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THE RIGHT TO THE CITY: FOREIGN LEGISLATIVE AND ENFORCEMENT PRACTICE

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The subject. In the 20th century the problems of urbanization began to be discussed at the international level. In the early of the present century the international community moved to develop standards for human rights in cities. At the same time, special attention was given to the right to the city. The article is devoted to the analysis of foreign legislation and law enforcement of the right to the city. Examples of states in which the right to the city has been reflected in legislation, as well as states in which the right to the city has been recognized through judicial decisions, are discussed separately.

Only a few studies can be found in Russian legal science, which fragmentarily analyzed the experience of foreign countries (primarily Brazil) in terms of the consolidation and recognition of the right to the city. Therefore, the purpose of the article is to summarize comparative legal approaches in interpreting the right to the city, as well as to identify differences in them.

The methodology of the study includes general scientific methods of cognition (methods of analysis, system approach, deduction and induction), special methods of cognition (comparative-legal, formal-legal) and method of interdisciplinary research.

The main results. The right to the city has been legislated in the states of South and Central America. This is explained by two reasons: the high level of urban population and false urbanization. Three states were chosen for the study: Ecuador, Brazil and Mexico. The right to the city has obtained the status of a constitutional right in Ecuador. In Brazil the foundations for the right to the city were laid at the constitutional level. However, it was set forth in a separate law – the City Statute of 2001. It is noted that the right has not become declarative. It has had a significant impact on urban planning regulation and the protection of the rights of citizens. The right to the city is considered as one of the principles of urban planning policy in Mexico and was established in Constitution of Mexico City.

It is also analyzed the experience of states in which the right to the city has not been formalized. South Africa and India, where the right to the city has actually been recognized by the courts in resolving housing disputes, are selected as examples. This allowed the author to state that even in the absence of formalization, the idea of the right to the city can be used to protect the rights of citizens.

Analyzing the possibility of application of the right to the city in the states of Europe and North America, the author notes the widespread use of the other approach to the protection of the rights of the urban population – the concept of "human rights in the city". However, the author provides arguments in favor of the right to the city and states that the foundations for its development in the states of Europe and North America are laid by the European Charter for the Safeguarding of Human Rights in the City.

1. Introduction

At the present stage, special attention is paid to the issues of urban development. The reason for this interest lies in the high growth rates of cities and their population. Against this background, socio-economic and environmental problems have objectively become more acute, and states have faced the task of improving the system of urban governance. Consequently, states are tasked with ensuring the rights and freedoms of their urban population.

In the second half of the 20th century at the universal level there was an international legal actualization of urban development standards. In 1976, the United Nations (hereinafter – the UN) adopted the Vancouver Declaration on Human Settlements (hereinafter – the Vancouver Declaration), which highlighted the problems of urbanization and set vectors for their further discussion**.** Improvement of the ideas laid down in the Vancouver Declaration occurred in 1996 with the adoption of the Istanbul Declaration on Human Settlements and the Habitat Agenda. These documents emphasized sustainable development in human settlements and the significance of affordable housing.

In the 21st century, the international community has moved from the discussion of general problems of urbanization to the development of standards of human rights in cities [1, p. 61]. In this aspect, attention should be paid to the World Charter for the Right to the City, adopted at the Second International Urban Forum (2004–2005)[1]. It characterizes the right to the city, emphasizes the relationship with universally recognized rights and identifies its collective nature [1, p. 61]. In 2016, the Declaration of Quito on Sustainable Cities and Human Settlements (hereinafter – the Declaration of Quito) and the Implementation Plan of the New Urban Agenda[2] were adopted. It promotes the concept of "cities for all" and, crucially, acknowledges the significance of implementing the right to the city at both national and local practices (paragraph 11).

However, the protection of the rights of urban populations, in particular the consideration of the right to the city, was not limited to international instruments. The Declaration of Quito explicitly notes that the right to the city is being implemented at the national level. At the same time, in domestic legal science we can find only a few studies that fragmentarily analyzed the experience of foreign countries (primarily Brazil) in terms of consolidation and recognition of the right to the city [2; 3]. It seems important to dwell more fully on comparative-legal interpretations of this right, which will allow to reveal its meaning from the perspective of constitutional-legal science.

2. Experience in the Legislative Establishment and Application of the Right to the City in South and Central American States

The right to the city has been enshrined in the legislation of a number of States in South and Central America. Its formalization in this region is determined by two reasons: the high percentage of urban population and the presence of false urbanization (the process of population growth without socio-economic development of the city), the increase in the number of favelas. For the purposes of this article, we will focus on the three countries: Ecuador, Brazil and Mexico. This choice can be explained by the fact that in these states the right to the city has gained special popularity and development.

Ecuador is the only example of an explicit constitutional enshrinement of the right to the city. Its 2008 Constitution includes a number of provisions on the rights of citizens living in cities (section VI). In particular, it establishes the right of citizens to a safe environment and to housing (article 30); it proclaims the use of urban space on the basis of sustainability, equity, respect for different urban cultures and the

[1] World Charter for the Right to the City. URL: https://www.right2city.org/wp-content/uploads/2019/09/A1.2_World-Charter-for-the-Right-to-the-City.pdf (Accessed on 30 September 2024).

[2] Resolution adopted by the General Assembly on 23 December 2016 No. 71/256. URL: https://habitat3.org/wp-content/uploads/New-Urban-Agenda-GA-Adopted-68th-Plenary-N1646659-R.pdf (Accessed on 30 September 2024).

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right of citizens to the city (article 31). The Constitution reveals the content of this right. It is understood as the right to democratic urban governance based on the principles of sustainable urban development, urban citizenship, social function of property[3].

The rights to housing and property are specified at the constitutional level. For example, the Constitution of Ecuador guarantees the right to housing by establishing development programs that take into account the need to provide urban amenities to the surrounding residential space (article 375). In addition, ownership of "unclaimed" land necessary for future development is restricted. Of interest is the constitutional prohibition on the conversion of obviously rural areas to urban status, which is aimed at preventing false urbanization and the formation of slums. The detailed constitutional regulation of urban development is a result of the collaboration between the Ecuadorian national authorities and UN-Habitat.

In the end, the guarantees of the right to housing were strengthened, primarily in the decisions of the Constitutional Court of Ecuador [4, p. 214–217]. However, some problems in the implementation of housing policy remained unresolved. For example, the inconsistency of powers between state and municipal authorities has not been eliminated [5].

The experience of Brazil is an illustrative example of the implementation of the right to the city in national legislation. The starting point in this matter is the Constitution of 1988, which specifically establishes urban policies (chapter II, section VII)[4]. These provisions are referred to as the "people's amendment", because they were proposed and actively promoted by representatives of civil society when creating the new constitutional text [6, p. 30; 7, pp. 247–248]. The goal of this policy is to organize the fullest development of social functions of the city and to ensure the well-being of their residents (article 182). Its implementation is entrusted to the municipal authorities and takes place on the basis of general directions established by the federal law.

Historically private land ownership in Brazil has been inaccessible to the majority of the population due to socio-economic inequality [7, p. 239]. To realize the social function of property in the urban environment, the Constitution entitles local authorities to demand from the owner of a land plot the development of the territory in case he does not use it, and also provides for progressive taxation and expropriation with subsequent monetary compensation.

One of the features of urbanization in South American countries, in particular, in Brazil, is the use of urban territory through actual ownership and use of land [8, p. 203]. This leads to the creation of favelas. To solve the problem of legalization of unauthorized constructions in cities, article 183 of the Constitution establishes a kind of analogue to the continental-legal institution of acquisitive prescription. It is expressed in the right of citizens to acquire ownership of a plot of land up to 250 m^2, if it serves as a dwelling, is the only property and has been owned for at least five years. Therefore, the constitutional provision under consideration brings unauthorized constructions into the "legal field".

To concretize the considered norms of the Brazilian Constitution required the development of a separate law. This was directly pointed out by the Supreme Court of Brazil, recognizing unconstitutional the law of Sao Paulo on progressive taxation of urban real estate in the absence of normative regulation at the federal level [9, p. 44]. The discussion of the legislative draft was held for more than ten years and the result of the discussions was the adoption of the City Statute in 2001. This legal act sets out the principles of urban planning policy and mechanisms for the realization of the social function of property. It establishes the right to sustainable urban development, which includes a number of other rights that guarantee citizens access to elementary urban goods: the right to affordable housing, developed urban infrastructure, and satisfactory environmental health (article 2).

The results achieved by the adoption of the City Statute have not been unequivocally evaluated. On the one hand, the authors note its importance in

[3] Constitution of the Republic of Ecuador. URL: https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html (Accessed on 30 September 2024).

[4] Constitution of Brazil. URL: https://www.constituteproject.org/constitution/Brazil_2017 (Accessed on 30 September 2024).

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the ordering of development in terms of creating municipal urban plans [10, p. 89]. Some cities have introduced tools for realizing the social function of property [7, p. 244]. In addition, it allowed to mitigate social inequality, with the help of zones of "special social interest" (socially and economically backward areas of the city (slums), which require the intervention of public authorities to regulate the processes of urbanization) it was possible to improve the state of the urban environment[5]. On the other hand, the framework nature of the Statute has not eliminated contradictions in urban planning arising at the local level [11, p. 406], has not taken into account the heterogeneity of cities in terms of economic development [9, p. 64]. Despite the significant strengthening of judicial protection of residents' rights, the City Statute has not contributed to the resolution of urban conflicts at the pre-trial stage [12, p. 62].

The Mexican Constitution does not enshrine the right to the city, but it contains provisions regarding the ability of the public authority to develop plans for the urban environment (article 115, paragraph V)[6]. The Law-General Human Settlements, Land Use Planning and Urban Development, adopted in 2016, expands on this constitutional provision. It recognizes the right to the city as one of the principles of urban policy implementation[7].

The right to the city received more detailed elaboration at the level of Mexico City. In the late 2000s, urban problems were widely discussed there with the participation of representatives of civil society and public authorities [13, p. 227–229]. Based on the results of the discussion, in 2010 the Mexico City Charter for the Right to the City was adopted[8]. Conceptually, it is based on the provisions of the World Charter for the Right to the City. The Mexico City Charter is based, in particular, on the principles of full respect for human rights, social function of the city, democratic governance, sustainable and responsible management of natural resources, cultural heritage (chapter 2). This document is an act of "soft law". Its purpose is to create guidelines for public authorities in addressing issues of urban life, and for the population in the possibility of protecting their rights and interests. Originally, the Charter contributed to the resolution of urban conflicts, but then gradually began to be ignored by the public authorities [13, p. 232–234]. This can be explained that it had no legal force and was rather political in nature.

However, the ideas of the Mexico City Charter have been developed in the Constitution of the State of Mexico (2017), which establishes the right to the city (article 12). This right is considered as a collective right that guarantees the full realization of human rights, the social function of the city, its democratic governance, social inclusion and the equitable distribution of public goods with the participation of citizens[9]. At the same time, taking into account the experience of the Mexico City Charter, the scholars are cautious about the prospects of practical realization of this right [14, p. 2075].

3. Affordable Housing and the Right to the City: the Law Enforcement Practices of South Africa and India

The growth of urban population in the XX century predetermined the problems related to the provision of housing and its accessibility. The importance of these issues is emphasized by the enshrinement of the right to housing (in various interpretations) in international instruments at the

[5] Rossbach A., Caminha J., Jônatas de Paula, Le Failler R., Ramalho T. The Future of the Brazilian City Statute // Cities Alliance. July 23, 2021. URL: https://www.citiesalliance.org/newsroom/news/urban-news/future-brazilian-city-statute (Accessed on 30 September 2024).

[6] Constitution of Mexico (with Amendments through 2015). URL: https://www.constituteproject.org/constitution/Mexico_2015 (Accessed on 30 September 2024).

[7] Law-General Human Settlements, Land Use Planning and Urban Development. URL: https://www.global-regulation.com/translation/mexico/8197349/law-general-human-settlements%252c-land-use-planning-and-urban-development.html (Accessed on 30 September 2024).

[8] The Mexico City Charter for the Right to the City. URL: https://uclg-cisdp.org/sites/default/files/Mexico_Charter_R2C_2010.pdf (Accessed on 30 September 2024).

[9] México: Constitución Política de la Ciudad de México. URL: https://www.refworld.org/legal/legislation/natlegbod/2017/es/147884 (Accessed on 30 September 2024).

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universal level[10]. However, such documents do not take into account the specifics of the realization of the right to housing in cities. It does not necessarily follow that it cannot be filled with new content in the process of its realization by a person living in an urban environment.

Foreign researchers agree that the right under consideration should include a more specific right to housing in the city, which would be based on the ideas of the right to the city [15, p. 78; 16]. In international acts (for example, the World Charter for the Right to the City) it was declared, first of all, as the right of everyone to have access to urban goods. In this regard, the scholars proceed from the position that the increase of guarantees of the right to housing of socially vulnerable segments of the population should be carried out on the basis of the principles on which the right to the city is based [16, p. 181]. Some researchers develop this thesis, considering the right to affordable housing as one of the central rights protected by the right to the city [17]. The above theoretical approaches are reflected in some African states, in particular, in South Africa, as well as in India.

Although the right to housing is not explicitly enshrined in the African Charter on Human and Peoples' Rights, it is enshrined in article 26 of the South African Constitution, which proclaims the right of everyone to satisfactory housing conditions[11]. This right is secured by the State's obligation to take legislative and other measures for its realization. In addition, there are constitutional prohibitions on the eviction of a citizen from housing or its demolition in the absence of a court decision taken in the light of all the factual circumstances of the case.

The constitutional provisions were developed in the Housing Act of South Africa, adopted in 1997 [16, p. 192]. One of its objectives is to promote processes of racial, social and economic integration in the urban environment (article 2e (iv)). The public authority has a duty to pay attention to the needs of the economically weak population in the issue of housing affordability (article 2a (i)). M. Strauss noted that the principles underlying this law are largely consistent with the more general values on which the right to the city is based [16, p. 193].

The problem of the realization of the right to housing in South African cities has received special attention from the Constitutional Court of South Africa. The Court found that this right should be understood not simply as the ability to obtain land or premises for occupancy, but the direct endowment of a citizen with land, housing and related services (water supply, drainage, etc.)[12]. When considering the demolition of residential structures and eviction due to illegal occupancy of private land, courts should not absolutize the right of private property. The duration of residence on the land should be taken into account; whether there is a real need for eviction, since the illegal occupation of the land plot and the construction of housing structures on it should not in itself lead to automatic deprivation of housing and destruction of the house[13].

The Constitution of India, unlike the Constitution of South Africa, does not enshrine the right to housing. This right is protected by the courts as part of the right to life [15, p. 12]. The Constitution does not contain provisions aimed at regulating urban policy. The problems of protecting the rights of urban population, especially the right to housing, are the object of attention of judicial bodies.

The Higher Court of New Deli in *Ajay Maken*

[10] For example, article 25 (1) of the Universal Declaration of Human Rights, article 11 (1) of the International Covenant on Economic, Social and Cultural Rights.

[11] Constitution of South Africa. URL: https://www.gov.za/documents/constitution/chapter-2-bill-rights#26 (Accessed on 30 September 2024).

[12] Constitutional Court of South Africa. Decision "Government of the Republic of South Africa and Others v Grootboom and Others" (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) URL: http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZACC/2000/19.html&query=Government%20of%20the%20Republic%20of%20South%20Africa%20v%20Grootboom (Accessed on 30 September 2024).

[13] Constitutional Court of South Africa. Decision "Port Elizabeth Municipality v Various Occupiers" (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004). URL: http://www.saflii.org/za/cases/ZACC/2004/7.html (Accessed on 30 September 2024).

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& Ors v. Union of India & Ors[14], resolving a dispute related to forced eviction and demolition of unauthorized residential constructions, considered the right to the city within the framework of protection of the right to housing [15, p. 79–81]. The court relied not only on national legislation, but also referred to international regulation. In the decision of the court the problems of housing affordability and forced evictions were analyzed, including in the context of the principles laid down in the Declaration of Quito and the Implementation Plan of the New Urban Agenda. The Court was based on the idea of "cities for all" and the right to the city as a reference point in the question that the housing needs of the socially and economically disadvantaged population should be a priority for the state [18, p. 16]. Additionally, the Higher Court of New Deli took into account the practice of the Constitutional Court of South Africa, characterizing it as a "useful recommendation" for the courts to develop guarantees of the right to housing in cities. Accordingly, it can be stated that the provision of urban population with housing, its accessibility in the practice of South Africa and India is a key characteristic of the right to the city.

4. Prospects for Development of the Right to the City in Europe and North America

Some foreign scholars consider the right to the city as a mechanism for ensuring the basic rights and freedoms of the most marginalized groups [19, p. 119–120; 20, p. 383]. This logic explains the fact that this right is more developed in the countries of South America, Asia and Africa, while it is practically not formalized in the states of Europe and North America [21, p. 78]. It is noteworthy that such an approach is widespread in the works of European and North American researchers who contrast the right to the city with the concept of "human rights in cities" [19, pp. 119–123; 20, p. 384]. It is based on the need to rethink the content of fundamental rights and freedoms in the context of their realization in the urban environment [19, p. 103–107]. The main idea is the possibility of authorities of various levels (primarily, local authorities) to provide human rights and freedoms with additional guarantees of realization. Proponents of the concept of human rights in cities call for the rejection of an exclusively "state" approach in the field of human rights and the possibility of local authorities to implement their own ideas in this sphere (localization of human rights) [20, p. 383]. The European Charter for the Safeguarding of Human Rights in the City is cited as a program document for the said concept, which established a number of features in the realization of human rights and freedoms in the urban space[15].

Based on this approach, many cities in Europe and North America have attempted to declare themselves "human rights cities". This has been accompanied by the adoption of regulations at the local level aimed at further protecting and guaranteeing human rights in the urban environment. For example, in Montreal, the Montreal Charter of Rights and Responsibilities was enacted, which established guarantees for the realization of political, social and economic rights of citizens[16].

In our opinion, the idea of localizing human rights at the city level is quite interesting and, if properly developed, can significantly increase the guarantees of rights and freedoms. However, its application together with the concept of "human rights in cities" promoted in some works raises several questions. It is difficult to assess the feasibility of its implementation in States where local authorities have significantly limited powers. The approach under consideration is rather declarative in nature, in contrast to the right to the city, which has been recognized at the international level, in the constitutions and legislation of a number of States (albeit not European). To be fair, in Europe the idea of the right to the city was formalized in 2000 with the adoption of the European Charter for the Safeguarding of Human Rights in the City [22]. This

[14] Decision of the Higher Court of New Deli. Case Ajay Aggarwal vs. Union of India & ors. URL: https://www.hlrn.org.in/documents/Judgment_Ajay_Maken.pdf (Accessed on 30 September 2024).

[15] European Charter for the Safeguarding of Human Rights in the City. URL: https://uclg-cisdp.org/en/right-to-the-city/european-charter/1 (Accessed on 30 September 2024).

[16] Montréal Charter of Rights and Responsibilities. URL: https://www.haitilibre.com/docs/charte_montrealaise_english.pdf (Accessed on 30 September 2024).

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charter enshrined the right to the city, which is understood as the right to conditions that ensure their own political, social and environmental development (Article 1). In addition, the same Montreal Charter of Rights and Responsibilities in the doctrine is sometimes considered as a "weak" form of realization of the right to the city, without its recognition at the state level [23, p. 95]. Consequently, in general, the foundations have been laid for further development of the right to the city in the legislation and law enforcement of European and North American states.

5. Conclusion

The diversity of comparative-legal interpretations of the right to the city can be connected with the initially non-legal nature of the concept of this right, which from the idea of the struggle of the "working class" for their rights evolved into a mechanism for involving different segments of society in the urban agenda [24]. This, on the one hand, creates certain difficulties in its formalization and further enforcement, as demonstrated by the example of Mexico. On the other hand, as can be seen from the experience of Ecuador and Brazil, the right to the city managed not only to fix in the legislation, but also to actively use it to protect the interests of the population. Moreover, in order for this right to act as a mechanism to protect the constitutional rights and freedoms of city dwellers, it is not necessarily necessary to institutionalize it in law. Judicial practice in South Africa and India has shown that even in the absence of formalization of the idea of the right to the city can be used to protect the housing rights of citizens. In Europe and North America, the foundations have been laid at the supranational level for the implementation of the right to the city in the legislation of various States.

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