**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 7-r(ІІ)/2021 of October 20, 2021 in the case upon the constitutional complaint of the Private Joint Stock Company “Chernihivoblbud” on the compliance of the provisions of subparagraph “b” of Article 14.3.1 of the Law of Ukraine “On Ensuring the Realisation of Housing Rights of Dormitory Residents” with the Constitution of Ukraine (constitutionality)**

Private Joint Stock Company “Chernihivoblbud” (hereinafter referred to as “Chernihivoblbud”) appealed to the Constitutional Court to verify the compliance of subparagraph “b” of Article 14.3.1 of the Law of Ukraine “On Ensuring the Realisation of Housing Rights of Dormitory Residents” of September 4, 2008 No. 500–VI as amended (hereinafter referred to as “Law No. 500), which stipulates that the dormitory included in the authorised capital of the company is transferred to the ownership of the territorial hromada without the consent of the dormitory owner by court decision, with the Constitution (constitutionality).

The condition of full reimbursement to the owner of the value of a private property in case of its forcible alienation on grounds of public necessity is established directly by Article 41.5 of the Basic Law, and therefore this issue is beyond the discretion of the Verkhovna Rada; the legislator, within the limits of its competence, should only provide guarantees for the implementation of the condition established by the said provision of the Constitution.

Both at the constitutional level and at the level of international treaties, which are part of the national legislation of Ukraine in case the Verkhovna Rada of Ukraine approves their binding nature (Article 9.1 of the Constitution), the possibility of restricting property rights is established, taking into account the interest of the society, and due to the need to ensure the protection of other constitutional rights of citizens, in particular the right to housing.

One of the ways to exercise the right to housing (the basis for acquiring ownership of housing) is its privatisation. The legal basis for the privatisation of the state housing fund, its further use and maintenance are defined by the Law of Ukraine “On Privatisation of the State Housing Fund” of June 19, 1992 No. 2482–XII as amended (hereinafter referred to as “the Law No. 2482”).

According to Article 2.2 of the Law No. 2482 as amended by the Law No. 500, rooms in dormitories were not subject to privatisation.

The Law No. 500 envisages the possibility for citizens to exercise their right to housing through the privatisation of residential premises in dormitories exclusively with the presence of such dormitories in the ownership of territorial hromadas; dormitory residents who, on the legal grounds specified by the Law No. 500, live in dormitories covered by the Law No. 500.

According to the provisions of the Law of Ukraine “On Privatisation of State-Owned Enterprises” of March 4, 1992 No. 2163-XII (hereinafter referred to as “the Law No. 2163”) in the original wording, which was effective at the time of privatisation of Chernihiv Regional Project Repair and Construction Lease Enterprise “Chernihivoblbud”, the Law No. 2163 does not apply to the privatisation of state land and housing facilities, as well as socio-cultural facilities, except for those owned by enterprises that are being privatized.

Rooms in dormitories were assigned by the legislator to the objects of privatisation of the state housing fund only from January 1, 2009 - the day of entry into force of Law No. 500.

The Law of Ukraine “On Privatisation of State and Communal Property” of January 18, 2018 No. 2269–VIII did not apply to the privatisation of state housing facilities, including dormitories (Article 3.2).

The Constitutional Court proceeds from the fact that the dormitory was acquired by the Private Joint Stock Company “Chernihivoblbud” on the basis of the Law No. 2163 precisely in property.

According to the Law No. 500, the procedure (order) for transferring dormitories to the territorial hromada allows for different options and provides for the opportunity in case of failure to reach an agreement between the dormitory owner and the relevant local council to challenge in court the state share in the authorised capital of the dormitory owner, other conditions that are important for determining the amount of compensation.

The legislator, amending the wording of Article 14 of the Law No. 500, consistently limited the rights of dormitory owners included in the authorised capital of companies in the transfer of such dormitories to the ownership of territorial hromadas: from transfer exclusively on a compensatory basis to the introduction of the possibility of transferring a dormitory on a completely non-compensatory basis by a court decision without the consent of the dormitory owner.

The Constitutional Court considers that the introduced changes could be justified in the case of ensuring a fair balance between the interests of society (ensuring the exercise of the constitutional right to housing by dormitory residents) and the requirements of the Basic Law on protection of property rights (rights of owners of such dormitories).

The method established by the Verkhovna Rada of exercising the constitutional right to housing for dormitory residents and the state's efforts to minimise certain financial costs for compensation to dormitory owners at the level of national legislation led to a disproportion between the socially significant goal (ensuring the housing rights of dormitory residents) and the legal mechanisms that were used to achieve it.

The Constitutional Court concluded that a fair balance must be struck between the guarantee of protection of the right to private property, in particular from forced expropriation without observance of the condition of prior and full reimbursement of its value (Article 41.5 of the Constitution), and the constitutional right of persons living in dormitories to a sufficient standard of living for themselves and their families, including adequate food, clothing and housing (Article 48 of the Constitution).

The legislator cannot resort to such legislative regulation, which would allow forcible deprivation of housing only through a change of dormitory owner, which could put individuals and their families in an extremely difficult social situation, incompatible with their human dignity - one of the fundamental values of the constitutional order of Ukraine.

Thus, the Constitutional Court held to declare the provision of subparagraph “b” of Article 14.3.1 of the Law “On Ensuring the Realisation of Housing Rights of Dormitory Residents” of September 4, 2008 No. 500–VI as amended to be as such that does not comply with the Constitution of Ukraine (is unconstitutional) and to lose its validity from the date of Decision.

**References:**

Decisions of the Constitutional Court of Ukraine:

No. 13-rp/2001 of October 10, 2001;

No. 3-rp/2002 of 12 February 2002;

No. 11-rp/2003 of June 10, 2003;

No. 16-rp/2004 of 11 November 2004;

No. 24-rp/2008 of October 16, 2008;

No. 26-rp/2009 of October 19, 2009;

No. 14-rp/2011 of November 9, 2011;

No. 2-rp/2016 of June 1, 2016;

No. 3-r (I)/2019 of June 5, 2019;

No. 12-r/2019 of December 20, 2019;

No. 3-r (II)/2021 of July 21, 2021;

Judgments of the European Court of Human Rights:

*Maksymenko and Gerasymenko v Ukraine* of 16 May 2013(Application no.49317/07);

*Batkivska Turbota Foundation v. Ukraine* of 9 October 2018 (Application no. 5876/15);

*Pincová* *and Pinc v. Czech Republic* of 5 November 2002 (Application no. 36548/97);

 *Gashi v. Croatia* of 13 December 2007 (Application no. 32457/05);

*Vistiņš and Perepjolkins v. Latvia* of25 October 2012 (Application no. 71243/01);

 *The Holy Monasteries v. Greece* of 9 December 1994 (Applications nos. 13092/87, 13984/88);

 *Platakou v. Greec* of 11 January 2001 (Application no. 38460/97);

 *Kryvenkyy v. Ukraine* of 16 February 2017 (Application no. 43768/07);

 *Ukraine-Tyumen v. Ukraine* of 20 May 2010 (Application no. 22603/02);

 *James and Others v. the United Kingdom* of 21 February 1986 (Application no. 8793/79).