is possible to conclude that, in our opinion, the subsequent repeated change of the approach by establishing the rules according to which the housing privatized by one of the spouses during the marriage would belong to their joint compatible property is not devoid of meaning and to a greater extent would ensure the implementation of the provisions of Art. 47 of the Constitution of Ukraine. It seems that such changes should be introduced into the family legislation of Ukraine. On the other hand, in accordance with the provisions of the special land legislation: 1) foreigners and stateless persons can acquire ownership rights to land plots of non-agricultural purpose within the

boundaries of settlements, as well as to land plots of non-agricultural purpose outside the boundaries of settlements, on which real estate objects are located property owned by them under the right of private ownership in the event of: acquisition under a contract of sale, annuity, gift, mine, other civil law agreements, purchase of land plots on which real estate objects owned by them are located, acceptance of inheritance; 2) agricultural land inherited by foreigners and stateless persons shall be alienated within a year; 3) foreigners and stateless persons may have plots of land for individual or collective gardening on lease terms. Therefore, the preservation of the legal regime of personal private ownership of a wife or husband to a land plot acquired by her or him during marriage as a result of the privatization of a land plot that was in her or his use, or obtained as a result of the privatization of land plots of state and communal agricultural enterprises, institutions and organizations, or received from state and communal lands within the limits of free privatization norms defined by the Land Code of Ukraine, is currently justified.

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