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ДОГОВІРНІ ПІДСТАВИ ВИНИКНЕННЯ ПРАВА ВЛАСНОСТІ НА ЖИТЛО

Анотація. *Стаття присвячена теоретичному аналізу таких вторинних підстав виникнення права власності на житло, як цивільно-правові договори. Встановлено, що цивільно-правовий договір є найпоширенішою підставою, що виражає в єдиному волевиявленні загальну волю суб'єктів договору, спрямовану на перехід житла у власність. Недарма договір є і юридичним фактом, і формою існування правовідношення, і документом, який фіксує права та обов'язки сторін, і регулятором відносин з передання житла. Проаналізовано та запропоновано доповнити наявну систему цивільно-правових договорів як підстав виникнення права власності на житло такими договорами, як договір застави (іпотеки), договір пожертви, договір найму житла з викупом, спадковий договір, шлюбний договір. Окремо в межах цієї статті встановлено відмінності між договором міни житла та договором обміну житлом. Акцентовано увагу на недосконалості чинного законодавства з цього приводу та зроблено висновок, що зазначені договірні конструкції мають різну правову природу, адже договір міни є підставою виникнення права власності на житло, а договір обміну жилими приміщеннями – підставою виникнення лише права користування. Розмежовуючи договір дарування як підставу виникнення права власності на житло та заповіт, зроблено висновок, що договір дарування може бути укладений у випадку настання смерті дарувальника в майбутньому, оскільки законом не передбачено такої заборони. Тобто сторони можуть передбачити у договорі дарування житла, що житло переходить до обдаровуваного з моменту смерті дарувальника. Окремо акцентовано увагу на особливостях договору пожертви як підстави виникнення права власності на житло, що відображається у праві пожертвувача визначати мету використання житла, яке передається у власність особи за договором. Мета, зазначена у договорі пожертви, повинна відповідати призначенню житла. Розглянуто особливості спадкового та шлюбного договорів як підстав виникнення права власності на житло. Запропоновано цивільно-правові договори як підставу виникнення права власності на житло класифікувати на договори купівлі-продажу житла; договори міни житла; договори довічного утримання; договори ренти житла; договори дарування житла; договори іпотеки житла; договори пожертви житла; договори найму житла з викупом; спадкові договори; шлюбні договори; договори будівельного підряду; договори про спільну діяльність*

Ключові слова: *право власності, міна, довічне утримання, спадковий договір, купівля-продаж*

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CONTRACTUAL GROUNDS FOR THE EMERGENCE OF HOUSING OWNERSHIP

Abstract. *The study provides the theoretical analysis of such secondary grounds for the emergence of housing ownership as civil law contracts. It is established that a civil law contract constitutes the most common basis, which delineates the general will of the contracting parties in a single expression of will, aimed at the transfer of housing ownership. There is a good reason that the contract constitutes a legal fact, a form of legal relations, a document that consolidates the rights and obligations of the parties, and the regulator of the relationship of transfer of housing. The study analysed and proposed to supplement the current system of civil law contracts as grounds for the housing ownership by such contractual forms as a pledge agreement (mortgage), donation agreement, a hire-purchase agreement, inheritance agreement, and marital agreement. In addition, the study established the differences between the housing barter contract and the housing exchange contract. The authors emphasised the imperfections of the current legislation in this regard and concluded that these contractual structures have different legal nature, because the barter agreement serves as the basis for the housing ownership, and the exchange agreement serves only as the basis for the right of use. Distinguishing the gift agreement as the basis for the ownership of housing and wills, it was concluded that the gift agreement may be concluded in the event of the donor's death in the future, as the law does not make provision for such a prohibition. That is, the contracting parties may stipulate in the housing gift agreement that the housing passes to the donee from the moment of death of the donor. Special attention is paid to the features of the gift agreement as the basis for the housing ownership, which is reflected in the right of the donor to determine the purpose of use of housing, which is transferred to the ownership of the person under the contract. The purpose stated in the gift agreement must correspond to the purpose of the housing. The study considered the specific features of inheritance and marriage contracts as grounds for the emergence of ownership of housing. Civil law contracts are proposed as a basis for the emergence of housing ownership to be classified as housing purchase and sale contracts; housing barter agreements; perpetual maintenance agreements; housing rental agreements; housing gift agreements; housing mortgage agreements; housing donation agreements; hire-purchase agreements; inheritance agreements; marital agreements; construction agreements; agreements on joint activities*

Keywords: *property rights, exchange, perpetual maintenance, inheritance contract, purchase and sale*

INTRODUCTION

During the entire development of property relations, special attention has been paid to the institution of property rights. Researchers pay no less attention to issues related to housing as an object of property rights and the subject of relevant civil law transactions. Thus, in accordance with Part 1 of Article 328 of the Civil Code of Ukraine the right of ownership is acquired on grounds not prohibited by law, in particular from transactions, the most common types of which are civil law contracts, which, serving as secondary grounds for ownership, are not limited to influencing the dynamics of civil relations, but also determine the content specific rights and obligations of the parties to the contractual obligation. That is, the derivative grounds for acquiring the right of housing ownership are those where a person's ownership is based on the right of the previous owner [1].

Accordingly, the civil law contract is the most common ground, which delineates the general will of the contracting parties in a single expression of will, aimed at the transfer of housing ownership. There is a good reason that the contract constitutes a legal fact, a form of legal relations, a document that consolidates the rights and obligations of the parties, and the regulator of the relationship of transfer of housing. Therefore, when analysing the most common civil law contracts as grounds for the housing ownership should take into account the time of acquisition of ownership, as the owner must have a clear idea of how long they can treat such housing as their property.

This issue also intersects with the scientific discussion on the criteria for classifying civil law contracts as grounds for the housing ownership. Thus, Ye.O. Michurin proposes to classify the contracts based on which a person may have the right to own housing, according to the types of contracts on the transfer of ownership, which are listed in the Civil Code of Ukraine1. In particular, according to the scientist, such contracts include a housing purchase and sale agreement, a housing barter agreement, a perpetual

maintenance agreement, a housing rent agreement, and a housing gift agreement [2]. The proposed classification needs to be supplemented by such contractual forms as a pledge agreement (mortgage), a donation agreement, a hire-purchase agreement, an inheritance agreement, as well as a marriage contract, taking into account the specifics of these agreements, which will be covered below.

At the same time, one can draw attention to the insufficient coverage of the outlined issues in the modern Ukrainian legal literature [3-12]. Notably, the modern legal doctrine lacks comprehensive research that would address the subject of contractual grounds for the emergence of housing ownership. This results in the incoherent approaches, enshrined in the codified regulations of Ukraine concerning the governing of the legal relations under study, the need to identify possible conflicts and develop scientifically sound proposals for their elimination. This emphasised the relevance of these issues and led to the choice of research subject.

Accordingly, the purpose of this study is to analyse the existing classifications of civil law contracts and develop a holistic system of civil law contracts as a basis for the housing ownership.

1. MATERIALS AND METHODS

The issue of isolating civil law contracts as a basis for the emergence of housing ownership is understudied in the legal literature. Classifications of civil law contracts under which the transfer of housing ownership takes place is covered in the works of such scholars as Ye.O. Michurin [13], M.K. Haliantych [14], L.M. Nykolaichuk [15] and others. At the scientific level, some issues of recognition of the right of housing ownership under purchase and sale agreements, perpetual maintenance agreements, gift agreements, etc. were considered, indicating that the legislator does not single out and systematise housing contracts separately. Thus, at the doctrinal level it is proposed to divide the contracts of sale of housing (depending on the subject matter of the contract and the method of its acquisition) into: an apartment, house, estate, part of a house purchase and sale agreement; a house purchase and sale agreement on the terms of perpetual maintenance; a purchase and sale agreement for a residential building owned by a minor; agreement on purchase and sale of a share of a residential building; agreements on purchase of residential premises in apartment buildings; real estate purchase transactions, the subject of which is not only a residential property, part of a house or a house, but also a corresponding land plot with outbuildings. The methods of purchase include purchase of housing at auction; by buy-out; on the stock exchange [14].

Particular attention should be paid to the classification of agreements that mediate the transfer of housing ownership as an object of ownership, to: 1) housing purchase and sale agreements; 2) housing barter agreements; 3) perpetual maintenance agreements; 4) housing rental agreements; 5) housing gift agreements [2]. However, considering the need to update the grounds for the housing ownership, the above classifications need to be revised and supplemented. The methodology of the relevant study is determined by its purpose and is to determine the features of the contractual grounds for the emergence of housing ownership; to identify gaps and inconsistencies in the legislation of Ukraine and the judicial practice, which arise during the application of the relevant grounds, and to make proposals for the elimination of such gaps and inconsistencies. The Civil Code of Ukraine[1], the Housing Code of the Ukrainian SSR[2], the Law of Ukraine "On State Registration of Real Rights to Immovable Property and Their Encumbrances"[3], the Resolution of the Cabinet of Ministers of Ukraine "On the Procedure for State Registration of Real Rights to Immovable Property and Their Encumbrances'[4], etc.

In this study, general scientific and special legal methods of scientific cognition were applied. The main method of research is a systematic method, which allowed to determine the system of civil law contracts, which are aimed at acquiring housing ownership. The dialectical method of cognition allowed to consider the trends in the development of civil law agreements as the basis for the emergence of housing ownership. The logical-semantic method allowed to analyse individual civil law contracts and determine their place in the system of grounds for the housing ownership. The dogmatic legal method allowed to analyse the provisions of the current legislation, to identify gaps in it, to formulate proposals for its improvement. The presented scientific ideas of the authors in the modern development of civil relations include target, methodological, substantive, organisational, legal and effective components.

2. RESULTS AND DISCUSSION

The most common contract, given pride of place to by the legislator among other types of contracts, is the purchase and sale agreement. In the context of the subject of this study, it will be considered as a housing purchase and sale agreement, which is classified in the doctrine according to the criteria of the subject of the contract and the method of its purchase as follows: agreements on purchase and sale of an apartment, house, estate, part of a house, etc. Furthermore, the emergence of housing ownership based on a purchase and sale agreement may occur by purchasing an apartment or residential property from a housing construction cooperative, a member of which may be an individual. Ownership of a residential building created by a housing cooperative, according to Article 384 of the Civil Code of Ukraine[5], arises in the cooperative. Individuals as

1. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.
2. Housing Code of the Ukrainian SSR No. 5464-X. (1983, June). Retrieved from https://zakon.rada.gov.ua/laws/show/5464-10#Text.
3. Law of Ukraine No. 1952-IV "On state registration of real rights to immovable property and their encumbrances". (2004, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1952-15#Text.
4. Resolution of the Cabinet of Ministers of Ukraine No. 1127 "On the Procedure for State Registration of Real Rights to Immovable Property and Their Encumbrances". (2015, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1127-2015-%D0%BF#Text.
5. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

its members, in order to acquire ownership of the apartment, must purchase it from a cooperative. Hence, it is concluded that the emergence of housing ownership in a person as a member of a cooperative occurs based on a civil contract; therefore, such acquisition constitutes a secondary ground for the emergence of ownership.

At the same time, it is not necessary to single out the purchase of an apartment from a housing construction cooperative as an independent basis for the emergence of housing ownership, because there a corresponding right occurs under a purchase and sale agreement. Although the authors of this study cannot disagree that the purchase and sale agreement has its certain features in this case. In particular, housing is purchased from a legal entity and a person can acquire ownership only of an apartment and not of a residential building. The current version of Part 3 of Article 384 of the Civil Code of Ukraine[1] allows to reach such conclusion. Thus, the housing purchase and sale agreement should be described as a contract aimed at the transfer of housing ownership on a paid basis. Therewith, one should support the opinion expressed in the legal literature that the risk of accidental destruction of housing passes to the purchaser simultaneously with the emergence of this purchaser's property rights, even if the contract stipulates otherwise [14]. This approach is conditioned by the fact that the seller, who is no longer the owner of the housing, is not responsible for the fate of the latter. Otherwise, it should be recognised that in the event of the loss of housing (loss of the contractual subject matter), the housing purchase and sale agreement would not be performed by the seller, which, in turn, would entail appropriate legal consequences. But de facto the seller would have performed the terms and conditions under the contract, and the destruction of the housing would be a coincidence, i.e., it would not be the seller's fault. Less common than the housing purchase and sale agreement, but no less applicable in practice, is the housing barter agreement. According to Article 715 of the Civil Code of Ukraine[2] under a barter agreement, each party undertakes to transfer ownership of one product to the other party in exchange for another product. Each contracting party in the barter is the seller of the housing that it transfers and the buyer of the housing which it receives in return. The contract may determine a supplemental payment for higher-value housing, which is exchanged for lower-value housing.

Thus, the housing barter agreement as a ground for the housing ownership is endowed with the same features as the housing purchase and sale agreement. That is, it is a paid, bilateral, consensual contract for the transfer of property (because it is concluded from the moment the parties agree on all its essential terms, and not from the moment of transfer of housing).

By concluding this contract, the parties have the opportunity to acquire housing ownership without attracting significant funds. In particular, a person does not have to enter into loan or credit agreements or mortgage his or her housing to improve his or her living conditions. It is sufficient for such person to exchange his or her housing or other property for the housing of a person who is the other party to the housing barter agreement. An individual may also agree to purchase housing in lieu of the services or work provided. Ownership of the exchanged housing passes to the parties at the same time after the performance of the obligations to transfer the housing by both parties, unless otherwise provided by agreement or law. Accordingly, the state registration of the parties' ownership to the exchanged housing takes place after each of the parties has completed the registration procedures. In the legal literature, some scholars make a distinction between a housing barter agreement and a housing exchange agreement. Thus, A.A. Titov noted that the barter agreement differs from the exchange agreement in that the parties to such a transaction (barter) can only be the owners of residential premises, and the subject is the housing owned by these parties [16]. Ye.O. Michurin argued that the difference between the barter and exchange contracts is that in the first case the contract consolidates the transfer of ownership, and in the second case there is a transfer of the right of use between the tenants of housing [2]. The same opinion is expressed by M.K. Haliantych, believing that the barter and exchange contracts differ in such features as subject, parties, procedure, legal grounds, and mechanism [14]. Given the above positions and considering the imperfections of current legislation in this regard, it should be recognised that the exchange of housing and the housing barter agreement are not terminological inconsistencies, and the specified contractual structures have different legal nature, because the barter agreement serves gives grounds to the emergence of housing ownership, while the housing exchange agreement merely gives grounds for the emergence of the right of use.

Another fairly common contractual for that serves as grounds for the emergence of housing ownership is a gift agreement. Under this agreement, the donor transfers or undertakes to transfer housing in the future to the donee free of charge. Thus Part 2 of Article 717 of the Civil Code of Ukraine[3] clarifies that the donee cannot be obliged to perform any action of a property or non-property nature in favour of the donor. Otherwise, according to Article 235 of the Civil Code of Ukraine, the housing gift agreement may be rendered null and void as a fictitious transaction and the parties will be subject to the provisions of civil legislation, which govern the contractual legal relations that the parties actually committed. In particular, this refers to the legal provisions on the above-analysed contractual forms of purchase and sale or barter of housing. At the same time, the legal literature states the thesis that the obligation of the donee to perform certain actions in favour of a third party, stipulated in Article 725 of the Civil Code of Ukraine, actually eliminates the free-of-charge basis of such agreement [17]. Therewith, the obligation of the donee to take certain actions in favour of a third

1. *Ibidem*, 2003

2. *Ibidem*, 2003

3. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

party does not lead to the recognition of the housing gift agreement as payable, as payment of the contract is associated with the performance of a counter-obligation. Accordingly, the donor does not receive any counter-grant under this agreement, which describes it as a free-of-charge transaction. A gift is a transaction that is based on mutual consent, not just on the will of the donor. This distinguishes the gift agreement from, for example, a will, which does not require the consent of the heir, since, according to the will, the rights and obligations of the deceased pass at the time of his or her death, and the housing gift agreement cannot be concluded in the event of the death of the donor in the future.

Agreeing that the main difference between a gift agreement and a will is that the gift agreement constitutes a bilateral transaction, and the will is unilateral. It cannot be categorically stated that the gift agreement cannot be concluded in case of future death of the donor, as the law does not make provision for such a prohibition. In addition, according to Part 2 of Article 719 of the Civil Code of Ukraine1, the housing gift agreement is concluded in writing and is subject to notarisation; therefore, for state registration of ownership of donated housing (the moment of emergence of this right under the housing gift agreement), it is sufficient to submit the notarised housing gift agreement to the state registrar (Article 20 of the Law of Ukraine "On State Registration of Real Rights to Immovable Property and Their Encumbrances"[1]), which, as noted above, is consensual. That is, the contracting parties may stipulate in the housing gift agreement that the housing passes to the donee from the moment of death of the donor. Considering the requirements of Articles 334 and 722 of the Civil Code of Ukraine[2], one can conclude that the housing ownership of the donee on the grounds of the gift agreement arises from the moment of state registration of such ownership. Thus, according to Part 1 of Article 722 of the Civil Code of Ukraine, the right of housing ownership arises from the moment of its adoption. In this case, according to Part 4 of this study, the acceptance of documents certifying housing ownership, other documents certifying the identity of the subject of the contract, or symbols of the thing (keys, models, etc.) constitutes the acceptance of a gift. However, considering the provision stipulated in Part 4 of Article 334 of the Civil Code of Ukraine, the housing ownership arises from the date of state registration of such ownership in accordance with the law.

Therefore, the recognition of the state registration of housing ownership as the only and indisputable legal fact cannot be questioned by the contracting parties under the housing gift agreement, as moments of acceptance of the gift and the emergence of ownership of it, stipulated in Part 4 of Article 722 of the Civil Code of Ukraine[3] relate to movables (e.g., vehicles or animals), and not housing or other real estate. The same opinion is expressed in the scientific literature, where the transfer of keys to an apartment or house or documents to them is considered a symbolic act [15]. An interesting and understudied type of housing gift agreement, according to Articles 729 and 730 of the Civil Code of Ukraine, is a donation agreement. Thus, based on the content of Article 729 of the Civil Code of Ukraine, a donation is a gift for the donor and the donee to achieve a certain predetermined goal. The donation agreement is concluded from the moment of acceptance of the object of donation. The donation agreement is subject to the provisions on the gift agreement unless otherwise provided by law.

According to Article 730 of the Civil Code of Ukraine, the donor has the right to control the use of housing as an object of donation in accordance with the purpose established by the agreement. If the intended use of the housing (for example, as a church for monks, doctors, etc.) is impossible, its use for another purpose is possible only with the consent of the donor, and in case of death or liquidation of the legal entity – by court decision. The donor or his of her successors have the right to demand termination of the donation agreement in the event that the housing is used for other purposes not stipulated by the agreement.

S.D. Rusu fairly pointed out that the specific feature of this agreement is that in order for the parties to achieve a certain predetermined goal, the agreement is considered to be concluded from the moment of acceptance of the donation [18]. In addition, the very agreement on the purpose of housing, which is transferred into the ownership of a person under a donation agreement, distinguishes this agreement from the gift agreement, for which the stipulation of the purpose of housing will contradict the essence of this agreement. In this case, the purpose of the use of housing may be, for example, to enable certain persons to live in it, to impose on a person the obligation to use housing as a shelter for certain categories of persons or to provide permission to conduct excursions or exhibitions, etc. However, the purpose specified in the donation agreement must be consistent with the purpose of housing. That is, the arrangement of trade platforms, a medical institution, etc. will contradict the provisions of Chapter 28 of the Civil Code of Ukraine. In conclusion, the housing donation agreement should be described as a real, free-of-charge, bilaterally binding agreement. The next type of agreements on the transfer of property ownership, based on which a person may have acquire the housing ownership, is a perpetual maintenance agreement, under which the alienator transfers ownership of the house, apartment or part thereof, in exchange for which the purchaser undertakes to provide the alienator with perpetual maintenance and (or) care.

There is a well-established position among civilists that such agreement is: a) unilateral, as only the purchaser of property becomes obliged under the agreement, while the alienator has no obligations [17]; b) paid, because the purchaser undertakes to carry out the alienator's property

1. Law of Ukraine No. 1952-IV "On state registration of real rights to immovable property and their encumbrances". (2004, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1952-15#Text.

2. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

3. *Ibidem*, 2003.

maintenance instead of receiving the property. The alienator, in turn, after the transfer of ownership of the thing, may require the purchaser to provide him of her with endowment. In this case, in contrast to the purchase and sale agreement, the perpetual maintenance agreement refers not to the price as an essential condition of the contract, but only to the monetary value of property and services [19]; c) aleatory (risk-related), because at the time of its conclusion it is impossible to determine what will be higher – the cost of housing or the final cost of the provided endowment [13]; d) consensual, because the ownership of a movable thing arises in the purchaser from the moment of notarisation of the agreement, while the ownership of immovable property arises from the moment of its state registration. The perpetual maintenance agreement should be described as a bilaterally binding transaction, as the alienator is obliged to transfer ownership of the house, apartment or part thereof, etc. in return for care or maintenance to be provided to the alienator by the acquirer. Moreover, this obligation is maintained in the event of termination of the perpetual maintenance agreement, provided that it is not the result of improper performance of obligations by the acquirer, or in the event of its termination due to the death of the acquirer (before the alienator dies).

In this regard, R.A. Maidanyk expressed an opinion that the specifics and the legal nature of the relations of perpetual maintenance are conditioned by the presence of a special, fiduciary trust in this agreement. By its legal nature, perpetual maintenance is a kind of fiduciary legal relationship [20]. It seems appropriate to agree with such considerations of the scientist, because the alienator, as a rule, chooses the person or persons who will care for him of her not at random, but from the circle of people close or well-known to him or her, who must justify the alienator's trust by providing the necessary security – perpetual maintenance or care.

In addition, the doctrine draws attention to the fact that the alienator is not sufficiently protected from committing an intentional crime against him or her. Because of this, there are proposals to improve the current civil legislation by making provision for a rule according to which, if the purchaser commits an intentional crime against the alienator, he or she loses the right to acquire ownership of the alienator's property (housing), and the perpetual maintenance agreement is rendered null and void [17].

In this regard, the arguments of V.P. Maslov are interesting for doctrinal analysis. He believes that the law should stipulate that the property should not be transferred into the full ownership of the person providing the maintenance, but should rather be in the joint ownership of the contracting parties [21], as this would reduce the risk of a perpetual maintenance agreement and strengthen protection of the rights of both parties. In view of the above, the authors of this study propose to amend Part 1 of Article 744 of the Civil Code of Ukraine[1] with the following wording: *"Under the perpetual maintenance agreement, one party (alienator) transfers to the other party (purchaser) a house, apartment or part thereof, other real estate or movable property of significant value on the right of joint ownership, with the condition of emergence of private ownership with the acquirer after the death of the alienator, in exchange for which the acquirer undertakes to provide the alienator with perpetual maintenance and (or) care".*

Due to the fact that the perpetual maintenance agreement is aimed at the transfer of housing ownership, the law establishes certain requirements for such property: firstly, the housing must belong to the alienator on an ownership basis, which must be confirmed by corresponding title documents, and, secondly, this housing should not be encumbered by arrest, bail, or any other rights of third parties. At the same time, the legislator reiterates that ownership is binding. Therefore, the purchaser as the owner of such real estate assumes all encumbrances and risks associated with it, including payment of all taxes and fees associated with the maintenance of housing, and bears the risk of accidental death or damage. Relatively new and not widespread in practice is the following ground for the emergence of housing ownership – a rent agreement under which the recipient of the rent transfers the housing ownership to the payer of the rent, and the payer of the rent, in return, undertakes to periodically pay the rent to the recipient thereof in the form of a certain amount of money or in another form. This formulation of the features of the rental agreement, as well as the rules for the transfer of property for rent stipulated in Article 734 of the Civil Code of Ukraine[1] bring it closer to the agreements of purchase and sale, gift, loan, and perpetual maintenance.

However, as rightly noted in the legal literature, the differences between the rent agreement and the purchase and sale agreement are seen in the fact that, unlike the latter, the rental agreement is described by some uncertainty regarding the equivalence of considerations, because according to Part 2 of Article 731 of the Civil Code of Ukraine, the rent agreement may establish an obligation to pay rent both for a certain period and indefinitely, and in the latter case there is always a risk for each party that it will be greater than the consideration received in return. In addition, rent relations are described by the duration of existence and periodicity of payments – rent is never one-time [22]. M.K. Haliantych considers the rent agreement and perpetual maintenance agreement as varieties of the same contract, observing the common features of these contracts. Both under a perpetual maintenance agreement and under a rent agreement, one party transfers housing to the other. However, unlike a rent agreement, a list of property that can be transferred into the ownership of the purchaser is defined under the perpetual maintenance agreement. Under both a perpetual maintenance agreement and a rent agreement, the purchaser of the property undertakes to provide the alienator with certain compensation in the form of rent or provision of maintenance or care [14].

The above position does not withstand criticism, proceeding from the placement of these contractual

1. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

1. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

structures in separate chapters of the Civil Code of Ukraine, given their completely different purpose and features of legal regulation: under the perpetual maintenance agreement – housing needs are satisfied by performing social functions of care and maintenance in respect of persons who need it; under a rent agreement – the satisfaction of housing needs by making periodic payments in the form of a certain amount of money or in another form that may significantly exceed the value of the housing thus alienated. In this regard, the position of M.I. Baru on the difference between a perpetual maintenance contract and a rent agreement is reasonable, which lies in the purpose of each of the agreements; for the former, it is the acquisition of property, and for the latter, it is the financial assistance to the party by its counterparty [23]. Moreover, the scientist went even further, emphasising the expediency of classifying the rental agreement as a contract for the provision of services as opposed to the transfer of property [23].

This statement is not appropriate, given the nature of the rental agreement as a contract of transfer of ownership, as its main purpose is the possibility of participants in civil relations to acquire property (housing) ownership rather than enriching the counterparty. Rent payments constitute a kind of payment by the rent payer for the opportunity to acquire the housing ownership, and not a loan or credit. There is no unity among scientists regarding the moment when the rent agreement should be considered concluded. According to some researchers, the rent agreement is consensual [24], according to others – real [25], and yet others believe that it is either consensual (in the case of alienation of real estate) or real (in the case of alienation of movables) [26]. The authors of this study believe that it is expedient to described the rent agreement as a consensual agreement, because, as follows from the analysis of Chapter 56 of the Civil Code of Ukraine[1], the law connects the rights and obligations of the parties to the rent agreement with the transfer of rent to the payer. In particular, as stated in Article 731 of the Civil Code of Ukraine, the rent payer undertakes to pay rent payments in exchange for the property (housing) transferred by the rent recipient. That is, the corresponding obligation of the person as a rent payer arises from the moment of registration of ownership of the relevant housing as the subject of the contract. The legislator connects the risk of accidental destruction or damage to housing with the moment of the transfer of rented housing. In addition, the contract for the transfer of rented housing is subject to notarisation. A rent agreement may stipulate that the rent receiver transfers the housing to the person for a fee or free of charge. If the rent agreement stipulates that the rent receiver transfers the housing ownership for a fee, the general provisions on purchase and sale agreement shall apply to the relations between the parties regarding the transfer of the housing, and if the property is transferred free of charge, the general provisions on the gift agreement should apply to the extent it is not inconsistent with the rent agreement.

In conclusion, the rent agreement, under which a person acquires the housing ownership, is described as a contract of transfer of housing ownership, consensual, paid, or free-of-charge (depending on its terms and conditions) and bilateral (the recipient of rent is obliged to transfer the housing ownership) contract as the grounds for the emergence of the housing ownership with the acquirer. Another ground for the emergence and termination of housing ownership is a mortgage agreement, under which the parties can resolve the issue of foreclosure on the subject of the mortgage by out-of-court settlement based on the agreement. In this case, the law allows the conclusion of such an agreement at any time before the entry into force of the court decision on recovery. Accordingly, the mortgage agreement plays a dual role. On the one hand, it is one of the derivative grounds for the emergence of housing ownership, and on the other hand, it can perform an ancillary function – to ensure the performance of the principal obligation. In particular, a person who does not have sufficient funds may enter into, for example, a mortgage agreement with a bank to ensure the implementation of the housing purchase and sale agreement (thus being able to pay the cost of housing), which will be the subject of the mortgage. In this situation, the mortgage agreement will not serve as the basis for the housing ownership. However, when a person acts as a mortgagee (pledgee), he or she can acquire ownership of the mortgaged housing by applying for foreclosure on the housing of the mortgagor (pledgor) or a third party who failed to perform its principal obligation (debtors). Despite the above, in connection with the changes introduced in the Civil Code of Ukraine on June 29, 2010, individuals were enabled to acquire housing ownership based on a hire-purchase agreement. The procedure for exercising this right is governed by Article 810 of the Civil Code of Ukraine[2] and the Resolution of the Cabinet of Ministers of Ukraine No. 274 "On approval of the Procedure for housing hire-purchase" of March 25, 2009[3]. These changes were introduced in the Civil Code of Ukraine with the adoption of the Law of Ukraine "On Prevention of the Impact of the Global Financial Crisis on the Development of the Construction Industry and Housing Construction"[4]. However, as fairly noted in the legal literature, it is unclear how the purpose of this law (which is to stabilise construction, increase the solvency of the population, ensure the implementation of housing rights of citizens in need of state support, stimulate construction and related industries in the global financial crisis) correlates with the settlement of the legal relations of lease of already built property [27].

Notably, this method of acquiring ownership can be

1. *Ibidem*, 2003.

2. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

3. Resolution of the Cabinet of Ministers of Ukraine No. 274 "On approval of the Procedure for housing hire-purchase". (2009, March). Retrieved from https://zakon.rada.gov.ua/laws/show/274-2009-%D0%BF#Text.

4. Law of Ukraine No. 800-VI "On Prevention of the Impact of the Global Financial Crisis on the Development of the Construction Industry and Housing Construction". (2008, December). Retrieved from https://zakon.rada.gov.ua/laws/show/800-17#Text.

distinguished as one that is inherent specifically in housing matters. Thus, in accordance with Part 1 of Article 810 of the Civil Code of Ukraine[1] hire-purchase constitutes a special type of rent (lease) of housing, which may provide for the assignment of the lessor's right to claim the debt to another person – the beneficiary. Under the hire-purchase agreement, one party, the enterprise-lessor, transfers housing to the other party, an individual (lessee), for a fee for a long period (up to 30 years), after which or pre-term, subject to full payment of rent, housing passes into the lessee's ownership. The hire-purchase agreement is a document certifying the transfer of ownership of real estate from the lessor to the lessee with deferred circumstances specified by law. In this case, the lessor acquires ownership of the housing previously selected by the lessee for the purpose of further transfer of such long-term hire-purchase housing to such a person and disposes of such housing until its full repurchase. The lessor disposes of the housing until the lessee pays the rent in full. At the same time, the lessee is empowered to own and use the rented housing, and after paying the rent in full, the latter acquires ownership of such housing. The object of rent may be an apartment or part thereof, a residential building or part thereof, which are intended and suitable for permanent residence in them.

The hire-purchase agreement must specify the persons who will reside together with the lessee. These persons acquire equal rights and obligations with the lessee regarding the use of housing. The lessee is liable to the lessor for breach of contract by persons residing with the lessee. The hire-purchase agreement is concluded in writing and is subject to mandatory notarisation. Remuneration (income) of the lessor is defined as the interest rate on payments for the purchase of housing, the amount of which is stipulated in the lease agreement. Payment of rent in full is certified by an act that forms an integral part of the contract. With the consent of the lessor, a person may enter into a sublease agreement with other persons who do not acquire an independent right to use housing. The right of housing ownership under a lease agreement with redemption arises, as well as housing acquired under other agreements, from the moment of state registration of this right. Thus, the analysis of the specified legal provisions suggests that the hire-purchase agreement as the grounds for the emergence of the housing ownership has the following attributes: 1) it is paid; 2) it is consensual; 3) it is bilateral; 4) it is aleatory (risk-related), because neither side, given the constant changes in socio-economic relations, is unsure of its benefits; 5) it is terminal, because the agreement is terminated with the expiration of the term established therein; 6) it belongs to mixed contracts, as it combines the features of the housing rent (lease) agreement and the housing purchase and sale agreement. Based on the above, it can be concluded that the hire-purchase agreement constitutes a separate type of contract, and serves as the grounds for the emergence of housing ownership.

The least common in the system of contracts, on the grounds of which the housing ownership may arise, is an inheritance agreement. The legislator allocated only 7 articles for the inheritance agreement and representatives of the civil law science developed several doctrinal provisions regarding it, from denying the agreement as such that restricts civil capacity and constitutes an attempt to deprive individual heirs of the right to a mandatory inheritance [28] to its approval as such that does not deprive the person of civil capacity, because the right to a mandatory share cannot arise until the death of the testator. Until then, there can be only hope of obtaining this share, which may disappear due to the conclusion of not only an inheritance agreement, but also the agreements on gift, purchase and sale, or perpetual maintenance [29]. Notably, the inheritance agreement, indeed, does not allow the alienator to dispose (sell, gift, etc.) of the property that is its subject. However, it does not deprive a person of civil capacity, as the alienator expresses one's will to enter into such an agreement, and instead receives the right to demand the implementation of one's orders, which, admittedly, should not contradict the current legislation and moral principles of society.

The parties to the inheritance agreement are the alienator and the acquirer. The alienator can be one or more individuals – spouses, one of the spouses, or another person. The legislator's use of the phrasing "or another person" in Part 1 of Article 1303 of the Civil Code of Ukraine[2] suggests that it refers to any person (both an individual and a legal entity) as a participant in civil relations. However, a detailed analysis of the provisions of Chapter 90 of the Civil Code of Ukraine clarifies that the moment of emergence of ownership of the acquirer is closely related to the moment of death of the alienator. That is, in this case, not all participants in civil relations under Article 2 of the Civil Code of Ukraine are implied, but specifically an individual endowed with full legal capacity [30]. The purchasers under the inheritance agreement may be individuals or legal entities. When concluding an inheritance agreement, the acquirer, if he or she is an heir by will or by law, does not lose the right to inherit in the share of property that was not specified in the inheritance agreement. The subject of the inheritance agreement is both the acquisition of ownership of the alienator's property and the actions (performance of works, rendering of services, etc.) of the acquirer. Personal non-property rights (for example, the alienator may not restrict the purchaser in choosing a place of residence, in choosing a spouse, etc.), property rights to another's property (emphyteusis, superficies, easements), etc. may not be the subject of this agreement.

Therefore, the acquirer undertakes to comply with the alienator's order and, in the event of the alienator's death, acquires ownership of such housing. That is, the inheritance agreement performs a dual function of the regulator of relations on the transfer of ownership and the commission of actions, because the inheritance agreement constitutes the transfer of ownership to the acquirer, and although these actions are no longer performed by the alienator, but by other persons after the alienator's death,

1. Civil Code of Ukraine, op. cit.

2. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

the acquirer becomes the owner of the property alienated in his of her favour. Thus, the alienator has the right to appoint a person who will supervise the performance of the inheritance agreement after the alienator's death. The inheritance agreement may be terminated by the court at the request of the person monitoring the performance of the alienator's will after the latter's death, in case of frustration on the acquirer's part or at the request of the acquirer in case of impossibility to perform the alienator's orders. The notary, who has certified such an agreement, imposes a ban on alienation of such housing, which achieves protection of the rights and interests of the purchaser. That is, the notarial form of the contract has a substantial legal significance, because the notary, unless otherwise provided by the agreement, acts as a guarantor of the obligations of the acquirer, which he or she must perform after the death of the alienator. That is, the notarial form of the hereditary contract allows to document the manifestation of the will of the parties most adequately and thus provide evidence of the true direction of their intentions.

In view of the above, the question of the place of the inheritance contract in the system of civil law contracts remains debatable to this day. Thus, Yu.O. Zaika substantiates the expediency of its "transfer" to Book Five of the Civil Code of Ukraine[1] and placement next to perpetual maintenance agreement and rent agreement as an independent contractual form [31]. V.V. Vasylchenko, on the contrary, defends the position on the validity of the consolidation of this institution in the system of inheritance law [32]. According to S.V. Mazurenko, the inheritance agreement does not belong to any of the groups of agreements proposed in the literature, but is in essence an "atypical agreement" of civil law. Therewith, the scientist concludes that in these relations two agreements are merged: 1) an agreement on the performance of actions by the acquirer, which gives rise to the relevant obligations, the content of which is the actions of the acquirer; 2) agreement on the transfer of ownership of the property of the alienator after his or her death [33]. Since the inheritance contract is a special type of binding legal relationship, the essence of which, although closely intertwined with the inheritance relations, cannot be considered as one of the possible types of inheritance. Accordingly, since the provisions of the Civil Code of Ukraine governing relations under the inheritance agreement are already placed in Book Six, and the moment of ownership of the alienator's property is associated with his or her death, there is no need to "transfer" the inheritance agreement to the Book Five of the Civil Code of Ukraine, as this is unlikely to affect the effectiveness of legal regulation.

The issues of possibility/impossibility of concluding this agreement through a representative also deserve special attention. In particular, R.A. Maidanyk, V.V. Vasylchenko believe that the inheritance agreement can be concluded only personally by an individual with full civil capacity [34; 35]. According to other scholars, on the contrary, it is allowed to conclude this agreement through a representative, because "according to the contractual nature of transactions, the conclusion of an inheritance contract is possible through a representative, at least the Civil Code of Ukraine does not prohibit it" [36].

The conclusion of an inheritance agreement, under which the housing is transferred into the ownership, cannot be carried out through a representative, because the alienator does not care who will be the purchaser of his or her housing. Only the alienator alone can ensure it most completely. Even if it is impossible to search for a purchaser unassisted, one should not involve a representative, although the law does not explicitly prohibit it. To confirm this, it is advisable to cite the position of O.V. Onishchenko, who believes that "it can be assumed that the inheritance agreement may be concluded in the interests of a minor, juvenile, incapacitated and incapable person, subject to the rules of the Civil Code of Ukraine on transactions with persons without full capacity", and suggests "to solve this issue at the legislative level by, for example, indicating that the alienator can be an individual regardless of age and state of health (following the model of a perpetual maintenance agreement)" [37].

In view of the ongoing discussion on the recognition of a succession agreement as a unilateral or bilateral agreement, the inheritance agreement is bilateral, as the rights and obligations under it arise for both the alienator and the acquirer. In particular, the acquirer, apart from the rights (ownership of the alienator's property, the right to demand termination of the contract in case of impossibility to execute the alienator's orders), also has obligations (to execute the alienator's orders and perform certain property or non-property actions). The alienator, in addition to his rights (to make certain orders, require the acquirer to perform certain conditions of the contract actions of property or non-property nature), also have responsibilities (the obligation not to alienate property defined by the inheritance agreement, the obligation to ensure the safety of this property and proper treatment). The bilateral nature of this agreement is also evidenced by the prohibition on the alienation of housing, including by will, which constitutes the subject of an inheritance agreement. In addition, the bilateral binding nature of this agreement is evidenced by the content of Article 1308 of the Civil Code of Ukraine[2] , under which the inheritance agreement may be terminated by the court at the request of the alienator in the event of non-performance of his or her orders by the purchaser or at the request of the acquirer in case of impossibility to perform the alienator's orders. Notably, in both cases the termination of the inheritance agreement is possible only in court. It is the court that must establish the fact of violation of the inheritance contract or the impossibility of its execution. Thus, due to the bilateral feature, the inheritance agreement cannot be terminated or changed unilaterally during the life of the alienator, as is the case with a will [30]. As for the payment-related feature of the inheritance contract, almost all scholars refer to this agreement as paid agreement, as the purchaser receives the

1. *Ibidem*, 2003.

2. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

property specified in the agreement (in this case – housing), and the alienator receives results of certain actions of property or non-property nature on the part of the acquirer. It is no coincidence that this feature allows to distinguish the inheritance agreement from the will and the perpetual maintenance agreement.

The purchaser's housing ownership on the grounds of the inheritance agreement emerges from the moment of the state registration of such ownership. This conclusion follows from the analysis of Articles 334, 1302, 1307 of the Civil Code of Ukraine. In particular, according to Article 1302 of the Civil Code of Ukraine, the purchaser under the inheritance agreement acquires the ownership of housing of the alienator in case of his or her (alienator's) death. However, given the fact that housing is real estate, the ownership of which is subject to state registration in accordance with the procedure prescribed by law, the ownership, according to Part 4 of Article 334 of the Civil Code of Ukraine, arises from the moment of such registration. In addition, Article 1307 of the Civil Code of Ukraine prohibits the alienation of property (housing), which is the subject of the inheritance agreement, until the death of the alienator. That is, the possibility of housing ownership under the inheritance agreement earlier than from the moment of death of the alienator is excluded. Therefore, considering the need for state registration of ownership of housing as a real estate, the right of ownership of the purchaser arises from the moment of state registration of the right, and not from the moment of death of the alienator. Thus, the above suggests that the inheritance agreement, under which a person may have ownership of housing, is a contract of transfer of ownership of property, paid, bilateral (bilaterally binding), fiduciary (based on trust between the parties), aleatory (the purchaser cannot be sure that the actions of property or non-property nature committed by them will be equivalent to the value of the received housing), and is of a personal nature.

Features of conclusion of the hereditary agreement by spouses should also be considered within the framework of this study. Thus, an inheritance agreement can be concluded by one or both spouses. In this case, the subject of the inheritance agreement may be housing jointly owned by the spouses, as well as housing that is the personal private property of either of them. As for the conclusion of an inheritance agreement by the spouses, the subject of which is housing as an object of joint ownership, one should be bear in mind that when making any transaction concerning the joint property of the spouses which requires notarisation, the consent of the other spouse must be established. If the contract was concluded without the consent of the other spouse, it may lead to a challenge to its validity. However, the inheritance contract may be certified without the consent of the other spouse, if the title document indicates that the housing specified in it was acquired prior to the registration of marriage, or during the marital relationship, but on terms determined by the agreement concluded between the spouses, or by inheritance, as well as in cases where the one of the spouses does not reside at the property and his or her place of residence is unknown. A copy of the court decision, which has entered into force, must be submitted to confirm this circumstance.

If the spouse as an alienator does not agree with the inclusion of jointly acquired property in the inheritance agreement or the spouses do not agree on this property, one of the spouses may establish its share in the joint property in court and then enter into a separate inheritance agreement. The inheritance agreement can also establish that in case of death of one of the spouses the inheritance passes to the other, and in case of death of the other spouse his or her property only then passes to the purchaser under the agreement. In the presence of a marital agreement, which defines the rights and obligations of the spouses to housing purchased both before marriage and during the latter, received as a gift or inherited by one of the spouses, upon certifying the inheritance agreement, the notary must be guided by the terms and conditions specified in the marital agreement. If the alienator violated the terms and conditions of the previously concluded marital agreement upon concluding the inheritance agreement, then this serves as the basis for rendering such agreement null and void.

In terms of the legal nature of the marital agreement as separate grounds for the emergence of housing ownership, it is appropriate to note the lack of a unified opinion in the doctrine of private law. The most common opinion is that the marital agreement, despite several specific features, belongs to the civil law contracts and is subject to general rules for transactions [38-40]. A detailed analysis of this contractual form, the conditions of its validity, the grounds for its invalidation, and the procedure for its conclusion and performance suggests that the general civil law constructions of contract law are used in this case. Therefore, it is necessary to agree with the opinion of those scholars who refer the marital agreement to civil law contracts. In general, the marital agreement is the most complex and can contain a variety of terms and conditions relating to the property of the spouses or the provision of maintenance to one of them; unlike all other agreements, marital agreement can be concluded in respect of the future property of the spouses; the subjects of the marital agreement may be not only the spouses, but also the persons who have applied for registration of marriage. In addition, a marriage contract can serve as grounds for joint ownership of the spouses if it stipulates that the spouses become co-owners of housing, which prior to the marriage and marital agreement was in ownership of one of the spouses. Moreover, the joint housing ownership of the spouses acquired based on the marital agreement emerges from the moment of state registration of such ownership.

There is good reason that Article 94 of the Family Code of Ukraine[1] stipulates the requirement that the marital agreement is to be concluded in writing and notarised. Notably, there is still a "cautious" attitude of the notarial community towards the marital agreement. As a result, there are cases of extortion to certify the relevant legal relations of other agreements (on the alienation of the share of one of the spouses in the joint ownership in favour

1. Family Code of Ukraine. (2002, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2947-14#Text.

of the other spouse without the allocation of this share, on the procedure for using property, on the allocation of a share of immovable property of one of the spouses from all property assets, on provision of maintenance, etc.), which forces persons wishing to enter into a marital agreement to bear considerable costs upon its execution. To prevent such abuse, the Law of Ukraine "On Notaries"[1] obliges a notary to assist citizens in exercising their rights and protecting their legitimate interests. In particular, when certifying a marital agreement, the notary is obliged to explain to the parties the content and meaning of the marital agreement, the consequences of including certain terms and conditions therein, as well as to verify compliance with the law and the actual intentions of the parties.

Thus, among the grounds for the housing ownership, the marital agreement has a special place because: 1) it has the most complex nature and may contain various conditions relating to the property of the spouses or the provision of maintenance to one of them; 2) it may be concluded in respect of the future property of the spouses.

CONCLUSIONS

Summarising the analysis of the contractual grounds for the emergence of housing ownership, it is appropriate to emphasise the feasibility of expanding the classification of contracts as grounds for the emergence of housing ownership, which is established in the doctrine of housing law, by supplementing the classification with such contractual forms as mortgage agreement, donation agreement, hire-purchase agreement, inheritance agreement, lease agreement, as well as a marital agreement. Thus, it is appropriate to supplement the system of agreements that mediate the transfer of ownership of housing as an object of ownership as follows: 1) housing purchase and sale agreements; 2) housing barter agreements; 3) perpetual maintenance agreements; 4) housing rent agreements; 5) housing gift agreements; 6) housing mortgage agreements; 7) housing donation agreements; 8) hire-purchase agreements; 9) hereditary agreements; 10) marital agreements; 11) construction agreements; 12) agreements on joint activities.

It is established that the exchange of housing and the housing barter agreement are not terminological inaccuracies; these contractual forms have different legal nature, because the barter agreement serves as grounds for housing ownership, and the housing exchange agreement serves merely as grounds of the right of use.

It is substantiated that the inheritance contract performs a double function, governing both the relations on the transfer of housing into ownership and the performance of actions, since under the inheritance agreement, the property is transferred to the acquirer in his or her ownership, and although these actions are no longer carried out by the alienator, but by other persons after the death of the alienator, the acquirer becomes the owner of the property alienated in his or her favour.

Thus, the issue of identifying new contractual grounds for the disappearance of housing ownership in general and the study of individual contractual grounds in particular is relevant and such that requires further substantial research.

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