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Spatial Property: World Approaches and the National Law of Ukraine

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The article considers the analysis of construction of spatial (floor) property, which assumes the existence of real property rights to individual premises in buildings in relation to such rights with the right to the building as a whole.
Keywords: property, real estate, rights to premises, apartment house, apartments, premises, floor property, spatial property.

Patalpų nuosavybė: pasaulinis požiūris ir Ukrainos nacionalinė teisė

Straipsnyje atliekama patalpų nuosavybės teisės analizė, pagal kurią daroma prielaida, kad gali egzistuoti daiktinės teisės į atskiras patalpas pastatuose, turint omenyje ir teises į šiuos pastatus kaip visumą.
Pagrindiniai žodžiai: nuosavybė, nekilnojamasis turtas, teisės į patalpas, daugiabutis namas, apartamentai, patalpos, patalpų nuosavybė.

Introduction

After the return to Ukrainian civil law of the category of real estate – which during almost the entire Soviet period of the evolution of civil law doctrine and legal practice not only did not exist, but rather was artificially split into number of interconnected constructions – scientists and practitioners encounter a lot of complicated problems that are extremely important for legal theory and practice. One of them is the proper doctrinal elaboration of the so-called concept of "*spatial property*".

Usually this legal construction is denoted in civil law doctrine by somewhat different terms, e.g.: floor property, residential property. But all these terms are rather relative. Referring to *floors*, although it emerges due to historical origins of the idea of ownership of the premises, does not correspond to modern realities, when the premises or their group as a unit of real estate can be a space of complex configuration on different tiers of the building. And designation of such property as *residential* ignores the similar problems that arise with regard to nonresidential buildings divided into separate rooms, owned by different persons. In view of these considerations, it seems more correct to use the term to denote the regarded legal structure "*spatial property*".[1]

[1] In the scientific literature of recent years the corresponding legal phenomenon is called also "three-dimensional property" (3-D property) (Paulsson, 2007, p. 1).

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1. Historical overview – Ancient Rome

It should not be assumed that the considered issue is something completely new for law. The practical needs that determine its formulation are inherent in any society that in its development has crossed a certain line in the process of urbanization.

Turning to the history of Ancient Rome, we will see that in the practice of those days concepts "domus" (actually "house") and "insula" (a house, built for renting apartments (rooms) in it) were quite different.[2] And gradually it was the insula that began to dominate the Roman urban landscape. Even in the I century BC Mark Tullius Cicero wrote that "Rome, situated among mountains and valleys, stuck up, as it were, and raised aloft…" (Cic., De Lege Agraria, II, XXXV, 96). This trend was growing stronger and at the beginning of the IV century AD there were only 1790 mansions (domus) in Rome and as many as 46602 insulas (Michaylov (ed.), 1973, p. 619). At the same time, Roman law did not ignore the relevant legal issues. In particular, in the Digests we still find, albeit a few, but symbolic fragments that testify to the attempts of lawyers to regulate somehow the relations that objectively arise in connection with the owning of certain parts of buildings by different persons.

Ulpian (D.39.2.15.13) wrote that the house (domus) can in principle be divided into many parts, and possession of part of the house (pars domus) is possible. And though in other place he notes that in case of division by the owner of one house in two by building of middle wall two houses emerge (D.8.4.6.1), the question of belonging such "middle wall" (the wall between the owners of neighboring premises) does not disappear and it has to be resolved. As a result, Roman lawyers were inclined to accept the idea of common property to a building occupied by several owners. Even Proculus in the I century AD pointed out that it is impossible to have a pipeline laid along a common wall, just as it is impossible to have your own wall by means of a common wall (D.8.2.13.pr). And a century later Gai spoke even clearer: "The wall, which is naturally common, none of the neighbors has the right to destroy and rebuild, because he is not the only owner" (D.8.2.8).

However, the corresponding problem turned out to be much more complicated when it came to the separate ownership of premises on different floors of the same building. After all, the general principle "superficies solo cedit", although it was not absolute in Roman law, as it is often believed, is mostly perceived as dominant.

One of the earliest theoreticians of Roman law, Labeon, the founder of the Procullian school, wrote that if someone receives as legatee first-floor rooms, he would receive the entire building within the boundaries of the soil belonging to those rooms (D.32.31). That is, the rights to the building were consistently tied to the rights to the land on which it stands, so the division of the building into separate objects of rights was recognized possible only vertically and not horizontally.

However, already in the II century AD Julian expressed an opinion that did not fit well with the concept of exclusivity of the vertical division of buildings: "If something was built from the upper room to the lower, is the lower room included in the upper room because of the burden? Answer: An easement is deemed to have been made" (D.33.3.1). As is well known, an easement is terminated if the owner of the property encumbered with the easement and the property in whose favor the easement is established are combined in one person – "nulli res sua servit". Therefore, this fragment can be regarded as an indirect recognition of the possibility of the existence of different owners for the premises, located one above the other.

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[2] This is most evident in those fragments when houses and insulas are mentioned at the same time (Papinian D.32.91.6).

Finally, Ulpian has formulated provisions that are very reminiscent of the first steps towards formulating the classical concept of spatial ownership: “But if there is a floor above the building I own, on which a third person is **like the owner (quasi dominus)**, then Labeon argues that I can use the interdict “as you possess”, not the one who is on (this) floor: because superficies always follow the earth. Of course, if the floor has an entrance from the street, then, according to Labeon, it is believed that the building is in possession not in relation to who owns the basement, but in relation to who owns the building above the basement. This is also true for those who had an entrance from the street” (D.43.17.3.7).

2. Historical overview – Middle Ages and later period up to the middle of the XX century

The collapse of the Roman Empire, the return of the population to predominantly rural forms of coexistence, the decline of cities have suspended the development of civil engineering for a long time. However, the gradual development of cities in medieval Europe put to lawyers issues of property rights in general similar to that of the ancient Roman times. But they were solved somewhat differently, closer to the practical needs of multi-storey construction.

Distinctive is the approach introduced by German law of the Middle Ages, which did not recognize the principle “superficies solo cedit”, allowing the ownership of different persons to the building and land on which the building was located, as well as recognizing the permissible legal construction of property by floors (*Stockwerkseigentum*) (Kasso, 1905, pp. 12, 13).

Also in many French cities (Grenoble, Lyon, Rennes) the property to the floors of the house was recognized from old times, later extended by the codification of French civil law virtually to the whole country (Article 664 of the French Civil Code) (Morandiere, 1960, p. 85).

In Italy many city statutes contained provisions about factually divided houses. Paduan lawyer of the XV century Bartolomeo Cepolla describes in his treatise on easements that contract for the division of a common house was an “everyday phenomenon” and examines the question of the right of owners of upper floors to walk across the lower floor (Zimiliova, 2010, p. 231).

Romanization of jurisprudence since the XVI century caused a generally negative attitude to the concept of spatial property, and the school of F. K. von Savigny was extremely hostile to it, declaring property on the floor “legally impossible” (Savigny, 1837, p. 302).

Gradually Roman tendencies prevailed, and the German Civil Code (BGB) prohibited the existence of special rights to essential parts of a thing (§ 93 BGB), which factually “buried” the construction of spatial property in German law. Although not completely (in accordance with § 182 of the Introductory Law to the BGB, earlier rights of this kind were preserved) and, as it turned out, not forever.

Political, economic and military events of the XX century have raised again the question of the rights of individuals to separate spaces (rooms, flats etc.) in the building, especially in relation to housing. Due to well-known historical events, the strong demand for housing after 1945 forced those in need of housing to finance its creation on a share basis, but such people need also a real equivalent of investment (Fuchs, 2019, p. 1711). And post-war economic situation (and not only in Germany) no longer allowed people to build their own houses and even more to build also their own apartment houses for tenants.

Such situation was typical not only for Germany but also for many other countries at that time. And in different countries approaches to understanding the nature of the institution of floor property

are quite unlike, that led to several significantly different models of this legal construction, which for Romano-Germanic law can be defined as Classical German (Germany), South German (Austria, Switzerland) and Roman (France, Italy, Spain (except Catalonia)).[3]

3. Classical German model

In Germany relations concerning the rights to certain premises in residential buildings are regulated by the Law of Federal Republic of Germany on the Property to Apartments, 1951 (*Gesetz über das Wohnungseigentum und das Dauerwohnrecht*, abbreviated as *Wohnungseigentumsgesetz* or *WEG*). In recent years this Law has undergone significant changes twice: by the Law of March 26, 2007 and the Law of October 22, 2020.

According to § 1 of *WEG*, a new type of property has been introduced into German civil law: apartment property (*Wohnungseigentum*) and share property (*Teileigentum*). The first is the right to an apartment and the second to nonresidential areas, but the content of these rights is almost identical.

Apartment property comprises the separate property (*Sondereigentum*) to an apartment together with a co-ownership share (*Miteigentumsanteil*) of the jointly owned property (*gemeinschaftliches Eigentum*) of which it is an integral part (Part 2 § 1 *WEG*).

The providing by law of special terms for apartment and share property cannot be considered accidental, as a separate property (*Sondereigentum*) is not a classic property (*Eigentum*), but appears as a component of apartment property (*Wohnungseigentum*), which tends much more to common property than to individual (classic).[4]

With the aid of the institution of apartment property, the German legislature denied general principle enshrined in § 93 BGB, according to which parts of thing that cannot be separated without destroying (these parts or things as a whole) or without changing their essence cannot be subject to individual rights. The construction of apartment property shifts the emphasis: instead of a mechanistic understanding of the right to a part of a building as a right to a structure, there is a legal power over a certain economic unit (premises), a certain space, sometimes even without walls (such as parking spaces in underground part of the house).[5]

4. South German model

In Switzerland the situation with the evolution of spatial property in the XX century was generally reminiscent of Germany. Despite the traditional nature for the law of many cantons, legal construction

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[3] The uniqueness of the institution of property rights in England and the United States, which introduces not only property rights in relation to artificial real estate, but a system of legal titles, encourages us to refrain from an analysis of relevant issues under Anglo-American law. Scandinavian model of corporate organization of property in apartment houses is also not considered as one that was formed within the Scandinavian legal system and tends to the American approach to the corporatization of residential property (Lujanen, 2011, pp. 53–80).

[4] This determines the nonindependence of separate property (*Sondereigentum*) and the priority of common property in the construction of apartment property (*Wohnungseigentum*): separate property is allowed only in inseparable connection with common property and as its appendage (*Anhängsel*).

[5] The situation in German law is even more complicated, because the building itself in accordance with Part 1 of § 94 BGB is also an integral part of the land (more precisely – such a specific object as *Grundstück*, which is unequal to the land unit in the traditional understanding of Ukrainian law). And the *WEG*’s denial from the stricter version of the “superficies solo cedit” principle enshrined in the §§ 93 and 94 BGB was not the first for the German legislature: suffice it to mention the building right introduced by the Erbbaurechtsgesetz Act on the hereditary right of building of 15 January 1919 (*Erbbaurechtsgesetz*).

was not adopted by the Swiss Civil Code. On the contrary, the creator of SCC Eugen Huber was opposed to the *Stockwerkeigentum*, considering it a relic of antiquity. He described such relations in the Swiss cantons as "a difficult legacy of old times that must be eliminated as soon as possible" (Huber, 1889, p. 241).

However, Switzerland did not escape general trends. As a result, a federal law was adopted in 1963, which included in the Swiss Civil Code provisions on spatial property (entered into force on 01.01.1965).

Switzerland has chosen the model of spatial property as a kind of common property: individual owners have the right of common property of the whole house. According to the figurative expression of P. Liver, common property forms the trunk and roots from which the spatial (floor) property grows (Liver, 1963, p. 149).

Thus, the rights of owners of premises are constructed as a special kind of common property, consisting of two elements: property to the whole house and the special right of a particular co-owner to the exclusive use and management of a part of the building. This special right (*Sonderrecht*) is not an independent property right to a part of a building, it is not also an easement or an independent right to a part of common property, but appears as an attribute (right) of a share in common property, defined by law and a necessary component of spatial property.

Austrian law in this aspect is most inclined to the Swiss model. According to § 2 of the Law of the Republic of Austria on Apartment Property of 2002 (*Wohnungseigentumsgesetz 2002* or *WEG 2002*) apartment property is provided to a co-owner of real estate or a group of co-owners (*Eigentümerpartnerschaft*) right in rem, which content is the ability to use exclusively and dispose individually of apartment object. Such objects include apartments, in any way detached premises (*Räumlichkeiten*) and parking spaces.

5. Roman model

In French law the institute of spatial property received detailed regulation in Chapter II of the Law of 28.06.1938, which repealed Article 664 of the French Civil Code with the establishment of "*layering of exclusive property rights and common property to indivisible parts of the house*" (Morandiere, 1960, p. 85). Subsequently, this law was replaced by the Law on status of the co-ownership of buildings, 1965 (Loi no. 65-557 du 10 juillet 1965 fixant le statut de la copropriété des immeubles bâtis), which, with many changes and additions, is still in force today.

According to the modern French model separate parts of the building (*parties privatives*) are independent objects of property rights. However, the owner has a share in the right of common property to the common parts of the building (*parties communes*). Thus, every owner possesses a kind of indivisible complex (*le lot*): a separate part of the building and a share in the right to common parts. The definition of this complex is carried out with the help of a special public law act (*état descriptif de division*).

A similar approach is also introduced in Italian civil law, which operates on the concept of "condominium" (*condominio negli edifici*), that according to Art. 1117 of the Civil Code of Italy appears as a combination of property to separate parts of the building (floors, apartments, offices, garages, etc.) and the right of common property to indivisible parts of the building (land, foundation, walls and other structures, stairwells, other auxiliary spaces, elevators, utilities, etc.).

An important feature of this legal construction is that the land under such a building may be not only in common property, but also in the property of one of the co-owners of the building or even in the ownership of a third party. That is, the subject of ownership of the land and the building on it does not necessarily have to coincide.

6. Historical overview – Ukraine before the 1990s

The features of the regulation of the considered issue in the Ukrainian legal order have long been determined by the problem of political integration in ethnic Ukrainian lands due to the belonging of their separate parts at different times to different states – Poland (including the Polish-Lithuanian Commonwealth), Austria, Russia and others. Therefore, the institution of spatial property in the past existed in Ukraine to the extent that it was allowed in a particular period by the law of a particular state, which included the relevant territories.

So, in the eastern part of Ukraine the issue of ownership of certain parts of building was resolved in accordance with the law of the Russian Empire, in which given the predominant rural forms of coexistence (and a significant number of rural elements in the organization of urban life) this problem was not essential until the middle of XIX century.[6]

However, when the considered question arose before scholars and practitioners, groups gradually formed of both supporters and opponents of the admissibility of the division of the house into premises (floors) as separate objects of property rights. Thus, K. Pobedonostsev pointed out that houses are nowhere defined as indivisible, but denied the possibility of their divisibility except for the sale of parts in houses, obtained by decisions of ex-divisional courts in the Western Provinces of the Russian Empire (note to Article 1389 P. 1 Vol. X Code of Laws of the Russian Empire) (Pobedonostsev, 2002, pp. 125, 126).[7] A similar opinion was held by K.Annenkov, who pointed out that "… indivisible should also include houses and other buildings… because they are indivisible by their very nature" (Annenkov, 1899, p. 291).

The opposite approach was expressed by G. Shershenevich, who noted that "in fact, the house should be presumed as a divisible thing, but this presumption can be refuted by proving the impossibility of dividing the particular house while preserving parts of the economic value of the whole" (Shershenevich, 2001, p. 140).

In Soviet times the complete withdrawal of land from civil circulation and the abolition of the division of property into movable and immovable (note to Art. 21 of the Civil Code of the Ukrainian SSR of 1922) did not eliminate the circulation of buildings, but significantly limited it, which is not even contributed to the question of the ownership in the premises of houses by individuals. There were also direct doubts about the divisibility of the house with reference to the emergence in this case of problems with the operation of the house as an integrity (Agarkov *et al*., 1944, p. 18).

Nevertheless, Soviet civil law doctrine shaped the approach that actually recognized spatial property. It is true that this was done in terms of the rights of persons to parts of an individual residential house after its factual division, but the principle was objectively suitable for extrapolation to apartment house as well.

So, M. Zimiliova, criticizing the practice of permission by local councils to divide households depending on the division of land unit, pointed out that the latter could well remain in the common use of those who divided the house, and that would allow division by floors (Zimiliova, 2010, pp. 237, 238). D. Genkin pointed to the apartment house as a classic example of an object that is divisible in

[6] Of course, the limited possibilities of construction in the city were evident before, but the issue was still discussed and regulated at the level of divisibility of **yards** in the city, i.e. actually built-up land units – from the prohibition of such division in 1762 to the general permit in 1827 (Nevolin, 2006, p. 27).

[7] The reference to the peculiarities in the considered aspect of the law of the Western Provinces of the Russian Empire should be supplemented by the fact that in the district of the Warsaw Judicial Chamber the French Civil Code (in particular, Articles 553, 664) which created another version of the existence of spatial property in the territory of the Russian Empire.

one aspect but is not in another: apartments and rooms can be factually separated, but the construction of a building, network and other similar property is indivisible (Genkin, 1961, pp.155, 156).[8] A similar position was expressed by the famous Ukrainian civil law theoretician of that time V. Maslov (Maslov, 1968, p. 193).

The concept of the apartment house as an object of the right of common property of all owners of individual apartments was reflected also in the Soviet legislation. In accordance with paragraph 24 of the Resolution of the Central Committee of the CPSU and the Council of Ministers of the USSR on the development of housing in the USSR, 1957 in the case of building an apartment house by a team of individual builders for each builder the right of personal property to the apartment was retained. Similar provisions were adopted in the Ukrainian SSR.[9]

In addition, Part 3 of Art. 101 of the Civil Code of the Ukrainian SSR of 1963 directly provided the possibility of establishing the right of personal property of citizens for apartments in apartment houses of housing and construction team of individual builders. However, this method of house construction has not become widespread in practice and has been gradually supplanted by cooperative house construction (Smirnov, 1982, p. 286). As a result, the problem of spatial property in the late Soviet Union for some time lost relevance.

7. Spatial property in modern Ukrainian legislation

The radical reform of property relations in the early 1990s, especially the recognition of private property to apartments for members of housing and construction cooperatives and the privatization of state housing, had a tremendous effect: in a short time a huge number of owners of individual premises (especially apartments) with unclear at the same time legal regime of other premises in the house and the house as a whole.

The predominant emergence of a social group of apartment owners through the privatization of the state housing has left its mark on the legal regulation of spatial property relations in Ukraine, which took place with the aid of technically imperfect rules of privatization legislation.

We are talking primarily about the provisions of Part 2 of Art. 10 of the Law on Privatization of State Housing, 1991, according to the original version of which apartment owners of apartment houses are co-owners of ancillary premises, technical equipment, elements of external landscaping and are required to participate in total costs for maintaining the house and adjoining territory in accordance with the share of their property in the house; ancillary premises (pantries, barns, etc.) are transferred to the ownership of tenants free of charge and are not subject to separate privatization.

The application of these legislative provisions proved to be so problematic that the Constitutional Court of Ukraine twice gave them an official interpretation.[10]

[8] At the same time, D. Genkin separately pointed out that the right of individual property to the apartment (room) exists within the common property to the house as a whole.

[9] In particular, S. Landkoff once pointed out that according to the resolution of the Council of Ministers of the Ukrainian SSR of 30.04.1958, one of the types of construction by housing construction teams is the construction of an apartment building with personal property per apartment with the common property of all owners of apartments to the whole house (Landkoff, 1967, p. 117).

[10] For the first time the Constitutional Court of Ukraine pointed out that ancillary premises (basements, barns, pantries, attics, wheelchairs, etc.) are transferred free of charge to the common property of citizens simultaneously with the privatization of apartments (apartment rooms). Confirmation of property to ancillary premises does not require additional actions, including the creation of an association of co-owners of an apartment house or joining it (decision of the Constitutional Court of Ukraine 2004 March 2).

At present the current civil legislation of Ukraine recognizes as the objects of rights residential houses (Article 380 of the Civil Code of Ukraine), estates (Article 381 of the Civil Code of Ukraine), apartments (Article 382 of the Civil Code of Ukraine), common areas (including ancillary), bearing, enclosing and mixed (bearing and enclosing at the same time) structures of the house, mechanical, electrical, plumbing and other equipment inside or outside the house, which serves more than one residential or nonresidential premises (Article 382 of the Civil Code of Ukraine), residential houses, buildings, structures and their separate parts, apartments, residential and nonresidential premises (Part 1 of Article 5 of the Law of Ukraine on State Registration of Rights in Rem, 2004).

At the same time, the focus on the rights of owners of separate premises in an apartment house actually led to negligence in another aspect: the question of the legal nature of an apartment house as such remained unanswered.

At one time this question arose in the aspect of doctrinal interpretation of Part 1 of Art. 382 of the Civil Code of Ukraine. After all, if the apartments belong to certain persons-owners, and auxiliary premises, constructions of the house and its engineering networks belong to such persons on the right of common property, then what remains of the apartment house as such? And is there anything left at all?

After some time the problem turned into a purely practical and Supreme Commercial Court of Ukraine expressed such legal position:

An apartment house **cannot be the object of property rights**, instead such objects are specific apartments in this house, and all other ancillary premises and the structures of the building themselves are the objects of joint common property of the apartment owners (Decision of the Supreme Commercial Court of Ukraine of 29 November 2007, Commercial case).

Subsequently, however, the Commercial Court of Cassation of the Supreme Court took an opposite position:

An apartment house is a **specific object of property**… the moment of transfer of property of an apartment house to its co-owners is not defined by the current legislation due to the specifics of such object of ownership (Decision of the Commercial Court of Cassation of 19 June 2019, Commercial case).

It is easy to see that for both of these approaches many questions remain unanswered: is an apartment house an object of civil rights? if so, what exactly is such a house and how does the house as an object of rights relate to the apartments and other premises in it, as well as to the right of common property to ancillary premises and structures of the house? what is the legal regime of an apartment house, built or purchased by a housing cooperative (Article 384 of the Civil Code)? and if an apartment house is really a specific object of ownership, what exactly is its specificity? how do the legal constructions of corporate law and law of property relate to the management of an apartment house?

The Law of Ukraine on Peculiarities of Accomplishment of Property Rights, 2015 also added disorder to the situation. An apartment house in this law is as an object of management, and sometimes even recognized as an object of property rights (for example, in Part 5 of Article 5).

The second decision formulates the legal position that owners of apartments in apartment houses with two or more apartments and dwellings in the dormitory, regardless of the grounds for acquiring ownership of such apartments, dwellings, are co-owners of ancillary premises in the house or dormitory, technical equipment, external elements, landscaping (decision of the Constitutional Court of Ukraine 2011 November 9).

It is noteworthy that the Constitutional Court of Ukraine substantiated these conclusions not so much by the content of the actual legislation on privatization, but by reference to more general rules of civil law of Ukraine (especially the provisions of the Civil Code of Ukraine and the Law of Ukraine on Association of co-owners of an apartment house, 2001). So, the official interpretation of the relevant provisions of the Law on Privatization of State Housing, 1991 was carried out in the context of the norms that introduced the institution of spatial property in civil law of Ukraine as a whole, regardless of the grounds for the relevant right.

There is no surprise, that in modern Ukrainian law researches apartment houses are characterized as a kind of "phantom" or "meaningless" objects: visually and physically they seem to exist, but in the sphere of private law they do not exist as such in every aspect (Spasibo-Fateeva, 2021, p. 13).

It is easy to see that of the three models of spatial property, that have developed today in the Romano-Germanic legal system, the current civil law of Ukraine clearly tends to Roman one: the right of individuals to apartments and nonresidential premises is full property, the common property of owners of apartments and nonresidential premises to indivisible parts of house, and the question of the apartment house as an object of the property rights is not positively resolved.

This approach, along with many advantages, also has significant disadvantages – uncertainty of the legal regime of the house as such, creating a false impression of common property elements as objects (and hence – potential possibility of their independent circulation), subjective "alienation" of apartment and nonresidential owners from common property of the house, when they do not feel themselves the real owners of all common property, are not interested in its comprehensive preservation and maintenance, and sometimes do not even have any idea about the structure and elements of such property.

Of course, these shortcomings cannot justify the opposition that the concept of spatial property sometimes encounters in civil law doctrine.[11]

Imperative assignment at the level of law of extreme forms of the principle "superficies solo cedit" or at least a sudden transition to a more balanced model of organization of the institution of spatial property according to the South German model is hardly possible for modern Ukraine. Depriving all owners of apartments and nonresidential premises in multi-apartment residential buildings of their property rights with a stroke of the pen of legislator will have consequences for social peace and tranquility in the state that are difficult to predict. Not to mention the controversial nature of such a measure from the standpoint of the principle of inviolability of property rights in terms of conceptual constitutional requirements of inalienability of rights and freedoms, prevention of narrowing the content and scope of existing rights and freedoms (Articles 22, 41 of the Constitution of Ukraine), which has been repeatedly pointed out by the Constitutional Court of Ukraine (e.g., decision of the Constitutional Court of Ukraine 2022 April 6).

8. Conclusion – prospects of spatial property in Ukrainian legal system

The optimal solution of the above-mentioned problems would be to stay on the basis of private law and provide concerned persons with a wide and diverse range of means, allowing them to choose the most appropriate option for the legal regulation of their relationship.

For such decision it is important to improve the existing models in the current legislation, as well as to introduce at least one new, which will create three alternative regimes of spatial property in Ukrainian civil law:

1) The Roman model, which is predominant for modern Ukraine, needs to be detailed not only and not so much in determining the regime of management of the house, but in terms of creating preconditions for effective management (because modern condominiums in practice are mostly unable to perform their functions). It is also important to introduce public reliable mechanisms for identifying and informing concerned persons about the structure, elements and technical condition of the common property of the house, because today the buyers of the apartment in most cases actually buy "a pig in a poke" – they do not know what they co-own, what specific obligations

[11] And not only in Ukrainian (e.g.: Mattei, 2000, p. 136).

could potentially arise for them and what exactly could be the real content of their rights of common property in an apartment house.

2) The Cooperative model, according to which the owner of the house as a whole is a cooperative created by concerned persons who have the exclusive right to use apartments and other premises in the house. It is generally based on the provisions of Part 1 of Art. 384 of the Civil Code of Ukraine: a house built or purchased by a housing construction (housing) cooperative is its property. However, its logically consistent implementation is possible if at least two legislative changes will be introduced:
   - the right of redemption of an apartment by a member of the cooperative should not be imperative (as it now follows from the provisions of Parts 2, 3 of Article 384 of the Civil Code and Article 19-1 of the Law of Ukraine on Cooperation, 2003), but should depend on the statute of a particular cooperative;
   - withdrawal from the members of the cooperative with the preservation of ownership of the apartment or the exclusive right to use it must be impossible.
3) The South German model, which is organizationally simple and theoretically consistent, but the current domestic legislation does not provide it at all. In order to be able to apply it in Ukraine, it is necessary to make significant changes to the Law of Ukraine on Peculiarities of Accomplishment of Property Rights, 2015 and the Civil Code of Ukraine (in particular, creating a new limited exclusive right in rem to an apartment within the common property to the house as a whole).

Owners of apartments and nonresidential premises in an apartment house should be given the opportunity to choose the model of organization of property relations that they want to implement for themselves. However, in one house there must be only one such model at a time.

Of course, this proposal is only a conceptual vision of ways to improve the legal regulation of relevant relations. It requires further research in various areas: determining the list of objects of ownership in an apartment house and the conditions of its being an object of property rights; solving the issue of the limit of divisibility of the building; design of a limited right in rem to premises suitable for the domestic law and order; formulation and solution of a number of organizational and registration problems related to determining the structure, elements and technical condition of the common property of the house; analysis of the ratio of private and public principles in the regulation of property relations in an apartment house and its management, as well as the development of an optimal model of the ratio of such principles, etc. However, in any case, most of these issues have already arisen in practice and require, above all, a balanced doctrinal response in order to bring the current situation out of the deadlock.

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Spatial Property: World Approaches and the National Law of Ukraine

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S u m m a r y

The author observes the socio-economic preconditions for the formation of the structure of spatial property, highlights the models of this structure in the countries of the Romano-Germanic legal system. In the specified general context the history of origin and development of floor property in a national legal order is traced, and also the current condition of the legislation on the considered question is analyzed.

The author concludes that it is necessary to reform significantly the institution of spatial property in the civil law of Ukraine. The initial idea should be the introduction of the possibility of three alternative models of spatial property organization: the Roman model adopted in national law (with its simultaneous improvement), the cooperative model, the South German model of common property to the whole house. The owners of apartments and nonresidential premises in an apartment building should be given the opportunity to choose the model of organization of property relations that they want to implement for themselves.

Patalpų nuosavybė: pasaulinis požiūris ir Ukrainos nacionalinė teisė

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S a n t r a u k a

Autorius apžvelgia socialines ir ekonomines patalpų nuosavybės struktūros formavimosi prielaidas, išskiria šios struktūros modelius romanų-germanų teisinės sistemos šalyse. Nurodytame bendrajame kontekste autorius nupasakoja patalpų nuosavybės atsiradimo ir raidos nacionalinėje teisės sistemoje istoriją, taip pat analizuoja dabartinį reguliavimą nagrinėjamu klausimu.

Autoriaus manymu, būtina iš esmės reformuoti patalpų nuosavybės institutą Ukrainos civilinėje teisėje. Pradinė įgyvendinimo idėja galėtų būti trijų alternatyvių patalpų nuosavybės organizavimo modelių įvedimas: romėnų modelio, jau įtvirtinto nacionalinėje teisėje (kartu jį tobulinant), kooperatinio modelio, Pietų Vokietijos bendrinės nuosavybės į visą namą modelio. Daugiabučio namo butų ir negyvenamųjų patalpų savininkams turėtų būti suteikta galimybė pasirinkti nuosavybės santykių organizavimo modelį, kurį jie galėtų įgyvendinti patys savo nuožiūra.

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