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**THE RIGHT TO ADEQUATE HOUSING: ITS LEGAL NATURE AND  
POSSIBLE WAYS OF IMPLEMENTATION IN THE NATIONAL  
SPACE LAW**

**ПРАВО НА ДОСТАТНЄ ЖИТЛО: ПРАВОВА ПРИРОДА ТА  
МОЖЛИВІ ШЛЯХИ ІМПЛЕМЕНТАЦІЇ В НАЦІОНАЛЬНИЙ  
ПРАВОВИЙ ПРОСТІР**

***Summary.** The article, based on the sources of international law, examines the legal nature of the right to adequate housing and possible ways of implementing this basic right in the national legal space at the general theoretical level. The author notes that the right to adequate housing is a basic social human right. Being enshrined in the sources of International Law, the right to adequate housing has mainly 'declarative properties', which actualizes the problem of its*

implementation in the national legal space. The full implementation of this right largely conditions the effectiveness of Ukraine's renovation processes. Realization and enforcement of this right, in the author's opinion, in the national legal space is fraught with difficulties due to the complexity of national legal systems, especially in the context of 'international-national' relations. The author concludes that the right to adequate housing is a meritorious good, which excludes its commodification, but it cannot be considered that it has no price. The author concludes that the operation of market institutions and, accordingly, property structures in the implementation of the right to adequate housing is subject to significant transformation. By its nature, the right to adequate housing is closely linked to other rights that can be realized in the context of inclusive institutions. At the same time, the author emphasizes that the theory of the right to the city can serve as a summarizing theory for ensuring the right to adequate housing and ensuring its implementation in the national legal space. The author argues that addressing the right to adequate housing requires strengthening the role of local communities and developing inclusive urban institutions, as this approach allows taking into account the moral externalities associated with the granting of this right.

**Key words:** human rights, international law, national law, implementation, right to adequate housing, inclusive institutions, meritorious good.

**Анотація.** У статті, ґрунтуючись на джерелах Міжнародного права, на загальнотеоретичному рівні досліджуються питання правової природи права на достатнє житло, а також можливі шляхи імплементації цього базового права в національний правовий простір, які автор вбачає у впровадженні інклюзивних правових інститутів. Автор зазначає, що право на достатнє житло є базовим соціальним правом людини. Будучи закріпленим у джерелах міжнародного права, право на адекватне житло має переважно "декларативні властивості", що актуалізує проблему його

імплементації в національний правовий простір. Повноцінна імплементація цього права, на думку автора, значною мірою зумовлює ефективність процесів реновації України. Автор вважає, що реалізація та забезпечення дотримання цього права у національному правовому просторі пов'язана з труднощами, зумовленими складністю національних правових систем, особливо в контексті відносин "міжнародне - національне". Автор доходить висновку, що право на достатнє житло є мериторним благом, що унеможлиблює його коммодифікацію, але не можна вважати, що воно не має ціни. Автор робить висновок, що дія ринкових інститутів, і відповідно, майнових конструкцій за умови імплементації права на адекватне житло підлягають суттєвій трансформації. За своєю природою право на достатнє житло тісно пов'язане з іншими правами, які можуть бути реалізовані лише в контексті інклюзивних інститутів. При цьому автор акцентує увагу, що узагальнюючою теорією для забезпечення права на достатнє житло та забезпечення його імплементації в національний правовий простір може слугувати теорія права на місто. Автор вважає, що розв'язання проблеми права на достатнє житло потребує посилення ролі місцевих громад та розвитку інклюзивних міських інституцій, оскільки такий підхід дає змогу враховувати моральні екстерналії, пов'язані з присвоєнням цього права.

**Ключові слова:** права людини, міжнародне право, імплементація, національне право, право на достатнє житло, інклюзивні інститути, мериторне благо.

It is undeniable that housing is a fundamental human right, as it is key to human well-being and serves as the foundation for other rights, including the right to health, education, water and sanitation, freedom of association and expression, and the right to life itself. It is this understanding of the right to adequate housing that gives it meaning in the context of human rights.

Human rights approaches arising from internationally agreed instruments can influence the way in which States support the homeless in the face of other competing influences. Indeed, there are a plurality of normative systems within the decision-making environment of State bodies. The advancement of human and housing rights competes with pressures for profits, market competitiveness, efficiency and cost-effectiveness in the neo-liberal climate [1].

The armed aggression against Ukraine and the resulting influx of refugees and internally displaced persons have extremely exacerbated the housing problem. For the fall of 2023, almost 160 thousand buildings and structures in Ukraine destroyed due to Russian aggression, about 20 thousand of which are multi-storey buildings [2]. Currently 6,335,100 refugees from Ukraine recorded globally [3]. The return home of persons forced to leave their homes depends to large extent on guarantees of the right to adequate housing. Thus, issues to the right to adequate housing have become particularly relevant.

Issues related to the right to adequate housing are the subject of many studies in foreign literature, mainly in the context of human rights.

In particular, Kenna, P. [1] in the detailed book produced on the issue of Housing Rights and Human Rights provides a critical analysis of such instruments, and how they have been used in different countries, particularly in the European Union. Christophe Golay and Melik Özden [4] present examples of implementation of the right to adequate housing on the national level, point out what monitoring mechanisms are available on the international, regional and national level for use by victims of violations of their right to adequate housing. Manuel B. Aalbers & Kenneth Gibb [5] in the special issue presents case studies of housing struggles from around the globe that are framed within a right to the city perspective. In this special issue present a short synopsis of the idea of a right to the city, as put forward by Henri Lefebvre; second, we briefly discuss earlier work that has used a right to the city lens to look at housing; and third, we provide an overview of the papers that make up this special issue. Clarence J. Dias & Scott

Leckie [6] argues that adequately resourced and clearly-defined initiatives by the international human rights community involving activities designed to prevent housing rights abuses, to empower, educate and train citizens about their entitlements to adequate housing as a human right and the incorporation of housing rights themes within ongoing human rights operations at the field level could go a long way towards actually protecting this fundamental human right. Hohmann, Jessie M. [7] asserts that the right to housing may seem an insignificant response, at worst even a distraction from the real issues and other avenues for action. It is only one resource among many – political, legal, economic – that must be pursued. Vols, M., and Dyah Kusumawati, E. [8] analyses if, and how, the international right to housing obliges states to protect the victims of justifiable evictions, particularly evictions due to rent arrears.

The few works devoted to the study of the problem of the right to adequate housing, published recently in Ukraine, attempt to go beyond the narrow subject matter of research and consider this topical issue synthetically. In particular, Stepanova T. V. [9] examines the issues of the current state of regulatory regulation of the right to housing, substantiates the complex nature of this right, the protection of which is possible only by joint means of constitutional, criminal, administrative, civil and housing law. Tchaikovsky O. I. [10] concludes that the majority of rights and freedoms, guaranteed to us by the Constitution as the standards of possible behavior generally accepted worldwide, belong to every person from the birth, and the society and the government recognize that as a fact.

**The purpose of this study** is to identify the ways of the right to adequate housing implementation in the National Space law based on the analyses of the sources of International law, analytical studies and proceeding from its legal nature.

The rights to housing originally established as part of the development of international human rights. In addition, numerous scholars and social advocates

claim that the global legal interpretation of the right to housing served as the basis for national legal systems.

After the second World War (1939-45) the nations of the world set out in the Universal Declaration of Human Rights, 1948, (UDHR), the first clear articulation of all these rights, civil and political, as well socio-economic [1]. From this moment until the events related to the aggression against Ukraine, starting from 2014, human rights have been a kind of "currency of international standards and comparisons", a source of legislative inspiration.

So, the right to housing as a fundamental human right for the first time was recognized in the Universal Declaration of Human Rights [11] (Article 25(1)):

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The development of the provisions of the Universal Declaration of Human Rights embodied in most human rights instruments and regarded as an integral part of economic and social rights. These conventions are: INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS [12] (Article 11(1)) – *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent;* International Convention on the Elimination of All Forms of Racial Discrimination [13] (Article 5(e)(iii)) – *States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (e) Economic, social and cultural rights, in particular: (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (iii) The right to housing;* Convention on the Rights of the Child [14] (Article 27 (1)) – *States Parties recognize the right of every child to a standard of living adequate*

*for the child's physical, mental, spiritual, moral and social development; Convention on the Elimination of All Forms of Discrimination against Women[15] (Article 14(2)) – States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications; Convention relating to the Status of Refugees [16] (Article 21) – As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.*

Even during times of peace and apparent progress in implementing human rights, the fulfillment of the right to adequate housing greatly influenced by prevailing political regimes and the level of industrial or political development. Really, the “worldwide recognition does not, however, guarantee the right to housing is well implemented at the national level” [8, p. 238].

The problem of the authority of international legal instruments becomes even more pressing in light of the aggression against Ukraine. It raises doubts about the observance of human rights, including the right to housing. In case the system of international legal instruments that serves as their foundation loses its authority and political/legal significance under such circumstances, the situation worsens.

As a rule, when a State ratifies one of the Covenants, it accepts a solemn responsibility to apply each of the obligations embodied therein and to ensure the compatibility of their national laws with their international duties, in a spirit of good faith. Through the ratification of human rights treaties, therefore, States become accountable to the international community, to other States, which have ratified the same texts, and to their own citizens and others resident in their territories [see 17].

The Guidelines for the Implementation of the Right to Adequate Housing the following implementation measures are:

(a) States, including their judiciaries, must ensure that the right to adequate housing is recognized and enforceable as a fundamental human right through applicable constitutional and legislative provisions or through interpretations of interdependent rights such as the right to life. It should be integrated into policy and programme design and included in the training of lawyers and judges;

(b) The right to housing should be defined as the right to live in a home in peace, security and dignity, and include security of tenure, availability of services, affordability, habitability, accessibility, appropriate location and cultural adequacy;

(c) Courts should adopt interpretations of domestic law that are consistent with the right to housing when exercising judicial review and Governments should promote such interpretations, including in pleadings in court cases;

(d) The right to housing must be recognized and affirmed as indivisible and interdependent with other rights, including the rights to life, security of the person and equality, and these rights should be interpreted to the greatest extent possible in such a way as to facilitate the full protection of the right to housing [18].

Thus, the obligation of States to recognize the right to housing manifests itself in several key areas. Firstly, all countries must recognize the human rights dimensions of housing, and ensure that no measures of any kind taken with the intention of eroding the legal status of this right. Second, legislative measures, coupled with appropriate policies geared towards the progressive realization of housing rights, form part of the obligation 'to recognize'. Any existing legislation or policy which clearly detracts from the legal entitlement to adequate housing would require repeal or amendment. Policies and legislation should not be designed to benefit already advantaged social groups at the expense of those in greater need. Thirdly, a genuine attempt must be made by States to determine the degree to which this right is not in place, and to target housing policies and laws towards attaining this right for everyone in the shortest possible time. In this

respect, States must give due priority to those social groups living in unfavorable conditions by according them particular consideration [19].

The right to adequate housing is relevant to all States, as they have all ratified at least one international treaty referring to adequate housing and committed themselves to protecting the right to adequate housing through international declarations, plans of action or conference outcome documents [see 18]. However, given the current transformative changes in the realm of human rights, it is evident that the dialectical relationship between national legal systems and the international community on one hand, and national legal systems and citizens on the other, is undergoing a significant shift.

In our view, local communities should be the mediators of the right to adequate housing, and possibly other basic human rights as well. Indeed, the growing role of cities in modern society and their changing role on a global scale allows us to raise the question of the special nature of the social and legal organization of a modern city. In this case, the once homogeneous legal space of the national state acquires a differentiated form of its organization – local (city) and national law [20]. Moreover, each of these loci interacts in a special way with international aspects of legal phenomena and processes [21].

It should be noted that it is the complexity of the right to adequate housing that makes it possible and necessary to realize it through the architecture of inclusive institutions based on the concept of the ‘right to the city’. Only then, in our view, can the realization of the right to adequate housing be truly successful.

In this regard, it is necessary to recall the basic rules-recommendations in the acts of the UN General Assembly and the Council of Europe based on the idea of the ‘right to the city’, in particular: The 2030 Agenda for Sustainable Development, which sets out 17 Sustainable Development Goals (SDGs) [22]; The New Urban Agenda, the outcome document agreed upon at the Habitat III conference in Quito, Ecuador, in October 2016 [23]; European Urban Charter II (New Urban Manifesto) Adopted by the Congress during its 15th Plenary Session

on May 29, 2008 in Strasbourg [24]; THE EUROPEAN CHARTER OF EQUALITY OF WOMEN AND MEN IN THE LIFE OF LOCAL COMMUNITIES Presented at the General Assembly of the Council of European Municipalities and Regions, Innsbruck, May 2006, drawn up by the JURISPRUDENCE THE ROLE OF SOCIETY IN THE DEVELOPMENT OF SCIENTIFIC IDEAS 72 Council of European Municipalities and Regions within the framework of the 5th Community Action Program for Gender Equality [25]; UN General Assembly, 2015, Transforming our world: the 2030 Agenda for Sustainable Development, resolution A/RES/70/1, September, New York [26], as well as some other acts.

These acts aims to ensure responsive, inclusive, participatory and representative decision-making at all levels, emphasizing the importance of public access to information, protection of fundamental freedoms and the promotion of nondiscriminatory laws and policies for sustainable development [*see* 27, p.71-75.]. The realization of these objectives, however, should not considered as an end in itself. Instead, the focus should be on providing adequate housing for all people in the community taking into account the guidelines proposed by international instruments in this field.

In fact, "housing is only one dimension albeit a crucial one of the wider right to the city as an oeuvre that constitutes a fundamental analysis and contesting of the way urban space is produced with primarily its exchange values in mind, producing alienation, exclusion and expropriation" [28, p.212].

Furthermore, we believe that only through the introduction of inclusive urban institutions can we effectively address the fundamental issue of recognizing and protecting the right to adequate housing, while ensuring that the forms of its implementation are consistent with the core principles of this right.

The realization of the right to adequate housing through inclusive institutions is facilitated by the complex structure of this right itself. Thus, the right to adequate housing contains freedoms. These freedoms include: Protection

against forced evictions and the arbitrary destruction and demolition of one's home; The right to be free from arbitrary interference with one's home, privacy and family; and the right to choose one's residence, to determine where to live and to freedom of movement.

The position of the Office of the United Nations High Commissioner for Human Rights, reflected in Fact Sheet No. 21/Rev.1 The Right to Adequate Housing, according to which "The right to adequate housing is NOT the same as the right to property" [29]. Noted above raises the question of the legal nature of this right. To state that the right to adequate housing is a basic human right is obviously insufficient to understand the essence of this right.

A basic aspect for understanding the idea of the right to adequate housing is that this right "is broader than the right to own property as it addresses rights not related to ownership and is intended to ensure that everyone has a safe and secure place to live in peace and dignity, including non-owners of property" [29].

In other words, the right to adequate housing 'across the board' extends to all who reside in the dwelling, including owners and other property rights holders. Moreover, the right to adequate housing has a 'qualitative' specificity determined by the respective property constructions: "Security of tenure, the cornerstone of the right to adequate housing, can take a variety of forms, including rental accommodation, cooperative housing, lease, owner-occupation, emergency housing or informal settlements. As such, it is not limited to the conferral of formal legal titles" [29].

Thus, the right to adequate housing takes precedence over specific property constructions that provide for the attachment, exercise and protection of certain property rights to dwelling real estate.

Indeed, in crisis contexts, when national and local governments are challenged to meet the need for adequate social housing, the agenda should include policies to introduce instruments for the management of such housing, land policy instruments (land rent, land readjustment, strategic urban and

neighborhood planning), as well as financial instruments (public and private loans, social housing bonds, subsidies, grants) [30].

At the same time, based on the conceptual model of the right to adequate housing, it is clear that the right to adequate housing is inherently a meritorious good. In general terms "The concept of merit goods assists governments in deciding which public or other goods should be supplied. Goods such as subsidized housing or social services, which predominantly help the poor, or health care services, which help the poor and elderly, are generally regarded as having considerable merit and therefore have a strong claim on government resources. Other examples include the provision of retraining schemes or urban regeneration programs" [31]. From these examples becomes clear that the creation of meritorious goods conditioned by collective action. The aforementioned characteristic allows us to compare public goods with meritorious goods as such.

More important, however, is the question of the distributive character of such goods. Richard Musgrave and James Tobin already pointed out that there is a group of goods that society does not consider possible to distribute in the same way as the mass of goods, and that individual market decisions regarding such goods do not fully take into account the external benefits and costs of their production and consumption [*see* 32; 33].

Musgrave call a public good and a merit good on three grounds. First, the provision of a merit good includes the intention to interfere with consumers. Second, a merit good is justified on moral grounds, not on the basis of a utilitarian calculus. Finally, a merit good financed in a different way than a public good [34, p. 702].

However, meritorious goods distinguished from public goods: the first can be appropriated by individual actors, but in a way different from the market. In turn, public goods belong to society as a whole and cannot be appropriated by individuals.

In other words, meritorious goods are not commodity, but can appropriated by means other than the market mechanism. Market allocation of meritorious goods not recognized by society as acceptable, although a price may placed on them. The aversion in this case is not the property constructions themselves subordinate in essence to the idea of the right to adequate housing, but the morally based concerns that "it is the capacity of the rich to outbid the poor that renders their allocation through the ordinary market unacceptable, utility diminishing, and therefore 'costly' to many people" [35, p.55].

Thus, the costs arising from the commodified allocation of housing rights as meritorious goods are moral costs. Setting a market price for the right to adequate housing would be extremely costly for society, and therefore this right needs a different distribution mechanism. The 'mythologize' of commodification as 'the process for creating a tradable product from what was previously not tradable as goods' in its purest form does not obviously apply to the right to adequate housing. However, purely authority decisions (commandification) not be applied to the allocation of this right. The 'median' in the mechanism of distribution of merited benefits, and thus housing rights, taking into account the moral costs associated with their acquisition, realization and protection.

The right to adequate housing contains entitlements. These entitlements are – Security of tenure; Housing, land and property restitution; Equal and non-discriminatory access to adequate housing; Participation in housing-related decision-making at the national and community levels. In addition, the right to adequate housing include the following: *Availability of services, materials, facilities and infrastructure; Affordability; Habitability; Accessibility; Location; Cultural adequacy* [36].

Thus, the assertion that the realization of the right to adequate housing is only possible within the framework of building inclusive urban institutions further supported by the fact that this right, while considered a fundamental human right in its own right, is closely linked to other basic rights.

Truly that "housing rights can and are violated in much the same way as other human rights, with which these rights are indivisible and interdependent. While the violations of rights associated with the practice of forced evictions is perhaps the most obvious active violation of the right to housing is the very widespread practice of forced evictions, housing rights violations, of course, are not isolated to forced evictions. For example, a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would violate internationally recognized housing rights standards. Similarly, acts of racial or other forms of discrimination in the housing sphere, demolition or destruction of housing as a form of punishment, failing to reform or repeal legislation inconsistent with the contents of housing rights and a range of additional actions have been declared in principle, to constitute further violations of the right to adequate housing" [37, p. 23].

In summary, a brief analysis of the right to adequate housing yields the following conclusions:

(1) For the first time, the right to adequate housing is enshrined in international law, granting it primarily 'declaratory authority';

(2) Implementing and enforcing the right to adequate housing in national law is challenging due to the complexities of national legal systems, particularly in the context of 'international-national' relations;

(3) The right to adequate housing is by its nature a meritorious good, which precludes its commodification, but it is not assumed that it has no price;

(4) Addressing the right to adequate housing requires strengthening the role of local communities and fostering inclusive urban institutions as this approach allows for the moral externalities associated with the granting of this right to be taken into account;

(5) The latter point further supported by the fact that, by its very nature, the right to adequate housing is closely connected to other rights, which can only be achieved together in the context of inclusive institutions.

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