

жизни людей, не будет создавать условия для их свободного труда с целью формирования частной собственности, то государственная власть попадает в угрожающее развалом положение.

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THE POSSESSION AS THE BASE OF APPEARANCE OF THE USING ACCOMMODATION RIGHTS

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The satisfaction of housing needs could happen on the base of housing property, renting contract and also on the base of property rights as the possession and using alien accommodation. In general the property rights on the alien estate are derivative from ownership, which provide to the empowered person the possibility to influence on the object and implement possession and using without owner in the limits which are installed by the law or contract.

The using accommodation could happen on the base of possession and limitation right of using the alien accommodation – personal servitude. So the possession is determined as the base of the appearance the using rights. From the other side, without actual staying in the housing i.e. it possession, are impossible to realize the using. The satisfaction of housing needs are fulfill with actual possession and staying there. Thereby the possession has been the base and condition for the implementation the using rights.

The institute of possession is a complicated ambiguous and contradictory institute of the property rights which has combine legal and factual aspect. In the civil law doctrine there are the possession and

the right of possession. Traditionally the right of possession enters to the triad proprietor's authority and it's impossible to fulfill the right of use and sometimes the right of disposal of the property without the right of possession. The right of possession is determined as the legal opportunity of the factual possession of the property that is to have it in own holding. It means that the subject could actually and easily stay in the accommodation and really control its condition. The possession secures an actual status of appurtenance of the accommodation to the real person so must be certify by the entitlement document. The right of possession is closely associated with the right of use which is determined as an exploitation something with the aim or to fulfill some needs or to have some profit. So using accommodation is impossible without actual possession and contrariwise. Using accommodation is made by resident or temporary habitation. If owner or leaseholder doesn't reside but have free access to the housing on the base of ownership or lease contract, so they exercise the right of possession.

The possession as the actual holding of something has been conditioned by the subjective and objective criterion that is existence one thing in factual possession and person's attitude as to his own. Some scholars specify that the institute of possession is the independent civil law institute which is out of the property rights and must be separately represented in the Civil code and we are share this opinion.

It is legally inconsistently the determination of the concept of the terms "possession" and "others possession". In the civil law doctrine the possession is considered as the authority of the owner which means the possibility to have one thing in its own holding for the satisfaction some needs. The 162 item of the Criminal Code of Ukraine determines the criminal responsibility for the entry to a dwelling or some others possession. The 311 item of the Civil Code of Ukraine also uses the term of others possession as the object of subjective law on a par with dwelling or accommodation. But this is not correspond with the civil law foundations which are determine the others possession as the authority of the owner that is subjective law. So we suggest that for the abolition the term controversy it should be amended to the 311 item of the Civil Code of Ukraine and change the term "others possession" to the "another property".

The possession could be title and nontitle, legal and illegal. The title legal possession is based on the ownership or lease contract. For example, leaseholder acquires the right of use and possession to the dwelling on the base of the lease contract, and member of the family's owner acquire the same rights on the base of law. Nontitle possession hasn't based on the legal title that is factual possession. For example, the inhabitation to the dwelling with unknown owner. In such case, the right of use the accommodation has been based on the fact of possession and protected with acquisitive prescription. According to the 344 article of the Civil Code of Ukraine the person who has honestly possessed the alien estate and has

been openly and continuously possessed the real estate for ten years acquired the property right on the base of the court decision. It should be specify that only on the base of nontitle possession the property right could be acquired on the acquisitive prescription. In general, courts refuse to recognize the right to the property if there is an owner to this property. But we think if the possessor openly and honestly has been used and inhabited in the dwelling, owner of which had dead and heirs haven't object to the using of the dwelling or if the owner alive and also hasn't object, it should be allowed to recognize the right of property on the acquisitive prescription.

So the right of possession is determined in the civil law as a subjective right of the owner and as separate property right of possession alien estate. Was determined that possession has been the condition and foundation of the right of using accommodation. It is impossible to reside in the dwelling without actual possession. In civil law the possession is determined as a subjective law of the owner or other persons and not as the object of the subjective rights. In cases of the acquirement of the ownership to the real estate by the acquisitive prescription, must proceed from the fact that if possessor openly and honestly enjoyed and that lived in the house whose owner has died and his heirs have no objection to the possession and use of housing or if the owner is alive and also has no objection to the use and acquisition of property by the acquisitive prescription it have to be considered a bona fide possession, which may be the reason for the acquisition of ownership by acquisitive prescription. Should also be noted that after the completion of the construction, the person who built it has been considered the owner and may fulfill the right of using accommodation.

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