ПРАВОВІ ЗАСАДИ ДІЯЛЬНОСТІ СУБ'ЄКТІВ ПУБЛІЧНОЇ АДМІНІСТРАЦІЇ ЩОДО НАДАННЯ ПУБЛІЧНИХ ПОСЛУГ У СФЕРІ ДЕРЖАВНОЇ РЕЄСТРАЦІЇ РЕЧОВИХ ПРАВ НА НЕРУХОМЕ МАЙНО

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DOI 10.32782/NP.2022.4.18

Запропонована стаття має за мету дослідження правового підґрунтя реалізації публічних послуг суб'єктами публічної адміністрації у контексті державної реєстрації прав на нерухомість. Здійснено аналіз нормативно-правових актів: як законодавчих, так і підзаконних, що визначають процес надання публічних послуг у функціонуванні органів виконавчої влади та місцевого самоврядування. Окреслено ключові нормативно-правові акти, які регулюють надання системи послуг (адміністративних, електронних, державних тощо) у сфері державної реєстрації речових прав на об'єкти нерухомості.

Нормативні акти, що регламентують суспільні взаємини у сфері надання системи послуг (адміністративних, електронних, державних тощо), які здійснюють суб'єкти публічного управління в контексті державної реєстрації майнових прав на нерухомі об'єкти, було систематизовано відповідно до таких критеріїв: юридична сила (закони України, підзаконні нормативні акти); предмет регулювання (акти, що визначають порядок дій, установлюють права та зобов'язання для тих, хто звертається по видом послуг (адміністративних, електронних, державних тощо), як учасників адміністративних правовідносин; та акти, що регламентують правовий статус підрозділів, відповідальних за державну реєстрацію речових прав на нерухомість); об'єкт регулювання (нерухоме майно, таке як квартири, будівлі, гаражі та інше; консультаційні послуги, довідкова та інформаційна підтримка, підготовка документації з питань, що стосуються нерухомості).

На основі дослідження нормативно-правових актів було виявлено основні недоліки у правовому регулюванні процесу надання системи послуг (адміністративних, електронних, державних тощо) суб'єктами публічного управління у сфері державної реєстрації майнових прав на нерухомі об'єкти, зокрема: відсутність чіткої концепції, програми надання системи послуг (адміністративних, електронних, державних тощо) відділами державної реєстрації речових прав на нерухоме майно; відсутність навчання державних службовців; невизначеність нормативними актами критеріїв оцінювання ефективності та якості надання системи послуг (адміністративних, електронних, державних тощо) суб'єктами публічного управління; недотримання принципів надання системи послуг (адміністративних, електронних, державних тощо), неузгодженості у нормативному регулюванні надання системи послуг (адміністративних, електронних, державних тощо) у сфері державної реєстрації майнових прав на нерухомість тощо.

Ключові слова: власність, державна реєстрація, державна реєстрація речових прав на нерухоме майно, нормативно-правовий акт, публічна послуга.

In the context of the announced direction of decentralization of local self-government and territorial organization in Ukraine, it is required to reform the system of public services, simplify the procedure for their provision. The subjects of applications for public services in the field of state registration of real rights

to real estate are individuals who enter into relations with public administration bodies in order to protect their right to property, namely during the state registration of real rights to real estate, recognition of ownership of a garage, recognition of ownership of a home, recognition of ownership of a cooperative apartment, etc.

However, the analysis of the types of public services in the field of state registration of real rights to real estate, provided to the relevant subjects (individuals and legal entities), is characterized by a low level of development and a certain uncertainty of the regulations for the provision of such services, despite the numerous reform processes that are constantly taking place in this area.

When providing public services in the field of state registration of real rights to real property, there are currently problems that require urgent resolution: unprofessionalism of civil servants who provide public services in the field of state registration of real rights to real property; arbitrary interpretation of regulatory legal acts; inability to apply real levers of influence, including holding accountable officials who provide these public services, etc. In addition, when providing public services in the field of state registration of real rights to real property, there is a possibility of corruption risks, overcoming which should become not only a practical task for the activities of public administration entities, but also the object of comprehensive scientific research at the dissertation and monographic levels in Ukraine.

Citizens in relations with the authorities are not applicants, but subjects of service requests. In addition, the state, represented by public authorities, is oriented towards the needs of the individual, just as in the private sector, providers of public services are oriented towards the needs of the consumer, his requests and expectations [19, p. 23].

In this regard, the scientific literature is beginning to pay attention to the activities of the executive branch in providing public services, since this direction is the most important component of management activity, comes from the general content of public administration, constitutes a substantive characteristic of activity, etc.

However, the issue of considering the legal basis for the provision of public services by public administration entities in the field of state registration of real rights to real property has hardly been studied.

The purpose of this article is to review the regulatory legal acts of the provision of public services by public administration entities on state registration of property rights to real estate.

Presentation of the main material. According to Article 3 of the Constitution of Ukraine, a person, his life and health, honor and dignity, inviolability and security are defined in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state's activities. The state is responsible to a person for its activities. The affirmation and provision of human rights and freedoms is the main duty of the state [8].

The Civil Code of Ukraine of January 16, 2003 determines that "immovable property (immovable property, real estate) includes land plots, as well as objects located on a land plot, the movement of which is impossible without their depreciation and change of their purpose" (Article 181 of the Civil Code). It is this act that establishes the provision that the right of ownership and other property rights to immovable property, encumbrances on these rights, their emergence, transfer and termination are subject to state registration, which is public, since it is carried out by the relevant authority (Article 182 of the Civil Code) [20]. This codification act also reveals a wide range of substantive law issues that are used daily in the work of state registrars, namely: general provisions on the right of ownership, the grounds for its acquisition and termination; reveals the main issues of joint ownership of property, real rights to other people's property; the law of obligations reveals the main content and requirements for transactions on the basis of which ownership of real estate objects subject to state registration may be transferred (purchase and sale agreements, donations, exchanges, leases, mortgages, life maintenance agreements, etc.); the book on inheritance law highlights the provisions that regulate the procedure for registering the right to inheritance, the subject of which is real es-

tate, and determines the documents on the basis of which the specified right arises.

Returning to the national legislation used by state registration bodies in the process of performing the functions and tasks of the state, the first group includes those acts whose norms, as a rule, are material and regulate general issues of the legal regime of objects subject to state registration - real rights and their encumbrances.

According to the Land Code of Ukraine of 25.10.2001 [2], land is the main national wealth, which is under the close protection of the state.

The Family Code of Ukraine of 10.01.2002 [18] clarifies the relations regarding the right of personal private property between spouses, as well as the rights of joint joint property of spouses, if the property includes real estate, the rights to which are subject to state registration.

The Economic Code of Ukraine of 16.03.2003 [1] defines the legal foundations of economic activity, which is based on a variety of business entities of different forms of ownership.

It establishes the types of land ownership and provides for the possibility of using land plots under the conditions of joint ownership; allows for the possibility of acquiring land plots from virtually all categories of land into private ownership; provides for the demarcation of land of state and communal ownership; determines the list of lands that cannot be transferred to private ownership; establishes the methods and mechanism for citizens and legal entities to acquire land plots in ownership; establishes the list of powers of executive authorities and local self-government bodies in the field of land relations.

The Law of Ukraine "On Administrative Services" [9] establishes the main conceptual principles on the basis of which the provision of administrative services is implemented: determines the principles on which state policy in the specified area is based; basic requirements for the procedure for the provision, terms, cost of administrative services and regulates the procedure for their provision by administrative service centers. It is worth noting that this regulatory legal act came into effect on 07.09.2013, and administrative service centers (hereinafter referred to as ASCs) were to begin performing their functions on 01.01.2014.

It is impossible to avoid studying the administrative procedure for providing public services in the field of state registration of real rights to real property. The regulatory mechanism, consisting of a large number of legal acts of different legal force, which supposedly should complement and specify each other in terms of regulating administrative relations in the field of providing public services in the field of state registration of real rights to real property, but in practice gives rise to conflicts due to contradictions in their individual norms. We see the solution to this problem in terms of administrative appeal in the actual entry into force of the Law of Ukraine «On Administrative Procedure» [10] dated February 17, 2022 No. 2073-IX. As for domestic administrative proceedings, the KASU [3] as a codified act has repeatedly undergone changes and additions in view of the practice of application and changes in social conditions; legal and technical work is ongoing to improve it.

In addition to the Codes, the first group includes other legislative acts, the substantive norms of which can be used in the daily activities of departments of public administration bodies: Laws of Ukraine "On Notaries" [16]; «On Mortgage» [15], which regulates the main issues related to such a type of security for the performance of an obligation with real estate as a mortgage (in this regard, it should be noted that a mortgage, according to Law No. 1952-IV [12], is for some reason considered as another real right, and not as a type of encumbrance (clause 2, part 1, article 1 of the Law of Ukraine «On Mortgage»). It is worth eliminating the contradictions in the above acts and bringing the norms of Law No. 1952-IV into line with the Law of Ukraine «On Mortgage»; «On Land Lease» [17], which resolves such issues as the object, the subject of the lease and the essential terms of the lease agreement, including the rights and obligations of the parties; «On Enforcement Proceedings» [11]; the Code of Ukraine on Bankruptcy Procedures [4]; the Order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine: «On Approval of the Procedure for Conducting Technical

Inspection and Acceptance into operation of individual (estate) residential buildings, garden and summer houses, farm (estate) buildings and structures, buildings and structures for agricultural purposes, which by the class of consequences (liability) belong to objects with minor consequences (CC1), built on a land plot of the appropriate purpose without a permit for construction work» (already new in 2018) [14], etc.

Among the international agreements that determine certain aspects of the functioning of rights registration bodies, it is advisable to single out: The Hague Convention of 05.10.1961[7]; The Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 (ratified by Ukraine on 17.07.1997) [5]; The International Convention on Legal Assistance (CIS Countries) of 1993, which entered into force for Ukraine on 14.04.1995[6].

In accordance with the Order of the Ministry of Justice "On the introduction of direct relations between the justice bodies of Ukraine within the framework of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 in terms of the execution of orders in civil matters" of 02.08.2007 No. 597/5, in order to implement Art. 5 of the Convention as amended by the Protocol thereto, from 01.10.2007, the bodies authorized to implement direct relations with the relevant authorized bodies of the Contracting Parties to the Protocol were determined. These bodies were: Western Interregional Department of the Ministry of Justice (Lviv), Southern Interregional Department of the Ministry of Justice (Odessa), Southwestern Interregional Department of the Ministry of Justice (Ivano-Frankivsk), Southeastern Interregional Department of the Ministry of Justice (Dnipro), Northeastern Interregional Department of the Ministry of Justice (Sumy), Eastern Interregional Department of the Ministry of Justice (Kharkiv), Central Interregional Department of the Ministry of Justice (Kyiv), Central Western Interregional Department of the Ministry of Justice (Khmelnytskyi) [13].

Also, it is worth noting the Treaty between Ukraine and the Czech Republic on legal assistance and legal relations in civil matters, which entered into force on 18.11.2002; Agreement between Ukraine and the Republic of Turkey on Legal Assistance and Cooperation in Civil Matters, which entered into force on 02.05.2004 – Article 27 of which establishes that the legislation of the Contracting Party on whose territory the real estate is located shall apply to real estate and property rights thereto. Similar Agreements were signed by Ukraine with the People's Republic of China (signed on 31.10.1992, ratified on 05.02.1993), the Republic of Poland (ratified on 04.02.1994), the Republic of Lithuania (ratified on 17.12.1993), as well as with Estonia and Georgia.

Thus, the above-mentioned legislative acts determine social relations regarding the state registration of property rights to real estate, including some of them and the provision of public services. They are classified according to: legal force (laws of Ukraine, subordinate regulatory documents); object of regulation (those that regulate the actions of people, determine the rights and obligations of applicants using public services as participants in administrative legal relations; and those that establish the legal position of departments of state registration of property rights to real estate); subject of regulation (real estate (apartments, houses, garages, etc.); consulting assistance, reference and information work, preparation of materials on real estate issues).

As a result of the analysis of regulatory legal acts, the main shortcomings in the legal regulation of the provision of public services by state authorities in the field of state registration of property rights to real estate in this context include: lack of a clear vision of the provision of public services by departments of state registration of property rights to real estate; regulatory lack of regulation of criteria for assessing the effectiveness of the quality of public service provision by public administration entities; non-compliance with the principles of public service provision, inconsistency in the regulatory and legal regulation of public service provision in the field of state registration of property rights to real estate, etc.

References

1. Commercial Code of Ukraine: Law of Ukraine dated 16.01.2003 No. 463-IV. Bulletin of the Verkhovna Rada of Ukraine. 2003. No. 18. Art. 144.

2. Land Code of Ukraine: Law of Ukraine dated 25.10.2001 No. 2768-III. Bulletin of the Verkhovna Rada of Ukraine. 2002. No. 3 4. Art. 27.

3. Code of Administrative Procedure of Ukraine dated 06.07.2005 No. 2747-IV. Bulletin of the Verkhovna Rada of Ukraine. 2005. No. 35-36, No. 37. Art. 446.

4. Code of Ukraine on Bankruptcy Procedures dated October 18, 2018 No. 2597-VIII. Voice of Ukraine dated 20.04.2019. No. 77.

5. Convention for the Protection of Human Rights and Fundamental Freedoms. Human Rights: Collection of Universal and Regional, International Doc. M., 1990. URL.: http://conventions.coe.int/treaty/rus/treaties/html/005.htm

6. Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Ukr/Rus): International Document of 22.01.1993. Official Gazette of Ukraine. 2005. No. 44. Art. 2824

7. Convention Abolishing the Requirement of Legalization of Foreign Official Documents (Ukr/Rus): Hague Convention of 05.10.1961. Official Gazette of Ukraine. 2003. No. 46. Art. 2419.

8. Constitution of Ukraine. Bulletin of the Verkhovna Rada of Ukraine. 1996. No. 30. Art. 141.

9. On administrative services: Law of Ukraine dated 06.09.2012 No. 5203-VI. Bulletin of the Verkhovna Rada of Ukraine. 2013. No. 32. Art. 409.

10. On administrative procedure: Law of Ukraine dated February 17, 2022 No. 2073-IX. Voice of Ukraine dated 15.06.2022. No. 123

11. On enforcement proceedings: Law of Ukraine dated 02.06.2016 No. 1404-VIII. Bulletin of the Verkhovna Rada of Ukraine dated 22.07.2016 — 2016, No. 30, p. 5, Article 542

12. On state registration of real rights to real estate and their encumbrances: Law of Ukraine dated 01.07.2004 No. 1952-IV. Bulletin of the Verkhovna Rada of Ukraine. 2004. No. 51. Art. 553.

13. On the introduction of direct relations between the justice bodies of Ukraine within the framework of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 in terms of the execution of instructions in civil cases: Order of the Ministry of Justice of Ukraine dated 02.08.2007. No. 597. URL.: http:// www.zakon2.rada.gov.ua/laws/show/v597_323-07

14. On approval of the Procedure for conducting a technical inspection and commissioning of individual (manor) residential buildings, garden, summer houses, farm (manor) buildings and structures, buildings and structures for agricultural purposes, which by the class of consequences (responsibility) belong to objects with minor consequences (CC1), built on a land plot of the appropriate purpose without a permit for construction work: Order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine dated 03.07.2018 No. 158. Official Gazette of Ukraine dated 08.31.2018 — 2018, No. 66, p. 28, Article 2242, Act Code 91358/2018

15. On Mortgage: Law of Ukraine dated 05.06.2003 No. 898-IV. Bulletin of the Verkhovna Rada of Ukraine. 2003. No. 38. Art. 313.

16. On Notary: Law of Ukraine dated 02.09.1993 No. 3425-XII. Bulletin of the Verkhovna Rada of Ukraine. 1993. No. 39. Art. 383.

17. On Land Lease: Law of Ukraine dated 06.10.1998 No. 161-XIV. Bulletin of the Verkhovna Rada of Ukraine. 1998 No. 46–47. Art. 280.

18. Family Code of Ukraine: Law of Ukraine dated 10.01.2002 No. 2947-III. Voice of Ukraine. 2002. No. 38

19. Tymoshchuk V.P. Administrative procedure and administrative services. Foreign experience and proposals for Ukraine. K.: Fact, 2003. P. 23.

20. Civil Code of Ukraine: Law of Ukraine of 16.01.2003 No. 435-IV. Bulletin of the Verkhovna Rada of Ukraine. 2003. No. 40–44. Art. 356.

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LEGAL PRINCIPLES OF THE ACTIVITIES OF PUBLIC ADMINISTRATION SUBJECTS REGARDING THE PROVISION OF PUBLIC SERVICES IN THE FIELD OF STATE REGISTRATION OF REAL RIGHTS TO REAL PROPERTY

The proposed article aims to study the legal basis for the implementation of public services by public administration entities in the context of state registration of property rights to real estate. An analysis of regulatory and legal acts has been carried out: both legislative and subordinate legislation, which determine the process of providing public services in the functioning of executive bodies and local self-government. The key regulatory and legal acts that regulate the provision of public services in the field of state registration of property rights to real estate have been outlined. Regulatory acts that regulate social relations in the field of providing public services, which are carried out by public administration entities in the context of state registration of property rights to real estate, have been systematized according to the following criteria: legal force (laws of Ukraine, subordinate legislation); subject of regulation (acts that determine the procedure for actions, establish rights and obligations for those who apply for public services as participants in administrative legal relations; and acts that regulate the legal status of units responsible for state registration of real rights to real estate); object of regulation (real estate, such as apartments, buildings, garages, etc.; consulting services, reference and information support, preparation of documentation on issues related to real estate).

Based on the study of regulatory legal acts, the main shortcomings in the legal regulation of the process of providing public services by public administration entities in the field of state registration of property rights to real estate were identified, in particular: the lack of a clear concept of providing public services by departments of state registration of property rights to real estate; uncertainty in regulatory acts of the criteria for assessing the effectiveness and quality of providing public services by public administration entities; non-compliance with the principles of providing public services, inconsistency in the regulatory regulation of the provision of public services in the field of state registration of property rights to real estate, and others.

Key words: property, state registration, state registration of real property rights, regulatory act, public service.