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EUROPEAN EXPERIENCE OF COMMUNAL PROPERTY MANAGEMENT

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SUMMARY

The article is devoted to the effective use of communal property by leasing. Recommendations of practical work and top-rank foreign experience are offered. There is suggestion of improvement of national legislation in this sphere. The author of the topic uses experience of daily work to describe a problem which executive bodies of local self government on municipal property issue deal with.

Key words: territorial community, communal property, leasing, local budgets, leaseholder, tenant, rent.

АННОТАЦИЯ

Статья посвящена проблеме эффективного использования коммунальной собственности. На основании анализа передового опыта и практики в данной сфере предлагаются рекомендации деятельности исполнительных органов местных советов, а также предложения по усовершенствованию национального законодательства. В результате анализа практической работы в данной отрасли автор статьи предлагает пути решения проблем управления коммунальной собственностью.

Ключевые слова: коммунальная собственность, аренда, местные бюджеты, арендодатель, арендатор, арендная плата.

Introduction. Nowadays the financial and property base of local government serves as the inalienable constituent of social and economical development of Ukraine and its regions. The successful providing of foreign experience of communal (municipal) property management is possible with proper economical support and financing from the all levels' budgets. Money from the leasing of communal property makes considerable part of profits of local budgets and creates the basis of development for local communities.

Research problem. There is no detailed research of leasing process because of its regional feature – the forms of agreements, formality of a lease, method of calculation, permission on improvement and others are determined by local councils in every special case. There are no model recommendations of such process in the spectrum of providing of their proper implementation. Nevertheless this problem was investigated by such scientists, practitioners and theorists as V.T. Aleksandrov, V.A. Verba, M.F. Golovaty, V.O. Gusev, V.M. Knyazev, O.F. Skakun, O.O. Spirin, O.O. Yaremenko, D. Davey, S. Magri and others.

Article's target. Therefore, it is very important to analyse the practice of European countries in such cases. It is necessary to spare attention on front-rank experience of communal property management in the Russian Federation, United States of America, Germany, France, United Kingdom and other countries of European Union.

The main material of research. In Ukrainian common law, real property, real estate, realty is any subset of land that has been legally defined and the improvements to it have been made by human efforts: buildings, machinery, wells, dams, ponds, mines, canals, roads, etc.

First of all it's significant to outline bases of the legal regulation of this issue in the legislation of Ukraine. The Law of Ukraine «On Local Self-Government» gives to the territorial communities the right to manage properties in their ownership. However, every city has its own peculiarities. Now when small privatization has been completed, the field of activities of local departments of the State Property Fund of Ukraine is considerably narrowed. As a result, territorial communities can lose the body that solves matters related to privatization and divestiture of objects of communal property (including land), auction sales, lease agreements, etc [6, p. 379].

The lack of the practice and effective recommendations to activity of local budgets' filling due to the leasing rent of communal property is one of the most widespread problem which the executive bodies of local self-government in the process of implementation of local budgets deal with.

Actuality of the topic is determined by the necessity of practical experience in leasing process of communal property as recommendations to law-work activity of executive branches of local self-government dealing with the leaseholders of communal property.

The author of this topic is a civil servant and works in similar branch, therefore deals in practice with the problems of lease. This article is part of publications for dissertation investigation on problem of providing activity of executive bodies of local self-government on communal property's leasing.

The issue of maintenance and effective use of communal property for the providing of necessities of territorial communities of cities, settlements and villages has an extraordinarily important value, in fact money getting from

the proper use of it fills up the budgets of administrative-territorial units.

Practical experience in area of local government's activity of leasing and research of European practice of it gives possibility:

- to use communal property effectively by lease it in accordance with the requirements of current legislation and local-government decisions;
- to make clear and open the process of leasing of communal property;
- to put in order the process of leasing and give recommendations for civil servants on this branch;
- to fill up the local budgets and own resources of communal enterprises;
- to carry out the control of the using of objects, conducting a register of the running agreements and objects to lease.

Given research and its results will have much importance for work of executive bodies of local government in Ukraine, all level councils, communal enterprises, establishments and organizations of communal property of territorial communities, also for potential leaseholders – private individuals and legal persons.

Practically in the whole world the municipalities come forward as a political corporation. Also in the Russian Federation exist so-called municipal formations, which present the interests of the habitants and acquire civil rights and obligations. [4, p. 82]

There are private, state and municipal property's forms in the Russian Federation according to the p. 1 ch. 212 of Civil Code. Municipal property is determined as the property which belongs to the territorial communities – the same definition as in the ch. 142 Constitution of Ukraine. However, Russian law-system uses the term «municipal» instead of «communal» property (as it's defined in Ukraine). [2]

The Russian experience in the field of municipal property is very important for Ukraine in connection with the similarity of our legal systems.

According to the article of Y.G. Mosunov, V.A. Schegolevsky and I.L.Zaika, published in journal «Real Estate and Investments. Legal Regulation» [7] in the question of property, Moscow authorities act in two aspects: as a government structure of the subject of the Federation, which establishes standards and rules of property sale and management, organizes interaction of all executive and legislative authorities of managing subjects; and as a managing subject and owner, which actively acts on the market.

Russian state policy of state-owned property management has the following goals:

- Increase of the federal budget incomes on the basis of efficient management of the state property;
- Optimization of property structure (from the point of proportions on macro and micro-levels) in order to ensure steady reasons for economic growth;

- Involving maximum quantity of state property objects in the process of management improvement;

- Usage of state assets as the instrument for committing the investments in real sector of economy;

- Increase of competitiveness of profit-making organizations, improvement of their financial and economic indexes by promoting their interior modification and ceasing the execution of unusual functions.

The legal and organizational aspects of organizing the sale of state and municipal property are very important in the asset management system in the Russian Federation and its subjects. The government of the Russian Federation by the decree from September 9, 1999 № 1024 «On the Concept of the state-owned property management and the privatization in the Russian Federation» has approved the Concept and recommended the executive bodies to organize the work on the Concept realization [7].

Therefore, the Law of Ukraine «On Lease of State and Communal Property» provides for communities to acquire, hold and manage property on a basis agreed by members in terms of a written positions. Effective communal property management is the key for economic power of region and also essential component of successful local reform. Around 75% of land reform projects have taken place using communal property institutions.

At present, the program named «Effective Management of the Territorial Community Property» is being carried out in Ukraine. The program's distinctive feature lies in that different transactors pay for land in different ways: Rent payments for land plots in producing sector are lower than for land in the non-productive sphere.

Kyiv and Dnipropetrovsk were the first in Ukraine to introduce this system according to European experience, and, as a result, these cities' revenues have been considerably increased. The leasing of communal property carries out enough fiscal function.

For example, there are 1200 agreements of communal property's leasing in Dnipropetrovsk. The parties are – lessor, leaseholder and communal establishment or enterprise which remains the object of leasing on its baance. [2].

Real income from leasing the property which belongs to territorial community of the city Dnipropetrovsk made 7 516 600.00 Hryvnas in 2007, which was a considerable part of city budget. City treasury got 626 000.00 Hryvnas per month on the average. Profits increased in 2008 and were 10 791 100.00 and 900 000.00 Hryvnas accordingly. The size of monthly rent in 2008 increased on 274 000,00 Hryvnas in comparing to 2007. Receipts of the city budget have much more increased in 2009 and were 14 000 000.00 Hryvnas despite of financial crisis and total decrease in rent rates of real estate. It was possible to observe some stabilization in 2010, that gives possibility to expect the same profits next year. [2]

The Civil and Commercial Codes of Ukraine provide general rules relating to the lease of real estate held in private

ownership. The Act on the Lease of State and Municipal Property of April 10, 1992 specifically regulates the lease of real estate held as State or Municipal Property. Moreover, rules pertaining to the lease of land plots are established by the Act on Lease of Land dated October 6, 1998.

In principle, foreign citizens and legal entities enjoy the same rights to lease real estate including land plots of state and municipal property, as Ukrainian entities.

Further, the rules and essential provisions for lease agreements (length of term, rent increases, tenant's right to sell or sub-lease, repairs etc.) are standard and similar to rules used in other European countries. On the market, business real estate can be leased as office, retail, warehouse or industrial premises. However, this classification has no legal implications [8].

The state legislation provides, that self-governmental institutions have the right to possess, control and use the communal property, to create and hold their own structures of control of the communal property. But in the real life – this legislative rule has rather a declarative character, because it is not supported either by the structure of the executive institutions, by the Budget Code, nor by the other law acts, that define the order of the financing and keeping the local self-governmental institutions. As the result, the local councils (radas) have to delegate their own powers to run the communal properties to the territorial executive institutions.

There are also such negative moments which have to be changed as the next. However, entrepreneurs in most small cities don't have information about property that is available for lease. Entrepreneurs complain about poor organization of tenders and nontransparency of tender procedures.

In most cases, the local authorities organize so-called «closed tenders» in which regular entrepreneurs cannot participate. Even if an entrepreneur took part in a tender and managed to lease communal property, their problems would not end there since lease contracts are signed for only one year, which is not much time at all.

Leaserates are unfairly high in the opinion of entrepreneurs and are constantly climbing. Few entrepreneurs can afford to lease communal property because of the reasons mentioned above. This would explain why this problem was not rated highly. At the same time, this should not delay settlement of urgent issues related to communal property leasing.

There are also such good achievements in national legislative and practice as follows. Good tenants can prolong the term for renting state and communal property, using preferential multipliers given to them during selecting the winners of a tender for the right to rent property.

The Cabinet of Ministers approved a corresponding resolution on approving the size of preferential multipliers during selecting a winner of the tender for the right to rent state and communal property. The privileges for good tenants foresee a multiplier of 0.8 for renters who upgrade rented premises under the permission of a tenant using their own funds, and a 0.9 multiplier for other renters.

According to the resolution, the preferential multiplier is applied to calculate the corrected tender offer of a renter, which is compared to the offers of other participants in the tender and is calculated through the application of this multiplier to the renter's offer.

Under such conditions a transfer from the reproduction of municipal services on a simple scale to their adaptation regarding the potential requirements of the population is necessary. And according to the new tasks the local bodies' property potential should be fully transformed. The suggested approaches to elaborating and realizing the strategy of the municipal property management allows for allocating municipal assets following the new priorities while maximizing the general efficiency of using them.

Using top-rank communal property management providing by local government in the Russian Federation, USA and European Union must be analysed national legislation and practice of its application, which arise at the concluding, fulfilment and discontinuance of the lease arrangements municipal property such as:

- the concept of a subject and object of the agreement;
- the contents and legal nature of the lease arrangements of state and municipal property;
- their essential conditions;
- legal status of the participants of contractual legal relationships;
- responsibility of the parties for default or inadequate fulfilment of the lease arrangements of state and municipal property;
- prolongation and abatement of agreements.

As conclusion it has to be noticed the work of research of European experience of communal property management devoting to complex research of state and public service of leasing in the management field because of its peculiarities. According to European legislation the problem of content and form of lease contract is analyzed and the proposals of its requirements to improvement have to be made.

The special attention must be given to problems of a ratio of the standards Economic and Civil Codes and statutory acts adjusting attitude by agreement leases of state and municipal property according to European legislation and its inconsistencies. The considerable attention is allocated to mining of the proposals on advancing the Law of Ukraine «On Lease of State and Communal Property», and also other statutory acts, which regulate lease contracts. [5]

Summary. The necessity of perfection the order of undertaking improvements of the lease object is proved, the features of order of execution, prolongation and abatement of agreements and the proposals of its improvement are worked out. Thesis is devoted to researching of actual idealized and practical problems, connected with regulation of the lease arrangements of state and municipal property in obedience to European experience.

The above-stated problems and offered ways of their decision must be taken in attention by the civil servants of

executive bodies of local government in Ukraine and have to be used in process of improvement of national legislation. This was also intended to advise practitioners on the steps needed to address existing problems. It defined the causes of the problems these institutions are facing and intended to propose solutions. The intention was also to prepare supporting resource documents, which regulate the law-system in branch of communal property management.

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