

Ukraine

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NGO submitting the report:

Ukrainian Helsinki Human Rights Union

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1. General overview

1.1. This report raises topical issues of right to peaceful enjoyment property.

2. Rights to peaceful enjoyment property

2.1. For a long time systemic problems of setting up a uniform system for state registration of the ownership rights in real estate have been in place. The registration system till now exists as a system of registering the property titles and documents establishing the rights of ownership. It does not guarantee the ownership rights per se – it just calls for further check-ups and verifications of the documents and subsequent arbitrary decisions as to the legality of the respective property rights. Large number of entities in charge of various registers reflecting these rights only aggravates the problem of lack of guarantees in ownership rights.

2.2. Over the last two years the state has been taking steps in the direction of reforming the system of registration of realty. Specifically, in 2010 the Parliament adopted the new version of the Law On State Registration of Ownership Rights to Immovable Property. In general, it is aimed at improving the situation. However, due to a number of text inaccuracies and practical problems in the law implementation, it still remains non-operational.

2.3. The registers of realty are not transparent for the public. The information concerning the owners of real estate is virtually unattainable, in particular, information with respect to the co-owners of multi-apartment buildings, which hinders the formation of co-owners associations; the information on the real property of politicians and bureaucrats becomes available only due to the reporters' investigations etc.

2.4. The instances of ownership rights violations are abundant. Thus, the unified registry of the court decisions contains over 420,000 court rulings dealing with the ownership rights violations. Over 180,000 out of those are the rulings passed over the years 2010-2011. It means that in less than a year and a half about 200 thousand cases related to ownership rights violations were entered into the registry. In the majority of cases the courts do not adhere to the statutes of limitations; moreover, sometimes the terms are exceeded so significantly that defence became irrelevant. The procedural violations committed by the state in the form of ignoring the claims also are numerous. In particular, the claimant often would ask the court to ban the defendant or third parties from committing certain actions with respect to the former's property, i.e. constructing or taking down a house (other real property) at the disputed plot of land, demolishing the fence etc. however, contrary to procedural law these claims remain without any court rulings which leads to the ownership rights violations and makes their further protection impossible even in case when ruling is in the claimant's favour.

2.5. Non-compliance with the national courts' rulings aimed at protection property rights represents another problem. Lack of efficient mechanism enforcing these rulings causes government's incapacity to protect the property rights and inability of individuals to protect their right to own, manage and dispose of their property. Despite the broad normative-legal basis for concluding the process of rights' protection, currently this issue remains unresolved and stressful, as, according to statistic data about 60-70% of the national courts' rulings in civil cases remain unexecuted. The European Court of Human Rights has recognized this problem long ago and introduced the procedure for "pilot" ruling in the cases "*Yuri Mykolayovich Ivanov v. Ukraine*" concerning specifically non-compliance with the national courts' rulings. This non-compliance refers, first of all, to the cases in which state is a defendant.

2.6. The requirements towards documentation with respect to new development, additions to existing buildings and legalization of illegally built structures and premises are very complicated. The individuals build their property and later face huge problems in legalizing it due to unwarranted complexity of the procedure.

2.7. The use of Law "On alienation of land plots and structures sitting on them, which are private property, for public needs or on the grounds of public need" is also arbitrary. Unfortunately, inaccuracies of the law are often used for illegal restricting of human rights. Vague definition of "public need" and "public use", disregard of market principles in establishing damages for the alienated land and premises and wide opportunities for abuse for the bureaucrats contribute to the seriousness of the problem.

2.8. The ownership rights protection with respect to land relations also poses a grave problem, especially taking into account the moratorium on sales and purchases of the agricultural lands. Ban on sales and purchases of the agricultural lands deforms the nature of private land ownership – legally it is in place, but economically it is not viable. The owner cannot use the land as an instrument to attract investments or credits due to the moratorium; cannot use it as security, while the leasing right can hardly be used for mortgage. The problem is further aggravated by the fact that “shadow” sales of land continue at a full speed. The land plots are bought out through various schemes, which allow circumventing the law requirements with respect to moratorium. On the other hand, precise and strictly defined legally regulated mechanism for exercising one’s right to land ownership (moreover, its sales-purchases) is yet not in place; therefore, the difference between normative and real (market) values of land plots is striking and lifting of moratorium seems a risky step to take.

Recommendations:

- Setting up transparent and efficient system for state registration of real property titles.
- Improving protection of land title owners, setting up mechanisms of counteracting seizure of land by force, passing the laws which would regulate main aspects of land market functioning.
- Implementing measures for enforcing the national courts’ rulings which protect the property; enhancing court control over the execution of courts’ decisions, banning the moratoria on forced sales of the public companies property. Introducing additional measures for complying with the “pilot” decision of the European Court of Human Rights in the case “*Yuri Mykolayovich Ivanov v. Ukraine*”
- Regulating the problem of land and housing alienation on the grounds of public need in strict compliance with the Constitution and international obligations of Ukraine.