

Legal Issues on the Recognition of Ownership of Unauthorized Residential Premises in the Republic of Uzbekistan

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ABSTRACT

The article deals with the issues of recognizing the ownership of illegally built premises in Uzbekistan. The institution of unauthorized construction is analyzed as an object of civil legal relations. It is concluded that Part 4 of Article 212 of the Civil Code of the Republic of Uzbekistan should be reworded.

KEYWORDS: *unauthorized construction, ownership, squatting of territory, demolition, land plot.*

The legislation of the Republic of Uzbekistan guarantees the rights of citizens to individual housing construction on land plots provided on the basis of the right of lifetime inheritable possession.

At the same time, a complete inventory of the real estate fund of the republic, carried out by the land management and cadastral authorities, revealed systemic omissions and serious shortcomings in matters of ensuring the rule of law in the field of individual housing construction, especially in rural areas.

In particular, despite the existence of legal mechanisms for the acquisition and construction of housing, thousands of citizens over the years illegally erected individual housing on unauthorized land plots¹.

In many ways, this became possible with the connivance of state bodies, primarily local executive authorities, including those authorized in the field of land cadastre, architecture and construction².

Unauthorized construction is a residential building, other building, structure or other immovable property (Article 212 of the Civil Code), if it was created:

- on a land plot not allocated for these purposes in the manner prescribed by law;
- Without obtaining the necessary permission for this, or with a significant violation of architectural and building codes and regulations.

A person who has carried out unauthorized construction shall not acquire the right of ownership to it.

Unauthorized construction is punishable. Without registration and permission, for violation of building codes and regulations, technical conditions during the performance and acceptance of work, rules for commissioning an object, fines can be imposed (Article 99 of the Code of Administrative Responsibility of the Republic of Uzbekistan). The legislation also provides for liability for the seizure of land.

¹Барышова, Мария Владимировна, et al. "Социальное предпринимательство: научные исследования и практика." (2019): 60-60.

²Дёмкина, Алеся Вячеславовна. "Принцип добросовестности и институт самовольной постройки в гражданском праве." *Имущественные отношения в Российской Федерации* 8 (167) (2015): 6-14.

Claims from the tax authorities are possible, since the data used in calculating taxes on land and property are distorted. There may be claims from neighbors and in case of self-occupation of territories - from khokimiyats, other persons whose rights and interests are violated by an illegally erected building. As a result, litigation and a court decision to demolish the building.

It has no right to dispose of the building - to sell, donate, rent, and make other transactions³.

From the above legal definition it follows that unauthorized construction can be considered among the objects of civil legal relations.

According to N.N. Dalbaeva, attributing unauthorized construction only to objects of civil legal relations would not be entirely correct⁴. O.G. Ershov and V.A. Betkher believe that the institution of unauthorized construction has a dual nature: on the one hand, it is one of the original ways of acquiring property rights; on the other hand, it is a sanction for construction in violation of the law⁵. Without excluding the duality of the legal essence of an unauthorized construction, we note that the right of ownership to it does not arise initially, it is conditioned by a certain procedure for its recognition, which in turn implies the existence of a thing (an unauthorized construction), without which it is impossible to raise the question of the emergence of a property right. Thus, unauthorized construction should be attributed to the number of such objects of civil legal relations as things⁶.

The Republic of Uzbekistan has implemented large-scale state programs aimed at creating decent living conditions for the population, primarily in rural areas. So, for the period 2009 - 2017, 81,992 houses were built, 6,624 residential areas were erected, and the necessary engineering and communication infrastructure was provided. Since 2016, a qualitatively new state program has been implemented, which provides for the construction of affordable housing according to updated standard projects for villagers. In 2017 alone, more than 18,000 comfortable houses were built in rural areas⁷.

There are numerous facts of conspiracy of farms and dekhkan farms to illegally provide land plots to citizens for housing construction for a certain fee⁸. As a result, this problem has become widespread throughout the country and the lack of necessary documents for housing has led to other social problems among the population⁹, in particular, the inability to register in the place of actual residence, acquisition and exercise of property rights.

The Virtual Reception Office of the President of the Republic of Uzbekistan received more than 5,000 requests to issue cadastral documents for residential property of citizens, more than 3,000 - during field receptions by deputies, senators, officials of state authorities.

In accordance with Part 4 of Article 212 of the Civil Code of the Republic of Uzbekistan, the right of ownership of an unauthorized construction may be recognized by the court for a person who owns, inherits for life, permanently owns and uses the land plot where the construction was carried out. In

³<https://lex.uz/docs/111181>

⁴Далбаева, Наталья Николаевна. "Признание права собственности на самовольную постройку." *БКК* 67.404 П78 (2017): 38.

⁵Ершов, Олег Геннадьевич, and Вера Андреевна Бетхер. "К вопросу о правовой природе самовольной постройки." *Право и экономика* 4 (2015): 37-41.

⁶Ерофеева, Ангелина Александровна. "Проблемы правового статуса самовольной постройки." *Юрист* 1 (2010): 43-46.

⁷<https://lex.uz/docs/3694453>

⁸Ибратова, Ф. Б. "Банкротство ликвидируемого субъекта предпринимательства: проблемы и решения." *Norwegian Journal of Development of the International Science* 58-2 (2021).

⁹Ibratova, F. "BANKRUPTCY OF A LIQUIDATED BUSINESS ENTITY: PROBLEMS AND SOLUTIONS." *NorwegianJournalofdevelopmentoftheInternationalScience* 2021 (2021): 45.

this case, the person who has been recognized as the owner of the building shall reimburse the person who carried it out for the costs of the building in the amount determined by the court.

In addition, in order to create favorable conditions for the implementation of housing rights and social support for the population, the rational and efficient use of land, as well as assisting in the state registration of residential premises owned by citizens, a Decree of the President of the Republic of Uzbekistan dated April 21, 2018 “On additional measures to social support of citizens and holding a one-time nationwide action to recognize the right of ownership of unauthorized residential premises.

According to this Decree, the Decree of the President of the Republic of Uzbekistan dated April 21, 2018 “On additional measures for social support of citizens and holding a one-time nationwide campaign to recognize the ownership of unauthorized residential premises”, not reserved for these purposes, or without obtaining a building permit, is recognized for a person who in good faith, openly and continuously owns this object as his own property, under the following conditions:

- this land plot (part of the plot) is not located on land that, in accordance with the law, cannot be allocated to it for housing construction;
- Unauthorized construction does not violate the requirements of urban planning norms and rules, and its preservation will not violate the rights and legally protected interests of other persons or pose a threat to the life and health of citizens. Specific cases in which the right of ownership of an unauthorized construction cannot be recognized are determined by the Cabinet of Ministers of the Republic of Uzbekistan.

Recognition of the right of ownership to an unauthorized construction is carried out: by the decision of the khokim of the district (city) on the proposal of the Commission for the organization of work on the recognition of rights to real estate, formed on the basis of a decision of the Cabinet of Ministers of the Republic of Uzbekistan; subject to the rules of civil and family law on common property; after paying a one-time fee of five minimum wages.

When recognizing the right of ownership to an unauthorized construction, the owner is granted the right of lifetime inheritable possession of the land plot (part of the plot) on which it is built, within the limits established by law, with the withdrawal of the excess part in the reserve land, without imposing a fine, provided for in Article 121 of the Tax Code of the Republic Uzbekistan.

The department for land resources and the state real estate cadastre of the city of Tashkent (hereinafter referred to as the department) emphasized that the existing permit procedures are aimed at ensuring the safety of the building and compliance with the law. When preparing for construction, it is important not only to think about what the architectural appearance of the building will be like, the purchase of building materials, but also about the legal aspects of construction. At the same time, you need to be guided by the regulations approved by the Resolution of the Cabinet of Ministers dated May 18, 2018 No. 370 “On approval of certain administrative regulations for the provision of public services in the field of architecture and construction”.

All permit procedures accompanying the start of construction have been simplified and today there is no need to run through numerous instances. Issues are resolved remotely through EPIGU. Another option is on a first-come, first-served basis through the Public Service Centers. As necessary, employees of authorized state bodies will contact you.

It must be borne in mind that recognition of ownership of an unauthorized building is possible if it:

- does not threaten life safety and meets the requirements of building codes and regulations;
- Does not violate anyone's legitimate rights and interests.

These aspects will be given priority attention when making decisions by the competent authorities.

As evidence that the building does not pose a threat to the life and health of citizens, and also complies with special norms and rules, it is necessary to provide positive conclusions from the authorized state authorities for architectural, construction, fire and sanitary supervision, in which these circumstances must be directly reflected, and the conclusions themselves are signed by authorized officials¹⁰.

The solution of the issue depends on who owns the land on which the unauthorized building was erected. If it is located on a site that does not belong to the one who erected it (a self-captured site), then all decisions are made only through the court (Article 212 of the Civil Code).

Recognition of ownership of an unauthorized building for law enforcement practice is more an exception than a common thing. There is no clear regulation on how to act if the building is located on a site owned by the person who carried out this construction¹¹. In solving this problem, experts recommend following the same order as if you were building without violating the regulations.

The management recommended the following algorithm:

- You need to contact the design organization involved in the design of buildings. Its specialists on site will conduct a survey of the building, make the necessary measurements, study the technical condition of the building and give recommendations on bringing it in line with building codes and safety rules, help with the preparation of the necessary documents;
- In order to complete the procedure for registering ownership of an unauthorized building, it is necessary to submit an application for acceptance into operation through the Public Services Center or the SPIGU. Within five days from the date of submission of the application, the State Enterprise of Land Management and the Real Estate Cadastre will examine the building with a site visit, and after another three days you will receive the relevant act.

Based on the foregoing, it is proposed to state part 4 of article 212 of the Civil Code of the Republic of Uzbekistan in the following wording:

“The right of ownership to an unauthorized structure may be recognized by a court, and in cases provided for by law, in another manner established by law, for a person who owns, inherits for life, whose permanent (unlimited) use is the land plot on which the structure was created, while simultaneously observing the following conditions:

If in relation to the land plot the person who carried out the construction has rights allowing the construction of this object on it;

If on the day of applying to the court the building meets the established requirements;

If the preservation of the building does not violate the rights and legally protected interests of other persons and does not pose a threat to the life and health of citizens.

In this case, the person who has recognized the right of ownership of the building shall reimburse the person who carried it out for the costs of the building in the amount determined by the court”.

¹⁰Савина, АннаВладимировна. "Правовой режим самовольной постройки." *АВ Савина.–автореф. дисс. на соиск. уч. степ. канд. юр. наук, М (2010).*

¹¹Мотлохова, Евгения Александровна. "Особенности правового режима самовольных построек в российском гражданском праве." *Имущественные отношения в Российской Федерации* 10 (169) (2015): 25-33.

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