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FEATURES OF LEGAL REGULATION OF SOCIO-ECONOMIC RELATIONS IN CONSTRUCTION: FOREIGN ASPECT

Abstract. The article reveals the foreign aspect of features of legal regulation of socio-economic relations in construction. It is noted that the modern economy of Ukraine is in a state of chronic crisis, so it is of interest to analyze the construction experience of the United States, Canada and the European Union countries in terms of establishing a regulatory mechanism for managing socio-economic relations in construction. It substantiates that the feature of the public administration of legal regulation of socio-economic relations in construction in the United States is the development of its own regulatory mechanism and the system of control over compliance with the relevant legal requirements. To this end the adoption of relevant codes, legislative acts in the field of construction, in

field of mortgage lending, the provision of soft loans, securities, ensuring effective mechanisms of the insurance system has taken place.

It determines that most foreign countries tend to “privatize” the functions of supervision and control over compliance with the construction legislation, bodies and organizations in charge of the technical regulation system functioning in construction, etc. The reasons for this are the added complexity and improvement of building technologies, the increase in the volume of construction and the transition of many countries to the use of parametric standards (norms).

It is concluded that the international experience in the implementation of architectural and construction control in foreign countries is a necessary foundation for the improvement of the national construction system of a state. The involvement of independent private specialized agencies in the supervision and control system or of experts in performing the functions of control will not only improve the quality of control measures, but also reduce the level of corruption in the construction sector.

Keywords: public administration, socio-economic relations, construction, legal regulation, mechanism, foreign experience, architectural and construction control, standardization in construction.

ОСОБЛИВОСТІ НОРМАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ СОЦІАЛЬНО-ЕКОНОМІЧНИХ ВІДНОСИН У БУДІВНИЦТВІ: ЗАРУБІЖНИЙ АСПЕКТ

Анотація. Розкрито зарубіжний аспект особливостей нормативно-правового регулювання соціально-економічних відносин у будівництві. Зазначено, що сучасна економіка України перебуває у стані хронічної кризи, тому цікаво проаналізувати досвід будівництва США, Канади та країн Європейського Союзу з точки зору встановлення нормативно-правового механізму управління соціально-економічними відносинами у будівництві. Обґрунтовано, що у США особливістю державного управління нормативно-правовим регулюванням соціально-економічних відносин у будівництві є розробка власного нормативно-правового механізму та система контролю за дотриманням відповідних законодавчих вимог. З цією метою відбулося прийняття відповідних кодексів, законодавчих актів у сферах будівництва та іпотечного кредитування, надання пільгових кредитів, гарантій, забезпечення дієвих механізмів системи страхування тощо.

Визначено, що у більшості зарубіжних країн спостерігається тенденція “приватизації” функцій нагляду та контролю за дотриманням вимог будівельного законодавства, органів та організацій, відповідальних за функціонування системи технічного регулювання у будівництві тощо. Причини цього — ускладнення та вдосконалення будівельних технологій, збільшення обсягів будівництва та перехід багатьох країн світу до використання параметричних норм.

Доведено, що світовий досвід впровадження архітектурно-будівельного контролю у зарубіжних країнах є необхідною основою для вдосконалення

національної державної системи будівництва. Включення до системи нагляду та контролю незалежних приватних спеціалізованих установ або експертів до виконання функцій контролю не тільки покращить якість заходів контролю, але й знизить рівень корупції у будівельній сфері.

Ключові слова: державне управління, соціально-економічні відносини, будівництво, нормативно-правове регулювання, механізм, зарубіжний досвід, архітектурно-будівельний контроль, нормування у будівництві.

ОСОБЕННОСТИ НОРМАТИВНО-ПРАВОВОГО РЕГУЛИРОВАНИЯ СОЦИАЛЬНО-ЭКОНОМИЧЕСКИХ ОТНОШЕНИЙ В СТРОИТЕЛЬСТВЕ: ЗАРУБЕЖНЫЙ АСПЕКТ

Аннотация. Раскрыт зарубежный аспект особенностей нормативно-правового регулирования социально-экономических отношений в строительстве. Отмечено, что современная экономика Украины находится в состоянии хронического кризиса, поэтому интересно проанализировать опыт строительства США, с точки зрения установления нормативно-правового механизма управления социально-экономическими отношениями в строительстве. Обосновано, что в США особенностью государственного управления нормативно-правовым регулированием социально-экономических отношений в строительстве является разработка собственного нормативно-правового механизма и система контроля за обеспечением соблюдения соответствующих требований законодательства. С этой целью принимались соответствующие кодексы, законодательные акты в сфере строительства, в сфере ипотечного кредитования, предоставления льготных кредитов, гарантий, обеспечения действенных механизмов системы страхования и так далее.

Определено, что в большинстве зарубежных стран наблюдается тенденция “приватизации” функций надзора и контроля за выполнением требований строительного законодательства, органов и организаций, ответственных за функционирование системы технического регулирования в строительстве и так далее. Причины этого — появление более сложных и усовершенствование строительных технологий, увеличение объемов строительства и переход многих стран мира к использованию параметрических норм.

Доказано, что мировой опыт внедрения архитектурно-строительного контроля в зарубежных странах есть необходимой основой для совершенствования национальной государственной системы строительства. Действительно, включение независимых частных специализированных учреждений или экспертов, для выполнения функций контроля не только улучшит качество мер контроля, но и снизит уровень коррупции в строительной сфере.

Ключевые слова: государственное управление, социально-экономические отношения, строительство, нормативно-правовое регулирование, механизм, зарубежный опыт, архитектурно-строительный контроль, нормирование в строительстве.

Problem statement. The object of legal regulation of various socio-economic relations in construction is a multi-faceted process per se called construction, construction activities and other construction-associated economic activities. Public policy in the field of construction consists of legislative, executive and supervisory measures, and the implementation of the legal regulation mechanism is carried out through the development, adoption and implementation of legal acts and regulations. One of the main mandatory elements of the public administration system is the function of state control and supervision over the functioning of the construction market [1, p. 65-66]. In Ukraine, it is of particular importance to improve the general principles of legal regulation of construction, and consequently, to modify the elements of the relevant regulatory mechanism. Therefore, at the present stage, it is relevant to study construction activities as an object of regulation and to exercise a comprehensive analysis of regulatory forms of legal regulation in this area [2, p. 32].

Analysis of recent research and publications. Issues of state regulation of construction in Ukraine have found their reflection in scientific works of such domestic scientists as: H. Lyska [5] O. Marusheva [1], O. Nepomnyashchy [6], V. Oliukh [3], O. Stukalenko [2], V. Felikman [8], etc. However, despite the publications on socio-economic relations in the construction industry in Ukraine available in the domestic science, an issue as to features of legal regulation of socio-economic relations in construction in foreign countries and its application in the Ukrai-

nian reality has not received its full and comprehensive study yet.

The purpose of the article. The purpose of this article is to reveal the foreign aspect of the features of legal regulation of socio-economic relations in construction.

Presentation of the basic material of the research. The main goal of construction is to create final construction products able meet the needs of people, society and the interests of the state. Therefore, one of the most important sectors of the national economy in any country of the world, regardless of the state of its economic development, social orientation, political stability and its place in the international arena, is the construction industry, which, in its turn, requires a balanced public policy. State measures should ensure not only the creation of a favorable political and economic climate for the stable development of the construction complex, but also the quality and availability of finished construction products for everyone. The experience of the developed countries of the world shows that the effective performance of the state's functions gives a powerful impetus to the development of construction. That is why it is advisable to consider an issue of foreign experience of legal regulation of socio-economic relations in construction, noting the features of state regulation of construction in the United States, Canada, the European Union, etc.

The modern economy of Ukraine is in a state of chronic crisis, therefore, performing analysis of experience in construction of the United States appears justified, from the perspective of formation and development of legal

mechanism of management of socio-economic relations in the construction industry [3, p. 185]. Taking into account a factor of the federal structure, there is no single legal act in the legislative system of the USA regulating relations in construction. For example, the standardization process in the US construction is based on model codes. Although a small number of administrative-territorial units continue to use building regulations developed independently by the relevant administrative bodies, in most cases the practice of adapting model legislation is applied. Even large cities have their own building codes, such as the Los Angeles Building Code or New York City Building Code [4]. For example, the purpose of the New York City Building Code is to provide reasonable minimum requirements and standards, based upon current scientific and engineering knowledge, experience and techniques, and the utilization of modern machinery, equipment, materials, and forms and methods of construction, for the regulation of building construction in the city of New York in the interest of public safety, health, welfare and the environment, and with due regard for building construction and maintenance cost [4]. At the same time, there are Mechanical, Plumbing, Building, Fire Codes and others. These Codes define standards and regulations that establish the minimum acceptable level of safety of facilities under construction. A feature of the management of legal regulation of socio-economic relations in construction in the United States is the presence of International Codes adopted by the International Code Council in order to set equal standards

of construction works. These Codes contain standards and regulations for construction works, in particular, requirements for fire safety, design, protection from dangerous geological processes, ensuring the reliability and structural safety of buildings, heating networks, water supply and sewerage systems, etc. [5, p. 175].

So today, the main regulatory standards, technical regulations, certification conditions, building regulations of the United States are contained in the International Building Code. The International Building Code was developed by the International Code Council in 2009, it contained provisions of the National Building Codes, the Uniform Building Code and the US Standard Building Code, the regulations of which refer to the construction of new buildings, reconstruction, extensions, refurbishment, apart from the construction of one- and two-family dwellings and townhouses of three stories or less. The requirements for these types of buildings are regulated by the International Residential Code. The International Building Code is applied or adopted in 50 States, the District of Columbia, GUAM, The Northern Mariana Islands, New York City, the Virgin Islands (USA), and Puerto Rico. An interesting fact is that the Code is updated in accordance with the developed schedule, which is published on the International Code Council official website in advance. The schedule contains activities with the purpose to discuss the proposed changes, bulletins, reports, information regarding public hearings, video-recorded discussions, covering the entire cycle of the code development. Now the 2018 edi-

tion (2018 IBC) is a current version of the Code but the running development cycle of relevant amendments covers the 2018–2019 code development cycle and it is known in advance that the next version of the code will be adopted in 2021. The main advantages of the Code are as follows: the principles of the model code are based on health protection, safety and welfare of the population; the code promotes the efficiency of structures that provide flexibility for an official, designer, engineer and architect; the provisions of the Code encourage the use of new and smarter technological advances; the Code emphasizes both regulatory and engineering solutions and allows the use of time-tested methods; the Code refers to consensus standards developed at the national level [6].

The United States have traditionally delegated the function of standardization in design to non-governmental organizations, since 1905. For example, the National Fire Insurance Office Council issued Model Building Code which became the first building regulatory document in the United States. Presently, in the United States there are non-governmental organizations dealing with the development and distribution of building regulations and standards as follows: Building Officials and Code Administration, the International Conference of Building Officials, the Southern Building Code Congress and other organizations. Endeavours to harmonize and develop a single integrated model of national standards for construction in the United States have led to foundation of the International Code Council in 1994 as a non-profit organization, which is the official in-

ternational organization for standardization [6].

The experience of the United States on the organizational mechanism accompanying the construction process at all stages, in terms of supervision and control, is indicative and interesting. In the United States of America, there is a multi-level system of supervision and control over use of funds and compliance with the law, where the division of powers is based on the subject matter of regulation between municipal inspectorates and government agencies. The main tasks of local and municipal authorities are to ensure compliance with the minimum requirements established by the building codes for health and safety, to provide the necessary conditions for living, working and leisure of the population [7]. A special organization is set up by the local authorities to monitor compliance with the building codes in the process of financing construction projects. Typically, such an institution is Building Departments.

In most municipalities, the Building Departments are also in charge of overseeing and monitoring compliance with local town planning legislation, in particular the settlement arrangement, as well as licensing procedures, etc. The department deals with the reviewing design decisions, granting building permits and inspection of construction projects to ensure compliance with the building regulations [3].

After analyzing the US experience, we can highlight positive aspects as follows:

- the codes create a powerful basis in the legal management mechanism in construction;

- an efficient and effectively planned system of updating and bringing amendments to the codes for discussion has been created;
- the organizational mechanism is characterized by a clear vertical division of power between the highest and lowest authorities;
- at the municipal level, almost all construction procedures are carried out in one administration (where the authorized persons are subordinate to one head);
- there is a clear horizontal distribution of power between institutions and organizations at the same level.

If we refer to the experience of centuries-old construction activities, it can be noted that the risks associated with the creation and operation of the property, undoubtedly, should be controlled and reduced. In many countries of the world there are systems that ensure safety on construction sites, one way or another.

Since the beginning of this decade, the National Standardization Strategy has been operating in the US, UK, Germany and France. Well-known risk management systems based on product safety are developed and widely used abroad. Their notable feature is the application of the principle of damage prevention by regulating labor at all stages. According to experts, this approach can reduce the number of accidents and catastrophes by lowering by 10–15 times the cost of dealing with negative effects [8].

It should be noted that in Canada, the technical regulation of construction activities takes place at the level of the subjects of the Federation. Since Canada is a country with different cli-

matic conditions and building traditions, it is considered unacceptable that the same building regulations are applied without regard to local conditions. Therefore, the state has developed a so-called new approach to standardization, the core of which was to ensure that provinces and administrative-territorial units were authorized to publish separate documents going beyond model laws, and therefore include only the combined provisions adopted by all provinces and regions in the national code. Local special conditions and technical differences not contained in the main text shall be indicated in the local appendices to the code which is prepared for each region or province and published separately. The new approach has played a major role in obtaining model code requirements that can meet the requirements applicable in Canadian provinces and territories [8].

The experience of the Czech Republic can be particularly helpful for Ukraine, provided that the system of regional governance in this country operates in crisis conditions similar to Ukrainian. Studying the experience of public administration in the field of administrative reform in the Czech Republic, we can emphasize the main positive point of the two-level structure of local self-government which has been established in the Czech Republic since 2000 [9, p. 40].

Therefore, it should be noted that most economically developed countries tend to “privatize” functions of normative legal acts development, functions of supervision and control over compliance with the construction legislation, bodies and organizations

in construction in charge of technical regulation system functioning. The reasons for this are the added complexity and improvement of construction technologies, the need to involve organized civil society in the development of legal acts, the increase in the volume of construction and the transition of many countries to the use of the parametric method of standardization [7].

Conclusions. The study of the features of legal regulation of socio-economic relations in construction in the United States, Canada and Europe indicates the need for a systematic combination of public administration methods, based on the implementation of elements of the foreign successful experience and the application of best international practices, the adaptation of the EU legislation through the creation of appropriate procedures and mechanisms, as well as the introduction of European administrative principles. The purpose of the Law of Ukraine “On Amendments to Some Legislative Acts of Ukraine on Decentralization of Powers in the Field of Architectural and Construction Control and Improvement of Urban Planning Legislation” is to implement the European principle of power decentralization in the field of construction, especially due to the expansion of the variety of state architectural and construction control and inspection bodies.

It was substantiated that the feature of the public administration of legal regulation of socio-economic relations in construction in the United States is the development of its own legal regulatory mechanism and the system of control over compliance with the relevant legal requirements. The US

model codes create a powerful basis in the legal mechanism of management in construction.

It was determined that the updating of the International Building Code, which operates in the majority of States in United States, takes place according to the developed schedule, which is published on the International Codes Council official website in advance. This schedule contains activities on discussion of the proposed changes, bulletins, reports, public hearings, video-recorded discussions, covering the current cycle of the code development. Thus, an efficient and effectively planned system of updating and bringing amendments to the codes for discussion has been created. It is worth paying attention to the legislative activity planning in Ukrainian realities based on similar principles and approaches.

It was determined that most foreign countries tend to “privatize” the functions of supervision and control over compliance with the construction legislation, bodies and organizations in construction in charge of technical regulation system functioning, etc. The reasons for this are the added complexity and improvement of building technologies, the increase in the volume of construction and the transition of many countries to the use of parametric standards.

REFERENCES

1. Marusheva O. A. (2019). Tendentsii normatyvno-pravovoho rehuliuвання sotsialno-ekonomichnykh vidnosyn u budivnytstvi v krainakh rozvyntoi demokratii [Trends in regulatory

- regulation of socio-economic relations in construction in developed democracies]. *Aktualni problemy derzhavnoho upravlinnia – Actual problems of public administration*, 1 (55), 63–68 [in Ukrainian].
2. Stukalenko O. V. (2014). Teoretychni zasady derzhavnoho kontroliu ta nahliadu v sferi budivelnoi diialnosti [Theoretical foundations of state control and supervision in the field of construction activity]. *Pravova derzhava – Legal State*, 17, 32–38 [in Ukrainian].
 3. Oliukha V. H. (2015). *Optymizatsiia kapitalnoho budivnytstva: hospodarsko-pravovi problemy* [Optimization of capital construction: economic and legal problems]. Kyiv: Tsentр uchbovoi literatury [in Ukrainian].
 4. New York City Building: Code. (2014). *www1.nyc.gov*. Retrieved from <https://www1.nyc.gov/site/buildings/codes/2014-construction-codes.page#bldgs> [in English].
 5. Lysko H. O. (2012). Protседura otrymannia dozvolu na budivnytstvo: dosvid Spoluchenykh Shtativ Ameryky [Building Permit Procedure: United States Experience]. *Naukovyi visnyk Lvivskoho derzhavnoho universytetu vnutrishnikh sprav – Bulletin of the Lviv State University of Internal Affairs*, 4, 174–183 [in Ukrainian].
 6. Overview of the International Building Code. (2018). *www.iccsafe.org*. Retrieved from <https://www.iccsafe.org/products-and-services/i-codes/2018-i-codes/ibc/> [in English].
 7. Nepomniashchyi O. M. (2014). Detsentralizatsiia derzhavnoho rehuliuвання budivelnoi diialnosti: zakordonnyi dosvid dlia Ukrainy [Decentralization of state regulation of construction activity: foreign experience for Ukraine]. *Derzhavne budivnytstvo – State building*, 1. Retrieved from http://nbuv.gov.ua/UJRN/DeBu_2014_1_30 [in Ukrainian].
 8. Serykh A. (2010). *Tekhnicheskoe regulirovaniє v stroitelstve. Analiticheskii obzor mirovogo opyta: Snip Innovative Technologies* [Technical regulation in construction. An analytical review of world experience: Snip Innovative Technologies]. Chikago: SNIP [in Russian].
 9. Deineha Kh. M., Kovbasiuk Yu. V., Zahorodniuk S. V. (Eds.). (2011). *Systema derzhavnoho upravlinnia Respubliky Chexkiiа: dosvid dlia Ukrainy* [The system of the sovereign government of Czech Republic]. Kyiv: NADU [in Ukrainian].

СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ

1. Марушева О. А. Тенденції нормативно-правового регулювання соціально-економічних відносин у будівництві в країнах розвинутої демократії / О. А. Марушева // Актуальні проблеми державного управління. № 1 (55). С. 63–68.
2. Стукаленко О. В. Теоретичні засади державного контролю та нагляду в сфері будівельної діяльності / О. В. Стукаленко // Правова держава. 2014. № 17. 135 с.
3. Олюха В. Г. Оптимізація капітального будівництва: господарсько-правові проблеми: монографія. К.: Центр учб. л-ри, 2015. 302 с.
4. New York City Building: Code. 2014 [Електронний ресурс]. – Режим доступу: <https://www1.nyc.gov/site/buildings/codes/2014-construction-codes.page#bldgs>
5. Лиско Г. О. Процедура отримання дозволу на будівництво: досвід Сполучених Штатів Америки // Наук. вісн. Львів. держ. ун-ту внутрішніх справ. 2012. № 4. С. 175.
6. Overview of the International Building Code [Electronic resource]. Access mode: Overview of the International Building Code [Electronic

- resource]. Access mode: <https://www.iccsafe.org/products-and-services/i-codes/2018-i-codes/ibc/>
7. *Непомнящий О. М.* Децентралізація державного регулювання будівельної діяльності: закордонний досвід для України / О. М. Непомнящий // Державне будівництво. 2014. № 1 [Електронний ресурс]. Режим доступу: http://nbuv.gov.ua/UJRN/DeBu_2014_1_30
 8. *Серых А.* Техническое регулирование в строительстве. Аналитический обзор мирового опыта: Snip Innovative Technologies; рук / А. Серых. Чикаго: SNIP, 2010. 889 с.
 9. Система державного управління Республіки Чехія: досвід для України / уклад. Х. М. Дейнега ; за заг. ред. Ю. В. Ковбасюка, С. В. Загороднюка. К. : НАДУ, 2011. 40 с.