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**ENSURING THE RIGHT TO HOUSING FOR ORPHANS IN
RUSSIA**

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Abstract

Providing orphans with housing in the Russian Federation is one of the tasks of social protection of population. The state has taken measures aimed at fulfilling its obligations in this regard. Despite quite complete regulatory frameworks, in some cases the established requirements for the provision of housing for orphans are not complied with. This study analyses the committed violations of the law, identifies the causes of the problems that arise, and examines the current legislation for ineffective enforcement of certain provisions, namely, the following negative factors are noted as the increasing number of orphans each year; lack of a complete registry of orphans in need of housing in the regions; shortage of funds for the purchase of housing in the regions, etc. Recent changes in legislation in this area have solved a number of problematic issues, but this has not helped to eliminate all the negative causes. As a result of the research, the authors conclude that housing for orphans can be provided as a partial measure of social support from the state. Such support should be solidarity-based, involving both the state and the person concerned. The housing that orphans receive into ownership without any security conditions quickly becomes an object of purchase and sale, thereby failing to achieve the main goal of social protection. Orphans should have an interest in acquiring housing through personal involvement by starting a family, having children, investing their own capital, obtaining preferential mortgages, etc.

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1. Introduction

The framework of the Constitution of the Russian Federation, the basis of state mechanism and the moral life of society, has recently changed significantly in response to the transformation of social relations. Basic law is an expression of essential values in the legal language. The extent to which children's rights are protected is a key indicator of the level of state social guarantees. According to article 67.1 part 4 of the Constitution of the Russian Federation "The state, providing priority of family education, undertakes obligations of parents concerning the children who were left without care". Similar provisions will serve as a stimulus for the emergence of new norms and the modification of existing ones in the area of the protection and enforcement of children's rights. Orphans and children left without parental care, orphans and children left without parental care (hereinafter referred to as orphans) are an indicator of the effectiveness of the current policy.

2. Problem Statement

In exercising the parental function, the state accepts a number of obligations. Measures of state support for orphans are represented by both general and subject norms. Among them, the most acute problem is the provision of housing. As of January 1, 2020, more than 279 thousand orphans are registered with housing. At the same time, in 2019, the queue of orphans for whom the right to receive housing arose but was not realized increased by more than 9 %. At the beginning of 2020, this is 191 thousand, or 68% of all orphans who are registered.

The state makes every effort to solve the problems of housing for orphans. For the purpose of realisation of orphans' rights on maintenance with habitation annually goes approximately 35 billion roubles of federal and regional funds; the Government of the Russian Federation develops the six-year program of liquidation of full debts on maintenance of orphans with habitation without dependence from requirement for financial resources; measures to increase responsibility of regions for execution of their own powers are taken; the Government of the Russian Federation offers the possibility of granting the state housing certificates; the mortgage and other compensatory forms of maintenance orphans housing is offered. The Prosecutor General of the Russian Federation I.V. Krasnov made a legislative initiative on the need to issue housing certificates to orphans registered as needing housing for more than 5 years. This alternative measure, in his opinion, is aimed at solving the problem of long waiting for orphans for housing, due to the inaction of regional authorities, and guarantees orphans the opportunity to independently select and acquire housing in their own right (Egorov, 2021).

From the standpoint of law enforcement, the practice of court consideration of cases related to the provision of housing in this category in 2018–2020 is generalized. However, the results of prosecutors' inspections and analysis of the situation made by the Government of the Russian Federation reveal, for example, the following problems:

- an increasing number of homeless orphans, with waiting lists of up to 10 years in some regions;
- in the regions, there is no full and transparent accounting of those in need for housing for children;

- there is inefficient spending of federal subsidies by the constituent entities;
- the allocated housing does not meet the established standards of housing, or does not meet the requirements of adequate quality, etc.
- the distributed housing does not conform to the established standards of providing with dwellings, or does not meet the requirements of adequate quality, etc.

The issues of enforcing the housing rights of orphans in Russia are both systemic in nature and have a deeply negative impact on the development of the social institutions that ensure the realization and protection of these rights.

3. Research Questions

The study is aimed to solve the following tasks:

- to identify the main obstacles to the realization of the orphans' right to housing;
- to formulate the most effective ways to solve the problem posed.

4. Purpose of the Study

The main purpose of the article is to substantiate the need for a new approach to ensure the right to housing for orphans in law-making and law enforcement activities.

5. Research Methods

The methodology of this work is based on the general scientific dialectical method. It allowed showing the unity and internal contradictions between the interests of the state and those of the individual and society as a whole in the realization of the orphans' right to housing. Discourse analysis and dogmatic (formal-legal) analysis were used as private scientific methods. The method of discourse analysis made it possible to assess the validity of arguments concerning the areas of legislative optimization in the field in question. Formal-legal analysis provided the study with systematic nature of research and building its internal structure.

6. Findings

Recent changes in the legislation in this area have eliminated a number of pressing issues, but the problem at this stage remains urgent. The amendments introduced in 2012 to the legislation on providing orphans with housing were aimed, among other things, at eliminating the situation when, after receiving housing, orphans privatized it in a short time and acquired ownership. As a result of such actions, in most cases, children were deprived of their rights to the received housing due to fraud by third parties, ignorance of the legislation, etc. The state could not interfere with such transactions due to the possession of this category of citizens the right of ownership to the received housing. In 2013, the procedure for providing housing to orphans was changed: instead of a social tenancy agreement, a five-year lease agreement for specialized residential premises began to be concluded, excluding such real estate transactions as privatization, exchange, and sublease. However, after the expiration of the term of such an

agreement, the housing is transferred to the owner on the basis of social tenancy, it can be privatized and sold, as a result of which there is again a need to look for another housing, which does not meet the interests of the state and a particular citizen, that is, the vicious situation which they tried to leave is repeated.

Among the main obstacles to the implementation of legislative solutions in practice are the following ones:

The low redemption price per square meter at which developers are offered to sell housing to the regional budget leads to a reluctance of construction companies to participate in the programme.

The purchase of housing by the region is carried out under the rules of the contractual system, aimed at saving public resources (Shakhbanova, 2018). Its obvious drawback is that the process of price reductions in steps often affects the quality of the future product. Experts refer to dumping as the main problem of today's procurement (Izutova, 2016).

The socialization of this category of children is difficult when they are in institutions, fully supported by the state. Once they reach adulthood, they face realities and challenges (the need for employment and a steady income, housekeeping, paying bills, budget allocation, etc.) that they are often not prepared for (Dalen et al., 2009). The possibility of getting publicly funded housing certainly allows "getting back on your feet" and building your life (Marais et al., 2013). However, an analysis of Russian legislation leads to the conclusion that parents have no obligation to provide their children with housing. Moreover, the typical Russian family is unlikely to be able to provide their child or children with their own apartment or house when they reach adulthood. The lack of such an opportunity for single-parent families is even more evident. For example, if a parent dies, the survivor's pension is paid to the child until he or she reaches the age of majority, graduates from full-time education or reaches the age of 23. In this case, the state does not help in the purchase of housing. "A person can only claim the benefits produced by society when he or she is unable to provide for himself or herself due to objective circumstances: age, state of health and other reasons" (Sedykh, 2018, p. 173). Orphans have the opportunity to receive an education at the expense of the budget. They are able to work and have legal capacity. Is the state's duty to provide housing ownership in this case a restoration of social justice or a promotion of social dependency? A person's material welfare should depend, primarily, on his own abilities, aspirations, and labour.

In our opinion the right to obtain a social mortgage with payment of part of the interest and (or) the initial payment from the budget would be the optimal balance. Another option is the provision of fixed-purpose financial assistance similar to the maternity (family) capital. Such measures would involve the joint financial participation of the citizen in solving the housing problem, and would encourage employment, career promotion, and an increase in income. The nature of social protection would become qualitative rather than quantitative. It does not change the fact that according to the housing law, a contract for renting specialized residential premises is initially made. Once the five-year period has expired, it is generally replaced by a social rent contract, which permits privatization. The dwelling is transferred to ownership. The fact is only delayed in time.

The rules on determining the floor area of the housing to be transferred do not oblige the family members of orphans to be taken into account. Without the right to manage their housing, young families

are long deprived of the opportunity to use, for example, maternity (family) capital and other ways to improve their standard of living. In fact, the possibility of changing one's place of residence for a certain period of time is also limited. Specialized residential premises are not subject to lease.

The success of the state's fulfilment of its public obligation to provide this category of citizens with housing, which includes organizing the process of providing housing, also depends on the accurate sharing of responsibilities in this area among the authorized government bodies (Han & Longzhu, 2019). The Letter of the Ministry of Science and Higher Education of the Russian Federation, containing methodological recommendations for the implementation of an effective mechanism for providing living quarters for orphans, explains that in the event of the emergence and resolution of the issue of the possibility of transferring to local governments the state responsibility to ensure the rights of orphans to purchase housing, as well as delegation of certain functions this authority (having a power-administrative nature), the availability of financial guarantees to ensure the possibility of exercising this authority (functions) is recognized as the most important factor influencing the solution of issues of timely provision of residential premises.

In the case when the provision of housing is vested in local governments, the regional authorities do not always take a responsible approach to checking the financial capacities of the municipality in this area. If the deadline for providing housing is violated, there is a need for enforced judicial protection. The municipality may be recognized as a defendant in such cases, but in the absence of sufficient funding, the enforcement of court decisions is complicated. Engaging the region in joint or subsidiary liability under the delegated authority is significantly complicated. Thus, the creation of such a model when there is insufficient funding for the construction (purchase) of residential premises of the specialized housing fund for orphans is unsuccessful, as it allows the authorized bodies to avoid implementing the guaranteed right to housing provision for orphans (Tarasova, 2017).

7. Conclusion

We believe that state involvement in the provision of housing for orphans should be done as partial support. This certainly does not diminish in any way the state's obligations to orphans. A housing interim measure must be combined involving the state and the person concerned. If the state takes an obligation in full, then it is actually a gift, the value of which is not always realized by those to whom it is given. When a person contributes to the purchase of his or her own home, he or she becomes responsible for his or her further management of the property. Therefore, we consider it necessary to take a balanced and differentiated approach to solving the problem of providing housing for orphans. It is possible to provide housing entirely at the expense of the state, but under certain conditions, such as starting a family and having children, which would naturally reduce the risk of unreasonable (thoughtless) alienation of property.

The primary goal of the state is to provide this category of citizens with housing so that further they will not experience housing difficulties and feel valuable members of a society; this, in particular, corresponds to the social function of the state and the social security right as a branch of law. The rational decision of this mission is possible probably only with the assistance of orphans. That is, the part of funds for housing is allocated with the state, and the part is earned by person in whose interests the given

housing is got. This and partial payment of housing, and rate decrease under the mortgage, etc. forms. Probably to provide housing granting completely at the expense of the state, but under certain conditions, for example, creation of a family and birth of children, that in the natural way will reduce risk of unjustified (rash) alienation of housing. Similar measures are able to fix in the Article 8 of the Federal Law No. 159 “About additional guarantees on social support of orphans and children who have remained without care of parents”.

The social function of the modern state contains the most important elements, including taking care of low-income groups of population, orphans (Vavrova et al., 2019). It is important to rely not only on immediate solutions aimed at ensuring current socio-economic stability, but also to go beyond meeting urgent needs (Erohina & Izvarina, 2020). The existing Russian state policy aimed at enforcing the right to housing for orphans is ineffective and requires revision. Formed social protection programs are a means of enforcing policies to overcome poverty and inequality, including specific categories of vulnerable groups such as orphans (Waqas & Awan, 2017). At the enforcement stage, legislative decisions face many obstacles. It is necessary to search for the boundaries of social policy that frame its effectiveness from social dependency. Qualitative rather than quantitative methods will make it possible not only to solve the problem of providing housing for this category of citizens, but also to promote their socialization, responsibility, a desire for stable income and an increase in income.

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