

Management of Common Property in an Apartment House from Coase Theorem Point of View

Filippova O.V.^{1,*} Malginova Y.N.² Khodasevich O.N.³

¹*Ural Institute (branch) of All-Russian State University of Justice (RLA of the Ministry of Justice of the Russian, Ekaterinburg, Russia*

²*Ural state University of Economics, Ekaterinburg, Russia*

³*Ural law Institute of the Ministry of internal Affairs of Russia, Ekaterinburg, Russia*

**Corresponding author. Email: ovz24@ya.ru*

ABSTRACT

The Institute of common property continues to cause many disputes in modern civil science. This is due to the fact that there are no clear definitions in the Housing Legislation even on the fundamental issues that make up the essence of this institution. For instance, one of such issues is the concept of "apartment house" where the owners of accommodations are forced to negotiate with each other and make concessions to manage the common property in it effectively. Having considered this issue, we will analyze it from the point of view of Economics of Law.

Keywords: *strategy, self-government, corridors, attics, basements, Elevator shafts, homeowners' association, transaction costs, communication buildings, resource supply, filler bearing and bearing structures, foundation, roof, bridging, dwelling, social and household needs*

1. INTRODUCTION

In the legislation of the Russian Federation, you can find the concept of "common property of owners of accommodations in an apartment house" with the admeasurement of each owner. The owner's right that accrues in this case is called "common participatory share ownership". Together with this right, the owner has an obligation to keep the common property in a proper condition.

The government of the Russian Federation continues to pay attention to the modernization of housing and communal services. Nowadays the Strategy for the development of housing and communal services project up to 2035 has been prepared. As an Agency's website reports, one of the main areas of the document implementation, along with the capital repair, resettlement of wrecking housing funds, resource supply, and personnel support for the industry will be housing management, including the common property of owners of accommodations in apartment houses [13].

Nowadays the legal regime of the common property of owners of accommodations in an apartment house (AH) is determined by articles of Chapter 6 of the Housing Code of the Russian Federation. According to the strategy for housing and communal services development up to 2020, approved by the Governmental Decree of the Russian Federation No. 80-R of 26.01.2016, the priority direction of the policy in the housing and communal sector was self-government of citizens [8].

Now for the effective management of an apartment house the owners of accommodations are forced to negotiate with each other and make concessions, because the house is a single body, all elements of which are interconnected. At the same time, there is no the concept of "apartment house" in the Housing Code of the Russian Federation.

We will assume the fact that an apartment house is a type of a dwelling building. Paragraph 2 of article 16 of the Russian Housing Code states that a dwelling home is recognized individually-specified building which consists of rooms and accommodations of the auxiliary use designed for citizens' satisfaction in household and other needs, connected with their residing in such building.

Point 6 of "The Statute of recognition of an accommodation to be dwelling, a dwelling house to be unsuitable for living, an apartment house unsuitable for living and an apartment house to be repaired and subjected to housebreaking", approved by the Governmental Resolution of the Russian Federation of 28.01. 2006 No. 47, AH is a collection of two or more apartments that have independent exits to the land plot adjoining to the house, or to common areas in such houses.

In practice, an apartment house is a building. There are the following elements in the structure of a building: structural elements are parts of the building that are building structures (filler bearing and bearing structures, foundation, roof, bridging, walls, etc.); residential and non-residential accommodations [10].

The legislative concept of "residential" is set up in Part 2 of Article 15 of the Housing Code of the Russian Federation is a isolated building, which is a real estate and suitable for permanent living of citizens (satisfying the established sanitary and technical rules and regulations and other legal requirements). The residential accommodations, as we have already established, according to Art. 16 of the Housing Code is a dwelling house, a part of a dwelling house, an apartment, a part of an apartment, a room. Non-residential accommodations are accommodations in an apartment house (volumes between building structures) designed for carrying out permitted activities (offices, stores, drug stores, clinics and other accommodations); all other accommodations (size between building structures) that are not related to apartments and non-residential accommodations (offices, shops, etc.).

According to Article 36 of the Housing Code on the right of common shared ownership, the common accommodations of the house, the bearing structures of the house, mechanical, electrical, sanitary and technical and other equipment outside or inside the apartment, serving more than one apartment, including accommodations in this house that do not belong to individual owners and are designed to satisfy the social and household needs of the owners of the accommodations in this house belong to the owners of an apartment house. Such accommodations include, for example, corridors, attics, basements, elevator shafts; engineering networks and equipment inside the building - communications and equipment located inside the house and designed for providing housing and communal services. Relatively speaking, these are pipes, boiler-rooms, refuse chutes, elevator equipment, etc.

From the above we can conclude that from the position of a single complex of immovable property an apartment house may not be an independent object of the property rights because the property rights of the ownership is an accommodations located in this house, and the rest (common property) is in common share ownership of the dwelling accommodation owners. Therefore, in the structure of an apartment house there are two parts, one of which is a residential and non-residential accommodation owned by citizens, legal entities or government entities, and the other part of an apartment house is a common that is in the common share ownership of the owners of accommodation in an apartment house.

The legal regulation of relations between owners of accommodations in an apartment house arising from the common property is created by Articles 289, 290 of the Civil Code of the Russian Federation, Article 36 of the Housing Code of the Russian Federation, and other legal acts.

The ownership ratio in the right of common share ownership to the common property in an apartment house of the owner of a residential accommodation in this house is proportional to the size of the total area belonging to their residential accommodation (Part 1 of Article 37 of the Housing Code of the RF). Expenses for the keeping of the common property of the building are distributed at the same principle. From the Provisions of Part 1 of Article

161 of the Housing Code of the Russian Federation it follows that the management of an apartment house is the coordinated action of the owners of residential and non-residential accommodations to create and keep favorable and safe living conditions (use of residential accommodation), proper keeping of the common property in the house, solving issues of using the common property of the house, rendering communal services to owners of apartments and accommodations in the house.

According to Article 145 of the Housing Code of the Russian Federation, the highest management body of the common property is the general meeting of the owners of accommodations in an apartment house. The first decision of such a meeting should be the choice of a mean to manage an apartment house.

In accordance with Part 2 of Article 161 of the Housing Code of the Russian Federation, the owners of accommodations have to make a choice who will manage the apartment house: the owners themselves (if there are no more than 30 apartments in the house), the owners' association (housing cooperative) or a management organization. If the owners did not overburn and did not independently choose a mean of management of an apartment house, or the decision to choose a mean of management was not made and in other situations provided for in Part 4 of Article 161 of the Housing Code of the Russian Federation as well, a local government body holds a competition to select a management organization.

The minimum list of services and works necessary to ensure the proper keeping of the common property in an apartment house, the procedure for their rendering and implementation are determined by the Rules approved by the Government Regulation of the Russian Federation of 03.04.2013 No. 290. According to Part 2. Vol.1 161 of the Housing Code, the organization responsible for keeping and repairing of the common property in an apartment house, providing heat, water, electric power, is responsible to the owners of accommodations in an apartment house for the performance of its obligations under the contracts and in accordance with the general rules of the property owning in an apartment house, and the Rules rendering of communal services to the owners and users of accommodations in apartment houses and dwelling houses, approved by the Government Resolution of the RF of 05.06.2011 No. 354 [6].

An important feature of the ownership right of the common property in an apartment house of the owners of accommodations in this house is its dependent nature, since the rights to the corresponding common property cannot be transferred separately from the ownership right of residential or non-residential accommodation. These legal possibilities are absolute and real, but their implementation is complicated by the necessity to coordinate their actions with other co-owners, so in order to execute their powers, the co-owner has to enter into legal relations, which are relative by their legal nature.

From the Economics of Civil Law the point of view the common property in an apartment house is a common resource. Let's envisage it from the point of view of the

Economics of Law, and to be exact from Coase Theorem, according to which an effective option for the distribution of rights to a resource will be that one where the transaction costs would be equal to zero. The costs of collecting information, negotiating, exercising rights, etc. are meant. [9]

For example, with zero transaction costs the right of residents to own and dispose of the common property is the option for distributing rights that leads to an effective result. That is, in this case, the assumption of zero transaction costs is theoretically used.

In practice, the owners of accommodations in an apartment house need to get together, to agree (according to the Housing Code of the Russian Federation, for a number of decisions regarding the disposition of the common property, it is necessary to take at least 2/3 of those who have voted "for", for others more than 50%), make a report of the general meeting correctly. At the same time, the circumstances preventing to do this are too high. So in Yekaterinburg there are houses with more than 600 apartments where many owners rent their accommodations and are not interested in the state of the common property. This is confirmed by another fact that the owners of accommodation voting in an apartment house is without a quorum in almost 100% of cases, that is why the most of decisions of the general meeting of the owners of accommodations in an apartment house are accepted after the second stage, i.e. the absentee voting that is held by polling according to Article 44.1. of the Housing Code of the Russian Federation, and in this case, the militants have to visit each apartment and find the owners in.

High transaction costs influence decisively on the choice of an inefficient solution. According to Coase, when transaction costs block negotiations and prevent agreement, the efficiency of resource use must be determined by the redistribution of the property rights. The choice of a legal proposition with zero transaction costs does not affect the achievement of an effective result but it does affect the income distribution. That is, the choice of a legal proposition redistributes the income of the parties on the amount of the cheapest option for solving the problem [9].

According to Coase's Theorem some fundamental provisions of the Housing Code of the Russian Federation (in particular Article 145, which states that the main management body of an apartment house is the general meeting of owners of accommodations in the apartment house) only increase the energy and material costs, and therefore they are irrational and inefficient [9].

It is interesting that in 2014 the Federal law No. 271 of 25.12.2012 "On amendments to the Housing Code of the Russian Federation" came into force. It established the legal basis for involving the homeowners in the process of financing capital repairs of the common property in an apartment house. Regional operators arrange timely capital repairs of the common property in apartment houses at the expense of contributions from accommodations owners in such houses for capital repairs of the common property in apartment houses. The overhaul program is designed for 30 years and the collected funds will be aimed at the

implementation of a specific list of works (also set by the regional operator for each house specifically). At the regional level, the fund sets a minimum tariff that all owners of accommodations of an apartment house must pay. In case of a debt on this account there is a penalty. This means that the legislator allows the option that independently citizens-owners of accommodations will not be able to agree on the repairs of the common property of an apartment house and this impugns the fact of the effectiveness of owners' self-government.

Thus, having studied the sources and the legal base we came to the following conclusions.

1) the Housing Code of the Russian Federation does not contain enough norms necessary for regulation of life moot points arising in the housing and communal sector. The legislators need to formulate the concept of "apartment house" and fix it into the Housing Code of the Russian Federation, since many articles of this Code are applied specifically to an apartment house.

2) we consider that while writing and adopting the Strategy of the development of housing and communal services until 2035 the authors should review the provisions relating to the citizens' self-government in the housing sector. The effective management of the common property in an apartment house where the owners of accommodations have to negotiate with each other and make concessions is a very difficult issue.

3) from the Economics of Law point of view in order to manage the common property effectively its owners have to suffer huge transaction costs. It is obvious that the owners of accommodation in an apartment house cannot make an effective decision on the implementation of the common property rights independently. We think that in this case in order to minimize transaction costs it is necessary to redistribute the common property rights. It is known that the value of an accommodation in an apartment house is higher if the common property is kept in a proper condition, this means that a seller is interested in a proper condition of elevators, halls, apartment landings, etc.

There is a question whether it is possible to minimize the impact of the transaction costs by choosing the legal norm that leads to an effective result. As an option we offer to view the establishment of regional funds for the current repairs of the common property in an apartment house, which would be enriched from, for example, the contributions from transactions on purchase and sale of a premise in an apartment house. However, it is worth to take into consideration that Russian citizens have not a high degree of mobility and are not inclined to change their residence.

REFERENCES

[1] The Constitution of the Russian Federation (ed. of 21.07.2014) [Electronic resource] - Access Mode: www.consultant.ru

[2] The Civil Code of the Russian Federation (ed. of 16.12.2019). [Electronic resource] - Access Mode: www.consultant.ru

[3] The Housing Code of the Russian Federation of 29.12.2004 No 188-FL (ed. of 27.12.2019) [Electronic resource] - Access Mode: www.consultant.ru

[4] The Federal Law of 29.12.2004 No 189-FL (ed. of 02.08.2019) "On the introduction of the Housing Code of the Russian Federation" [Electronic resource] - Access Mode: www.consultant.ru

[5] The Governmental Resolution of the Russian Federation of 13.08.2006 No 491 (ed. of 23.11.2019) "On approval of Rules of content of common property in an apartment house and rules of change of amount of payment for owning of the dwelling in case of rendering of services and work execution of management, keeping and repairing of common property in an apartment house of inadequate quality and (or) with the breaks exceeding established duration" [Electronic resource] - Access Mode: www.consultant.ru

[6] The Governmental Resolution of the Russian Federation of 28.01.2006 No. 47 (ed. of 29.11.2019) "On approval of the Regulations on the recognition of an accommodation to be dwelling, a dwelling house to be unsuitable for living, an apartment house to be a repair house and subjected to housebreaking or rebuilding, a garden house to be a dwelling house and a dwelling house to be a garden house" [Electronic resource] - Access Mode: www.consultant.ru

[7] The Governmental Resolution of the Russian Federation of 06.05.2011 No 354 (ed. of 13.07.2019) "On rendering of communal services to owners and users of accommodations in apartment houses and dwelling houses" (with "Rules rendering of municipal services to owners and users of accommodations in apartment houses and dwelling houses") [Electronic resource] - Access Mode: www.consultant.ru

[8] The Governmental Resolution of the Russian Federation of 03.04.2013 No 290 (ed. of 15.12.2018) "On the minimum list of services and works necessary for ensuring the proper keeping of common property in an apartment house, and the procedure for their rendering and prosecution" (with "Rules of rendering services and performing works necessary for ensuring the proper keeping of common property in an apartment house") [Electronic resource] - Access Mode: www.consultant.ru

[9] The Governmental Order of the Russian Federation of January 26, 2016 No 80-p "On affirmation of the strategy of housing and communal services development in the Russian Federation for the period up to 2020 (with changes and additions) [Electronic resource] - Access Mode: <http://base.garant.ru/>

[10] M.I. Odintsov, The Economics of Civil Rights. Moscow: Urait, 2007, pp. 37-39.

[11] E. Semenova, Management of common property in a building: what do owners of accommodations need to know? - [Electronic resource] Access Mode: <https://www.eg-online.ru/article/397904/> / Economics and Law

[12] The Civil Law: Textbook. in 2 vols. / edited by B.M. Gongalo. Vol. 1. 2nd ed. remade. and add. - Moscow: Statute, 2017.

[13] The Russian Civil Law: Textbook: in 2 volumes. Volume II. Law of Obligations / Ed by E. A. Sukhanov. - Moscow: Statute, 2011.

[14] The Ministry of Housing of Russia has prepared a strategy project for the housing and communal services development up to 2035/ Official website of the Ministry of Housing and the housing and communal services of the Russian Federation - [Electronic resource] Access Mode: www.minstroyrf.GIF