Unauthorized Building as an Object of Improper Civil Construction

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Abstract. The purpose of the study described in this article is to identify the problematic issues that arise during the construction of unauthorized real estate. The study examines fair and unscrupulous actions of developers and proposes appropriate algorithms for solving the problems of regulating unauthorized civil construction projects. The authors analyze the indicators of improper construction of unauthorized construction objects.

1. Introduction
The modern stage of the development of socioeconomic relations is characterized by an increase in the wealth of subjects of civil relations, the consequence of which is an increased interest in the construction of new real estate. In this regard, the issues related to the legalization of self-built properties are quite pressing.

The imperfection of civil, land, urban and other branches of legislation regulating land allocation and issuing permits for the construction of real estate, as well as bureaucratic obstacles, practically pave the way for unauthorized construction. It is no accident that disputes related to unauthorized construction occupy a rather significant place in the practice of courts of general and arbitration jurisdiction and there is no tendency for their reduction.

Thus, the main purpose of our paper is to analyze the problems related to the unauthorized construction of real estate.

Among the domestic scientists, T.E. Abovoy, S.S. Alexeeva, I.L. Braude, B.M. Gongalo, V.P. Grybanova, A.M. Gulyaeva, and others pay special attention to this topic. However, until now, the problems of unauthorized construction have not been sufficiently disclosed in scientific articles. There arises an interesting scientific question of what is an unauthorized building as an item and whether an unauthorized building can be considered an item for the purposes of legal regulation? On this issue, in her work, O.V. Chumakova supports the position that if we take the physical nature of unauthorized buildings as a basis, they can be safely classified as real estate, but their legal nature raises certain doubts [1].

In 2019, 23,646 disputes over unauthorized buildings were taken to federal courts of general jurisdiction. Given that during this period the courts examined almost 19 million cases, this figure seems insignificant. However, the total sum of claims in this category of cases amounted to 7.5 billion rubles [2]. At the same time, ordinary citizens who erected an unauthorized building either because of legal illiteracy or because of complicated and expensive bureaucratic procedures are often the defendants in such cases. In addition, in some cases there are situations when an unauthorized building
was erected in the Soviet period, and after three decades, the question of its demolition suddenly arises.

Thus, the discussion about unauthorized construction is not just theoretical. The choice of the development strategy of this institution also determines how protected citizens will feel and whether they will perceive the current legislation as fair, which is especially important during the current crisis.

The concept of "unauthorized construction" is defined in the Article 222 of the Civil Code of the Russian Federation, which also states that the person who built such a structure not only does not acquire any rights on it, but even has no right to use it. However, the same article states that an unauthorized structure under certain circumstances can be recognized as property. It is no coincidence that L.V. Bakulina points to the arbitrary nature of the unauthorized structures that are both a legal offence and a method of acquiring ownership [3]. V.A. Karpov agrees with this position, calling the unauthorized construction "a special case of creating a real estate object' [4]. However, it is impossible to register such buildings as required by the law No. 218-FZ without a court ruling [5].

Analysis of court practice allows us to divide unauthorized buildings into two categories:

1. Built on someone else's land.
2. Built on land belonging to the person who carried out the unauthorized construction: the site is intended for construction (e.g., for the individual residential construction, lands of settlements, etc.), but the development of the site is not possible.

Depending on the type, the possibility of legalizing the unauthorized construction and the legal consequences of its construction will be determined.

This way, according to the general rule, real estate built without permission is subject to demolition. However, the Supreme Court of the Russian Federation has repeatedly pointed out that for a building, even having signs of unauthorized constriction, ownership can be registered, if the following requirements are observed:

1. The building is located on land owned by the builder.
2. It was constructed without significant violations of city planning, sanitary and other norms.
3. It does not pose a threat to life or health [6].

We need to note that ownership of the land is an important aspect of the legalization of the unauthorized structure, as well as the purpose of the site the structure is built on is a necessary element for legalization. For example, in one of its cases, the Supreme Court of the Russian Federation noted that the purpose of the land where the unauthorized structure was erected had been gardening, which involves cultivation of fruit and berry crops. Meanwhile, the entire plot was actually built up, so growing anything on it became impossible [7].

Discussing the possibility of legalizing the unauthorized construction, G.A. Glushchenko and E.A. Idrisova point out that if a person has not applied for a building permit, then the claim for recognition of the right of ownership of the unauthorized construction can not be satisfied [8]. We think that we cannot agree with this point of view. Numerous judicial practices show that simply not applying to government agencies for obtaining permits is not enough for a refusal in a lawsuit [9]. In all cases, the courts found out to whom the land belongs, whether unauthorized real estate complies with construction standards, and whether sanitary and fire-fighting requirements are complied with.

2. Results

Summing up our research, we can argue that the courts do not take a formal approach to the matter, but examine actual circumstances of the cases, figuring out how dangerous is the unauthorized building and whether it violates the rights of third parties. Based on these criteria, the courts make decisions on preservation of buildings. In the opinion of the authors, this approach is fully consistent with the principle of fairness, since demolition of a building due to the lack of permission would be unjustified, forcing the person to suffer losses disproportionate to the seriousness of the violation. It is worth noting the opinion of O.V. Pudovkina, who notes that moving away from the formal approach protects the rights of a number of citizens, for example, the shareholders of apartment buildings. In
addition, such trials require time and financial costs, as it is the applicant who pays for all the necessary research and examinations.

Thus, we believe that applying the rules on unauthorized construction in general does not cause difficulties, but the position of the Supreme Court of the Russian Federation regarding the impossibility of acquiring ownership on land occupied by unauthorized buildings after reaching the statute of limitations is biased and needs to be reconsidered.

3. References

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