

<https://doi.org/10.61345/2734-8873.2024.3.10>

THE PROBLEM OF CODIFICATION OF URBAN PLANNING LEGISLATION

Onyskovets M.Yu.¹

Annotation. The article is devoted to the study of the issues of codification of urban planning legislation, in particular the codification of norms of a permitting nature in the field of urban planning activity in Ukraine as a problematic issue due to the presence of a large number of uncoded legislative acts, which create difficulties for users and subjects of state power in terms of applying the norms of such uncoded acts.

The article examines the issue of the sphere of relations regulated by such regulatory legal acts and notes the prospect of better regulation of the relevant sphere of urban planning legislation in the event that such urban planning legislation becomes codified.

The general and special legal principles for carrying out permitting activities in the field of urban planning legislation are presented, applying which currently the subjects of urban planning activity would already have codified legislation in the field of urban planning in Ukraine. The special legal principles for permitting activities in the field of urban planning in Ukraine are studied, using which it will become easier to codify urban planning legislation and ensure that the subjects of urban planning legal relations realize their legitimate rights and interests in the above-mentioned area.

Key words: urban planning, urban planning legal relations, legal relations of a permitting nature, reforms, public participation, digitalization, regulatory and legal regulation, information support for environmental management, public interests, public control, technological development, legal principles of urban planning activities, codification of urban planning legislation.

Formulation of the problem. The issue of codification of urban planning legislation, in particular the codification of norms of a permitting nature in the field of urban planning activity in Ukraine, has been identified as a problematic issue due to the presence of a large number of uncoded legislative acts, which create difficulties for users and subjects of state power in terms of applying the norms of such uncoded acts in the urban planning sphere.

Goal. To investigate the issue of codification of urban planning legislation, identify shortcomings and note the need to use legal principles in the implementation of urban planning activities in order to codify urban planning legislation.

¹ Postgraduate student of the Department of Theory and History of State and Law, University of Economics and Law «KROK».

Presentation of the material. As of today, the urban planning industry in Ukraine is regulated by about 23 laws and a large number of subordinate regulatory legal acts, orders of central executive bodies and state building standards. There is no Urban Planning Code in Ukraine. They have tried to develop it since 2010, but without success. Instead of the Urban Planning Code, the Law of Ukraine “On Regulation of Urban Planning Activities” is in force in Ukraine. Over the course of eleven years, it has been amended 65 times.

Permitting activities in Ukraine today are carried out in accordance with laws and subordinate regulatory legal acts. In particular, there are more than 5 laws that are considered special in the relevant area of the laws of Ukraine “On the permitting system in the sphere of economic activity” [2], “On the foundations of urban planning” [3], “On the regulation of urban planning activity” [4], “On the List of documents of a permitting nature in the sphere of economic activity” [5], “On architectural activity” [6], which indicates the lack of proper codification and systematization of legislation on the implementation of permitting activities in the sphere of urban planning in Ukraine.

The Concept of public administration in the sphere of urban planning activity in force in Ukraine determines the reform of the management system in the sphere of urban planning and the automation of permitting activities [7], however, no specific steps have been defined to achieve such results. However, we must state that the systematization and codification of urban planning legislation could become one of the solutions to achieve the goal defined by the Concept.

According to O.V. Dzhabarova, permitting activities should be defined as a means of legal regulation of a wide range of social relations. The scientist proposes to consider the following principles in the field of permitting activities: the principle of good governance and proper administration and the principle of regulatory (permitting) policy of the state [8, p. 83].

According to Romanyak M.M., the principles of permitting activities belong to group principles in the field of management [9, p. 75]. And Pryima S.V. in turn identifies such principles of permitting activities in the field of urban development in Ukraine as fairness, legality, good faith, proportionality, justification, expediency (useful effect), reasonableness, timeliness, etc. The principle of fairness as a primary aspect of the activities of public administration subjects is defined as the equal attitude of the subject of public administration to all categories of participants in legal relations, and as the application of the same criteria when resolving individual legal cases, thanks to which an equal distribution of public goods between all participants in administrative legal relations is achieved [10, p. 623–625].

Thus, we propose to distinguish two groups of principles of permitting activities in the field of urban planning according to the criterion of the object of their influence:

1) principles of further development of the organization of the permitting system in the field of urban planning as the basis for ensuring the safety of

human life and the activities of the state; as well as ensuring security in key areas of public life;

2) principles of implementing permitting activities in the field of urban planning (material and procedural principles) as the rule of law, legality, openness, proportionality, control, responsibility, and accordingly as the availability of acts of a permitting nature, impartiality of the subject of permitting activities, participation of the applicant in decision-making, transparency, timeliness, etc.

According to Neborsky E.A., two blocks of principles regarding permitting activities in the field of urban planning (general and special) should be defined as general principles of the activities of public authorities that go beyond the scope of urban planning; and as principles that reflect the specifics of the activities of public authorities [11, pp. 37–42].

At the same time, Stukalenko O.V. proposes to list as the defining principles of administrative procedures in the field of permitting activities those principles that organize a certain sequence of administrative acts of authorized entities carried out in order to exercise their powers, consider and resolve individually defined administrative cases, as well as those principles that allow directing activities to create conditions for the implementation of subjective rights regarding the pursuit of permitting activities in the field of urban planning [12, pp. 78–90].

The scientist Rybak K.O. proposes for consideration the following principles of carrying out permitting activities in the field of urban planning as the principle of implementing permitting procedures, the principle of determining the place of documents of a permitting nature among other documents in the field of urban planning, a general outline of some problems of permitting procedures in the field of urban planning, etc. [13, pp. 54–55].

Thus, to carry out the codification of urban planning legislation, it is necessary to use the above-mentioned principles in order to effectively ensure the rights and legitimate interests of subjects of urban planning activity.

According to the Concept of the Urban Planning Code of Ukraine, the purpose of its compilation “is to systematize the norms of urban planning legislation, improve the legal support of urban planning activity” [14].

The text of the draft Urban Planning Code is divided into chapters and sections. Special attention is paid to the definition of concepts. The bodies that carry out state regulation in the field of urban planning are listed, and their powers are outlined.

Planning is envisaged at different levels. The status of regional rules for development and zoning of territories is also regulated in detail. The procedure for approving places for the placement of urban development objects, the procedure for architectural and construction design are determined.

The project also provides for the procedure for the development of a specific land plot, the execution of necessary permits and other documents, and the commissioning of a construction object. The project also regulates relations on the reconstruction of territories. It should be especially emphasized that the need to solve the problems of taking into account

state, public and private interests during the planning and development of territories is also taken into account. Several articles are devoted to public discussions of draft urban development documentation.

The need to regulate the procedure for conducting state expertise of urban development documentation is also emphasized. Control and supervision in urban development are considered in a separate chapter of the project. Aspects of international cooperation in the construction industry are analyzed. Section VI of the project deals with liability for offenses in the field of urban development. In general, the project can be characterized as a successful attempt at codification, taking into account the most significant issues.

The development of the draft Urban Planning Code of Ukraine is a positive step towards the establishment of a legal state. Among the large number of regulatory legal acts regulating relations in the construction sector, such a codified act is the need of the hour. It is designed to ensure the systematization of legislation and the coordination of its provisions with the norms of related industries.

The adoption of a codified act will contribute to increasing the efficiency of the activities of executive authorities and local self-government bodies. Analyzing the provisions of the project, we note that a definite progressive step is the detailed regulation of these relations in a single legislative act. Such an approach will avoid conflicts of legislation and is designed to facilitate law enforcement. At the same time, the project needs to be finalized, clarifying in more detail the issues of delimiting the status of the developer and the customer, the procedure for holding public hearings, and the regulation of equity participation in infrastructure development.

Conclusions. Thus, the solution to the problem we identified as a priority – the lack of codification of urban planning legislation – was analyzed and proposed. By codifying urban planning legislation, the procedure for permitting activities in the field of urban planning will become accessible, orderly, open and legal, which will ensure the use and implementation of the basic principles in the field of urban planning.

References:

1. Gusakov V., Reva S. (2019) Permit system. Concept of public administration in the sphere of urban development: collection of analytical materials. Kyiv. 369 p. URL: <http://www.vin.gov.ua/images/doc/vin/dep-dmba/news/Conc.pdf> (date of access: 11.11.2024).
2. On the permit system in the sphere of economic activity: Law of Ukraine dated 06.09.2005 No. 2806-IV. Official Gazette of Ukraine. 2005. No. 39. Art. 2429.
3. On the foundations of urban development: Law of Ukraine dated 16.11.1992 No. 2780-XII. Bulletin of the Verkhovna Rada of Ukraine. 1992. No. 52. Art. 683.
4. On the regulation of urban development activities: Law of Ukraine dated 17.02.2011 No. 3038-VI. Official Gazette of Ukraine. 2011. No. 18. Art. 735.

5. On the List of documents of a permitting nature in the sphere of economic activity: Law of Ukraine dated 19.05.2011 No. 3392-VI. Official Gazette of Ukraine. 2011. No. 45. Art. 1824.
6. On architectural activity: Law of Ukraine dated 20.05.1999 No. 687-XIV. Official Gazette of Ukraine. 1999. No. 24. Art. 1089.
7. The concept of public administration in the sphere of urban development activities. URL: <http://www.minregion.gov.ua/wpcontent/uploads/2019/04/Kontseptsiya-na-sayt.pdf> (access date: 11.11.2024).
8. Dzhafarova O.V. (2015) Permitting activities of public administration bodies in Ukraine: administrative and legal principles: dissertation ... doctor of law: 12.00.07 / Kharkiv National University of Internal Affairs. Kharkiv, 2015. 625 p.
9. Romanyak M.M. (2010) Administrative and legal principles of permitting activities in the field of ensuring environmental safety: dissertation ... candidate of law: 12.00.07 / National University of the State Tax Service of Ukraine. Irpin. 183 p.
10. Great Ukrainian Legal Encyclopedia: in 20 vols. (2017) Kharkiv: Law, 2016. Vol. 3: General theory of law / editors: O.V. Petryshyn and others; National Academician of Law of Ukraine; V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine; Yaroslav the Wise National Law University. Kharkiv. 952 p.
11. Neborsky E.A. (2019) Methods and principles of activity of subjects of administrative-legal relations in the field of urban planning. Law and Security. No. 2 (73). P. 37–42.
12. Stukalenko O.V. (2016) Administrative and legal support of the construction industry: monograph. Kyiv: Center for Educational Literature, 2016. 376 p.
13. Rybak K.O. (2018) Urban planning activity as an object of administrative-legal regulation: dissertation. ... Candidate of Law: 12.00.07 / Kyiv. National University of T.G. Shevchenko. Kyiv. 275 p.
14. Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Concept of the Urban Planning Code of Ukraine" dated July 18, 2007 No. 536-p.