

UDC 349.442:711.4:340.134(477)

DOI: 10.15587/2523-4153.2023.293648

ON THE ISSUE OF CODIFICATION OF URBAN PLANNING LEGISLATION

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The subject matter of the article is conditioned by the discourse on the necessity to codify the urban planning legislation, approve the Ukrainian Urban Planning Code, and align its provisions with the norms of related branches of the legislation.

The purpose of the study is to specify the subject matter of the Urban Development Code's regulation and the sectoral affiliation of urban development relations, to define the structure of the codified act, and to change the requirements of the Commercial Code of Ukraine.

The research methods are based on the concepts and theories that describe the current state of the problem of the current urban planning and economic legislation in Ukraine and summarize the content of scientific works to conduct a broad analysis of the codification of the urban planning legislation while taking into account the existing legal system in Ukraine.

Results. The codification of the urban planning legislation, it is argued, provides for: increased transparency and ease of use of the norm; equivalent integrated nature of spatial planning; achievement of consistency of spatial planning and development in decision-making and regulation; decentralization and limitation of discretionary powers; and optimization of governing bodies in the urban planning sphere. The structured act of the Code will solve the problems of inconsistency and uncertainty of the conceptual apparatus in the field of urban planning, inconsistency with the land, environmental, and monument protection legislation, problems of technological support of urban planning activities, procedures for spatial planning, and public control over the development and adoption of urban planning documentation, with the maximum reduction in the number of acts of the current legislation.

Conclusions. It is proposed that the subject matter of regulation of the Urban Development Code of Ukraine should include social relations arising, changing, and terminating in connection with urban development activities based on the principles of a comfortable living environment and life cycle management of construction objects

Keywords: urban planning legislation, codification, systematization, urban planning activity, construction activity

How to cite:

Kvasnitska, O. (2023). On the issue of codification of urban planning legislation. ScienceRise: Juridical Science, 3 (25), 13–18. doi: <http://doi.org/10.15587/2523-4153.2023.293648>

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1. Introduction

The creation of an effective regulatory framework for urban development and harmonization of Ukraine's urban development legislation with the EU common principles have been the subject of discussion since the 2000s, as the urban development legislation was characterized by disorder, haphazardness, a certain degree of contradiction and excessive detailing, and construction activities were subject to unjustified state regulation. The gradual reform of the urban planning sphere in independent Ukraine has resulted in the introduction of rules of varying status and degree, including statutes and bylaws combining private and public law, sparking debate over the necessity to codify the urban planning legislation. Therefore, in 2007, the concept of the Urban Planning Code of Ukraine was approved, work directions for the modernization of urban planning law were established, and a draft Urban Planning Code was created (draft law No. 5181 of 29.09.2009). However, the structure of the code was modeled on the example of the city planning code of the rf, remaining a vestige of the Soviet system without a clear subject of regulation, without grouping sections and articles of the code into blocks, each of which was supposed to be focused on regulating a specific group of potential users and harmonizing with the most advanced international standards for regulating relations in development. Despite the fact that the urgency of codification of the urban planning legislation was due to the need to determine the place of the Urban Planning Code

of Ukraine in the system of both legislation on urban planning and legislation of Ukraine as such, taking into account subsystem codified fragments of regulation on the relationship in construction activities in the Commercial Code of Ukraine, these tasks were not solved by the Ministry of Regional Development and Construction of Ukraine, and the draft law was withdrawn in March 2010.

Subsequently, the discussion on codification in the urban planning sphere became the subject of exclusively academic research, although many changes and additions were made at the legislative level. Deregulation and digitalization of construction activities continued, approaches to the essence of urban planning documentation changed, and the areas of systematization of the urban planning legislation remained relevant. Although work on codifying the urban planning legislation was resumed in 2017, it was not possible to introduce a new conceptual model of the code based on institutions: planning, development and organization of territories, architectural design, construction and operation of real estate. It was only with the adoption of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Reforming the Sphere of Urban Development” in December 2022, which sparked significant opposition from communities and warnings from the European Parliament (resolution R9_TA (2023) 0247 of 15.06.2023), the debate on the feasibility of developing a new Urban Development Code of Ukraine has intensified and its development has begun, which has once again confirmed the relevance of scientific research on the need to systematize the legislation in the field of urban development and harmonize its provisions with the norms of related branches of the legislation, that will eliminate terminological discrepancies, introduce effective mechanisms to ensure the quality of construction, because the concept of freedom of development as a subjective right to development and use, guaranteed by the Constitution of Ukraine to develop, use, and manage a land plot, does not absolve the customer of the need to maintain construction quality, since the construction object cannot endanger inhabitants, users, or the environment.

Given the scale of the destruction, caused by the Russian aggression, and the need to rebuild destroyed cities, villages, and the economy as a whole, it is not so much the issue of deregulation and liberalization of construction activities that remains extremely relevant, as it was actively pursued before the war, and with the full-scale invasion, even more so. Instead, we must focus on codifying the urban planning legislation by balancing the interests of all participants in urban planning relations, with the return of the role of communities in urban planning through high-quality urban planning documentation and effective community control over the construction process, taking into account gaps in state regulation of construction activities that have led to a critical situation in the urban planning sector in most Ukrainian cities.

2. Literature review

All these years, the discourse on codification of the urban planning legislation has been focused on the subject of legal regulation, since urban planning legislation ensures a balance of private and public interests as a regulator of social relations, the methodology for determining the nature of which remains controversial, and on the name of the codified act: Construction Code or Urban Development Code.

In the updated research, Volodymyr Bezenko substantiates the need to adopt a codified law in the construction industry – the Construction Code, considering the content of the Public Construction Law of Ukraine through the law of development planning (law of construction planning/spatial planning law); construction regulation; permitting law (permitting (administrative) procedures); construction law (urban planning law); distinction between development planning, urban planning and special planning; peculiarities of design and construction of certain construction objects, in particular, infrastructure for ensuring the vital activity of a settlement; legal protection and responsibility of the state in public construction law [1, p. 41–42]. Kolomojety T. and Kolpakov V. use administrative and legal norms to regulate social relations that arise, change and terminate in the field of construction space administration [2, p. 22], thereby emphasizing the public authority component of the regulatory system of relations in the field of construction, identifying construction and urban planning activities, which is erroneous.

In turn, civilists determine the need to ensure the harmonization of private and public interests in the field of urban development through the methodology of civil law regulation, since, as Maidanyk R. points out, private urban development law is constituted by the norms, contained in civil law, primarily in the Civil Code of Ukraine, and covers all issues of private land use, civil rights to the implementation and results of construction [3, p. 7]. Kharytovnov E., Kharytova O. defend the position of different branches of urban planning relations, focusing on the fact that it seems controversial that there are complex branches of law, and therefore it is worth talking about complex branches of legislation and from this angle of view to consider “urban planning law” as a set of legislative acts regulating “urban planning relations”, which in essence can be in the field of civil law [4, p. 19–20].

A review of foreign studies on codification in urban planning shows that most countries have or are updating their codified acts. For example, in the United States, almost all 50 states and the District of Columbia have adopted model IEC and/or NFPA codes, and in Canada, most provinces and territories have adopted, in whole or in part, the National Building Code of Canada. The member states of the European Union have adopted the Eurocode norms for the design and construction of buildings. Each has adapted national rules to its national context [5, p. 138].

In the Netherlands, since 2017, the Environment and Planning Act (Omgevingswet) has been under discussion, which unifies 26 laws, i.e. optimizes the existing legislation: namely, the Construction Decree of 2012 (Building Decree 2012), municipal development rules, and the implementation of a new structure of requirements for obtaining a building permit is planned. And despite the predominant role of municipalities in the development of the environment, these legislative acts only strengthen their role, municipalities establish rules in terms of zoning, and soon (expected on February 1, 2024) in terms of environmental protection. This is a logical step, according to F. Brouwer, B. Rademaker, since the question of whether the construction rules, included in the environmental plan, should be subject to preventive assessment in the context of a permit will also be in line with the environmental plan [6, p. 225]. At the same time, work is underway to ensure the quality of buildings (Wet kwaliteitsborging voor het bouwen) [7]: construction supervision is being transferred from the state to the private sector, the position of the construction consumer is strengthened by increasing the contractor's responsibility for shortcomings, defects, etc.

In addition, Hungary is constantly working on reforming construction procedures, and this applies to the integration of permits, the validity of permits, grounds for refusal to issue permits, etc. (Government Decree No. 700/2020) [8].

According to Yilmaz O., Ertekin O., the legislation of the urban planning and management system of Turkey is quite branched, combining national legislation, regional rules, and regulations of local planning, having a hierarchical structure, which leads to spatial problems, overlapping jurisdictions and the need to improve the institutional capacity of urban management [9, p. 95, 111].

Thus, despite different legal systems and approaches to legal regulation of spatial planning and development in different countries (Table 1), we observe a dichotomy of urban planning that is centered on statistical and dynamic approaches, which in turn affect legislation, which in democratic countries is able to integrate best practices, develops with regard to innovations, today's needs – digitalization, environmental protection – and carefully goes through the process of optimizing or codifying the urban planning/building legislation.

Table 1

Availability of codified acts in foreign countries

United States of America	International Building Code	first edition of the was published in 2000
Canada	National Building Code of Canada 2020	first published in 1960
French Republic	Code de l'urbanisme	first edition of the was published in 1954
	Code de la construction et de l'habitation	first edition of the was published in 1978
Federal Republic of Germany	Baugesetzbuch (BauGB)	issued on August 18th 1997
Australia	National Construction Code (NCC) 2022	first edition of the was published in 1998
New Zealand	Building Act	issued on August 24th 2004

3. The aim and objectives of the study

The purpose of the study is stipulated by the need to adopt a new codified act in the field of urban development – the Urban Development Code of Ukraine and to modernize the Commercial Code of Ukraine.

To achieve this goal, the following tasks are defined:

1. To determine the range of social relations that will be subject to regulation by the Urban Development Code and the sectoral affiliation of urban development relations;
2. Determining the structure of the future Urban Development Code of Ukraine;
3. To improve the provisions of the Commercial Code of Ukraine that regulate the relations mediating construction activities.

4. Materials and methods

The research is based on concepts and theories that characterize the current situation of Ukraine's urban planning and economic laws. The article identifies, summarizes, and derives the obvious content of scientific works of various specializations, analyzes their thematic connection, and conducts a broad analysis of the study's subject matter – codification of the urban planning legislation, taking into account Ukraine's existing legal system. The use of numerous government sources, studies, and projects highlighted the faults and strengths of the legal control of urban development, which also includes building activities, and allowed us to focus on the core law's structure. We will be able to use the knowledge and ideas, gathered during this process, to draw reasoned conclusions about the place of the Urban Development Code of Ukraine in the systemic and structural relations with legal acts of the administrative, economic, land, civil, and environmental legislation.

5. Research results and their discussion

Social relations in the field of urban planning have become more complex in recent decades, and legal regulation has become more extensive and focused on spatial planning as a result of social, demographic, and economic development, creating a need in Ukraine to integrate environmental requirements, regulatory policy, and state regulation with the institution of planning and development. Tendencies of convergence of public and private law, as well as the practical need to balance private and public interests in urban development, since construction activities are inextricably linked to urban development, allow the subject of legal regulation of Ukraine's Urban Development Code to include public relations in the field of urban development arising during spatial planning, development and construction of territories, with the exception of organizational, economic and property legal relations that are the subjects to regulation by the Commercial Code of Ukraine (state regulation, contractual obligations, forms of public-private partnership, etc.).

Despite the fact that the issue of the nature of urban development legal relations is complex and underdeveloped at the moment, it is worth focusing on the position of defining urban development relations as social relations governed by law that arise in connection with urban development activities (development forecasting, planning, use, and development of territories) are characterized by the e-government system, and necessitate the decompartmentalization of urban development. Such a definition of the codified act's subject matter will allow it to be structured while taking into account spatial planning, environmental protection, cultural heritage, technical regulation and quality of construction objects, cyclic construction, safety, health, ecosystem quality, participant responsibility, and so on.

The analysis of the relations arising in the field of urban planning has led to the conclusion that the subject matter of urban planning legislation is partially included in the subject matter of legal regulation of economic law, which is justified by the fact that each branch of law is represented by a branch of legislation, but not every branch of national legislation is necessarily a form of a branch of law [10, p. 261]. In this regard, we cannot agree with those scholars who, firstly, separate public construction law and private construction law (following the examples of other states), because given the interpenetration and interdependence of construction activities (which combines private and public components) and urban planning documentation (which contains only a public component), such a separation is impossible. Secondly, urban planning law (public law) and urban planning legislation should be discussed, which is conditioned by the complexity of the private and public elements. In this regard, the codification should be carried out with a parallel deepening and expansion of the content of the Commercial Code of Ukraine to avoid unjustified duplication of state regulation and control over construction activities. Moreover, as has been repeatedly noted in the literature, there is a close relationship between public and private law institutions, and the division between them is more methodological than real. In any area of public law, private law institutions can be found and vice versa. Only in connection with a significant predominance of the number of these institutions in a particular area can it be attributed to public or private law [11, p. 261].

Therefore, the codification of the urban planning legislation as a result of the adoption of the Urban Planning Code of Ukraine provides for: increased transparency and ease of use of the norm; equivalent integrated nature of spatial planning; achievement of consistency of spatial planning and development in decision-making and regulation; decentralization and limitation of discretionary powers, optimization of governing bodies in the urban planning sphere. The codification of the urban planning legislation should be solved not by adapting to established practices, which in Ukraine are not based on human-centeredness, but by taking into account the best practices of direct democracy, participatory tools in the development of urban planning documentation, with the definition of not only the functional role of land use, but also the actual regulator of height and density, which today are regulated by ministerial orders, as in the case of historical areas or SBC that allows the official-customer formula to satisfy exclusively the interests of the customer. At the same time, urban planning zones of special use, which include historical areas, lands of historical and cultural significance, and complex developments, exist only on paper, while in reality, the special use and special management regime on such lands turns into management without restrictions, with the destruction of the traditional character of the environment, the destruction of cultural heritage sites, and ineffective permitting procedures. Therefore, when developing spatial planning documentation, it is necessary not only to determine their type of differentiation, but also to imperatively establish norms for examination, approval and supervision of the development and implementation of urban planning documentation on the ground with clear personal responsibility of the subjects for its violation.

The codification of the urban planning legislation should result in a well-structured act that will address issues, such as conceptual apparatus inconsistency and uncertainty, inconsistency with the land, environmental, and monument protection legislation, issues with technological support for urban planning activities, procedures for spatial planning, and public control over the creation and adoption of urban planning documentation, all while minimizing the number of laws that must be created. At the same time, it is important to improve the economic legislation, so that it more accurately reflects the phenomena that take place when economic interactions are evolving. This will help solve issues with permits and licensing for construction activities, author's rights, and technical supervision.

Limitations in the study of the selected issues are associated with minor developments in the direction of urban planning law, as a field that combines public and private interests, which in turn does not allow a full analysis of the role of state regulation and self-regulation in this field. Along with this, there is a lack of research on the legal regulation of urban planning in the post-war period, when the economy of war functions both at the global and local levels, and further liberalization in the field of urban planning allows for the development of the country's economy. Therefore, further studies of the codification of the urban planning legislation in the war and post-war period of Ukraine will require taking into account the optimal combination of market self-regulation of construction activities of economic entities (private legal aspect) and state regulation of urban planning activities (public legal aspect) with the provision of key tasks: reorientation of the economy to defense, security, restoration and construction of critical, social infrastructure, housing, etc.

6. Conclusions

The codification of urban planning activities is not only about the maximum consideration of political, economic, and social prerequisites, it is not only about the need to integrate Ukrainian construction standards with European ones and to establish an agreed system with green construction standards. The codification of the future Ukrainian's Code of urban planning is about the possibility of ensuring a wide range of urban planning relations, both horizontally and vertically, not only by quality regulation, but also by guarantees of the effective functioning of the construction industry, the interest of participants in urban planning relations in the increased efficiency of construction activities, their protection, and the restructuring of the legislative systems of the post-Soviet period to create a connection between the system of urban planning legislation and the legislation of foreign countries.

1. As a result, it is suggested that the Urban Development Code of Ukraine be interpreted to regulate social relations that develop, change, and end in urban development activities using the guiding principles of a comfortable living environment and life cycle management of construction objects.

2. It is suggested that the content of the future Urban Development Code of Ukraine be organized as follows, taking into account the legal nature of urban development: Section I: Fundamentals of urban planning. Section II. Management in the urban planning sphere. Section III. E-governance. Section IV. Spatial planning and requirements for the living environment. Section V. Development of territories. Section VII. Normalization in construction. Section VIII. State control in urban development. Section IX. Liability for violation of the urban planning legislation. Section X. Final and Transitional Provisions.

3. At the same time, in order to avoid unjustified duplication of the provisions of the Commercial Code of Ukraine with the Urban Development Code, it is necessary to distinguish between relations in the field of economic activity (organizational and economic relations) and urban development relations and to expand the scope of legal regulation of construction activities by modernizing Chapter 33 of the Special Part of the Commercial Code of Ukraine "Capital Construction" by changing not only the title, but also filling it with legal regulation of the permitting system of construction activities as well as construction information modeling technologies.

Conflict of interest

The author declares that she has no conflict of interest in connection with this research – financial, personal, authorial or otherwise – that could affect the research and its results, presented in this article.

Funding

The study was performed without financial support.

Data availability

The manuscript has no associated data.

Use of artificial intelligence

The authors confirm that they did not use artificial intelligence technologies when creating the current work.

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Received date 31.08.2023

Accepted date 20.12.2023

Published date 24.12.2023

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