

захисту житлових прав є: високий рівень юридичної техніки складання нормативно-правових актів, які закріплюють механізм правового регулювання суспільних відносин, зокрема, закріплюються як права людини, в т.ч. житлові права, так і інструменти їх забезпечення, високий рівень правосвідомості та правової культури, ефективність судової системи (в контексті судового захисту житлових прав), переорієнтація органів державної влади та органів місцевого самоврядування на забезпечення прав і свобод людини і громадянина (відхід від доктрини державного управління та орієнтація на «публічне адміністрування»). Механізм правового регулювання захист права особи на житло здійснюється в судовому порядку відповідно до положень ст. 15, 16 ЦК України та інших спеціальних норм ЦК України. При цьому судам при вирішенні цивільних спорів чи розгляді кримінальних справ варто враховувати, що практика ЄСПЛ є обов'язковою до застосування судами в Україні, оскільки його рішення є джерелом права України, а тому підлягає застосуванню при вирішенні судових справ.

1. Горобець Н. О. Поняття «житловий простір» у праві на недоторканість житлового простору: матеріали міжнародної науково-практичної конференції, присвяченій пам'яті професора О. А. Пушкіна «Проблеми цивільного права та процесу» (м. Харків, 23 травня 2009 р.). Харків: ХНУВС, 2009. 436 с.

2. Галянтич М. К., Самойленко Г. В. Характеристика житла за цивільним законодавством України та в практиці Європейського суду з прав людини. *Приватне право і підприємництво*. 2015. Вип. 14. С. 134-140. URL: http://nbuv.gov.ua/UJRN/Ppip_2015_14_35

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GUARANTEEING RULE OF LAW AND HUMAN RIGHTS IN BUSINESS AS DUTY OF A DEMOCRATIC STATE

Having in mind Ukraine's persistent steps towards its membership in the EU, it is undoubtedly topical to consider the state of guaranteeing the rule of law principle in the national «business and human rights» social relations. This principle is

recognised to be the cornerstone of national political and legal systems, of a social democracy based on law and justice. Following the Venice Commission, the rule of law is part of the inseparable and steadfast triangle, trilogy, trinity, or triumvirate «human rights, democracy and rule of law» [1]. International safeguards of human rights in business are introduced by the UN Guiding Principles on Business and Human Rights of 2011 (UNGPs) [2] which constitute a set of guidelines for States and business entities to prevent and address human rights abuses committed in business operations. The UNGPs meet the increasing demand for the rule of law in the interconnected relations between the State, individuals, civil society institutes, society in general and business (transnational including).

Noteworthy, that Ukraine's path of the EU accession negotiations will start and be finished with the «Fundamentals» Cluster. The progress under this Cluster will determine the overall pace of the negotiations [3], as the establishment of the EU itself has been inspired by the cultural, religious and humanist inheritance of Europe, from which the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law have been developed [4]. Thus, the implementation of the rule of law and realisation of guarantees of fundamental rights, as well as the determined efforts to promote economic and social progress for peoples with regard to the universal and national sustainable development agenda will draw the most attention of the EU and Ukraine in the course of the accession negotiations and further. Incorporation of the rule of law into the «business and human rights» relations will constitute a part of the key reforms necessary on Ukraine's EU accession track, for which the State is responsible primarily.

The rule of law principle is a means to restrain the power of the State and business entities over the human rights of individuals and the peoples as the constitutional bearers of the State power. It is a means to limit potential arbitrariness in any actions of the State power bodies, politicians, public officials and business entities. The rule of law is important for Ukraine and other countries in transition. Because, on experts' mind, the uncontrolled power in the business sector can lead to the seizure of the State power or to considerable influence of businessmen on the national political agenda and decision-making on the national and local levels. Also the unlimited power of politicians can lead to their alignment in using this power not for public good, not for public interest, but for their private interests [5], which are often merged with illegal business and crime. In both situations these specific phenomena cause the neglect of interests of population and abuse of civil, political, social and economic human rights.

The fundamental rule of law principle and the UNGPs are aimed at limiting the ability and potential of any public and private actors to violate human rights. And at the same time they are centred on directing the powerful forces of States and business entities towards generating fair opportunities and rules for all for human integrity, economic growth, mainstreaming investment, job creation and social cohesion, and sustainable development on the whole.

The UNGPs unequivocally recognise that States have the duty under international human rights law to protect everyone within their territory and/or jurisdiction from human rights abuses committed by third persons, business entities in particular. This duty means that States must establish and run effective laws, regulations, and enforcement mechanisms to prevent and investigate business-related human rights abuses, ensure access to effective remedy for those whose rights have been abused by business, punish and redress human rights abuses that take place in domestic business operations.

The current EU strategy and policy priorities – «An economy that works for people. Ensuring social fairness and prosperity» [6] are in accordance with the UNGPs and envisage the economy's focus on its full respond to the needs of EU citizens. The Organisation for Economic Cooperation and Development (OECD) concentrates on forging a path of countries towards better lives by shaping and realising policies that foster prosperity, equality, opportunity and well-being for all [7]. These goals are fully in line with the rule of law and the UNGPs.

Ukraine's constitutional norms, international commitments and obligations under the fundamental universal and European law acts, including International Bill of Human Rights, ILO conventions and Council of Europe treaties, as well as the relevant EU *acquis*, form a general contextual basis for the direct duties and legal obligations of the State to guarantee the respect and protection of human rights by business entities. In addition, the prospective membership in the OECD [8] involves the implementation by Ukraine of numerous norms and standards on «business and human rights», in particular, on application of the human rights due diligence procedure in various fields and sectors of business activities, etc.

In 2020-2021 a number of strategic policy acts were adopted to ensure Ukraine's move towards the European integration, globalised economic cooperation and the Sustainable Development Goals (SDGs). By adoption in 2020 of the Concept for Implementation of the State Policy to Promote the Development of Socially Responsible Business in Ukraine until 2030 (Concept on SRB) and in 2021 - the National Strategy in the Field of Human Rights (NSHR), the National Economic Strategy for the period until 2030 (NES), etc., the State intended to realise its duty to guarantee the democratic development in various areas of its responsibility, in «business and human rights» including. The expert analysis has proved, that taken together, they provide a general, though not comprehensive, political, legal and practical framework for the UNGPs' implementation [9]. The brief overview of the first two of them helps to reveal some aspects that need the further efforts of the State to realise its duty.

It is undoubtedly important, that the Concept on SRB and the Action Plan for its realisation [10] (adopted to follow the OECD rules) are the first strategic policy documents that lay the legal basis for meeting «business and human rights» standards in Ukraine. The Concept and the Action Plan contribute to implementation of some principles of the UNGPs' Pillar I «The State duty to protect human rights» (though not all of them) and provide business entities with general regulatory

frameworks for implementation of its Pillar II «The corporate responsibility to respect human rights». However, both the documents lack provisions on means of corporate- and State-based human rights protection that would correspond to the UNGPs' Pillar III «Access to Remedy». The National Contact Point for Responsible Business Conduct, whose activities are foreseen by the Concept on SRB and the Action Plan, up to now has occurred to be ineffective in its capacity of a State-based non-judicial grievance mechanism. The Ministry of Economy of Ukraine, authorised to lead the relevant State policy and ensure its realisation, does not publish the results of the Concept's implementation, nor the results are regularly discussed with stakeholders, business entities and public including, in order to check and balance the outcomes and raise the efficiency of the State and business policy and practice. The lack of transparency and oversight marks the failure to properly implement the rule of law principle.

As for the NSHR [11], its overarching goal tackles the issue of ensuring of human rights and freedoms as a determining factor in the conduct of business operations. Its § 16 «Ensuring respect of human rights in the course of economic activities» provides for a strategic focus on application of human rights-based approach by business entities in their operation and on access to effective legal remedies of victims of business-related human rights abuse. However, the content of § 16 is not fully in line with the UNGPs. Its most important failing is in the unreasonable absence of provisions that should correspond with the requirements of Pillar I «The State duty to protect human rights». In fact, this can be perceived in the way that the approved by the President of Ukraine State strategic policy document avoids establishing and addressing the State's duty to fully protect, respect and remedy business-related human rights. This inference is only confirmed by the facts that: a) the NSHR does not foresee the development and implementation of the Business and Human Rights Action Plan as it is envisaged by the UNGPs and Recommendation CM/Rec(2016)3 of the Council of Europe Committee of Ministers to the Member States on Human Rights and Business; b) the tasks set to solve the problems of respect for human rights in business, expected outcomes and main benchmarks for the progress tracking are inaccurate and not agreed between themselves; c) the Action Plan for the NSHR [12] implementation does not include a complex of complementary measures compatible with the content of § 16. Moreover, the Government has not authorised any State power body to lead the work on realisation of the NSHR's § 16 and has not attach any financial support to guarantee the progress in this work. Instead, all the activities to promote the UNGPs' implementation in Ukraine in 2021-2023 is led by the United Nations Development Programme in Ukraine; the Ombudsman's Office holds the parliamentary control over respect for human rights, the Centre for Advanced Studies and Cooperation on Human Rights in Economics of the V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine, the Yaroslav Mudryi National Law University and some CSOs take and realise various awareness-raising initiatives, provide expert assistance and consultancy, etc. However, these efforts

cannot substitute the realisation of the State duties in the business and human rights area foreseen by Ukraine's international commitments and obligations. The Concept on SRB and the NSHR should undergo the thorough revision, be improved and properly coordinated with other relevant strategic policy acts and international requirements; their implementation should be provided on the national and local levels; the sufficient financial, expert and human resources should be attached to reach the short-and long-term results.

It goes without saying, the 2 years of the brutal Russia's war against Ukraine does not provide for much possibility for developments at the expense of the State budget, and the martial law allows limiting some human rights. Though, the State that values its people and sovereignty and fights for the better – safe and prosperous –future, should stick to its constitutional duties and demonstrate ability to protect human rights, ensure democracy and the rule of law. The European identity of the people of Ukraine and its strivings to the European values, peace and sustainable development is recognised by the European community, which is officially confirmed by the Ukraine's EU candidacy and the prospective member status in the OECD. The EU and the OECD demonstrate their political will to accept Ukraine as a member, but they will not find reasonable to «offer discounts» or «turn a blind eye» to Ukraine's shortcomings at the expense of their taxpayers.

In this context, Ukraine should responsibly and efficiently implement the new Ukraine Facility for the period of 2024-2027 [13], the political agreement reached on 6 February 2024 between the European Parliament and the European Council, which will provide stable and sustainable financing to support Ukraine's recovery, reconstruction, and modernisation, including key reforms necessary for its EU accession, focused on the human rights-centred democratic and sustainable development.

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2. Guiding Principles on Business and Human Rights: Implementing the United Nations «Protect, Respect and Remedy» Framework; endorsed by the UN Human Rights Council in its resolution 17/4 of 16 June 2011 (HR/PUB/11/04). URL: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

3. EU accession process step by step. European Commission, October 2022. URL: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/eu_accession_process_clusters%20%28oct%202022%29.pdf

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2024/economy-works-people_en.

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8. Statement by the OECD Secretary-General on Ukraine, 24.02.2023. URL: <https://www.oecd.org/newsroom/statement-by-the-oecd-secretary-general-on-ukraine-24-02-2023.htm#:~:text=We%20have%20formally%20recognised%20Ukraine,Liaison%20Office%2C%20initially%20from%20Paris.>

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10. Концепція реалізації державної політики у сфері сприяння розвитку соціально відповідального бізнесу в Україні на період до 2030 року, схвалено розпорядженням Кабінету Міністрів України від 24 січня 2020 р. № 66-р. URL: <https://zakon.rada.gov.ua/laws/show/66-2020-%D1%80#Text>; План заходів з виконання Концепції реалізації державної політики у сфері сприяння розвитку соціально відповідального бізнесу в Україні на період до 2030 року, затверджено розпорядженням Кабінету Міністрів України від 1 липня 2020 р. № 853-р. URL: <https://zakon.rada.gov.ua/laws/show/853-2020-%D1%80#Text>.

11. Національна стратегія у сфері прав людини, затверджено Указом Президента України від 24 березня 2021 року № 119/2021. URL: <https://zakon.rada.gov.ua/laws/show/119/2021#n439>.

12. План дій з реалізації Національної стратегії у сфері прав людини на 2021-2023 роки, затверджено розпорядженням Кабінету Міністрів України від 23 червня 2021 р. № 756-р. URL: <https://zakon.rada.gov.ua/laws/show/756-2021-%D1%80#Text>.

13. Commission welcomes political agreement on the up to €50 billion Ukraine Facility. Directorate-General for Neighbourhood and Enlargement Negotiations, 6 February 2024. URL: https://neighbourhood-enlargement.ec.europa.eu/news/commission-welcomes-political-agreement-eu50-billion-ukraine-facility-2024-02-06_en.

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ПРАВОВЕ РЕГУЛЮВАННЯ УЧАСТІ ПРЕДСТАВНИКА ПРОКУРОРА У ЦИВІЛЬНОМУ СУДОЧИНСТВІ

Після правової реформи 2016 року значно звузилися повноваження органів прокуратури у поза кримінальній сфері. Законодавець значно обмежив їх повноваження в частині представництва інтересів держави, залишивши