PUBLIC-LAW CHARACTER OF THE STATE REGISTRATION OF PROPRIETARY INTERESTS IN REAL ESTATE

Administrative and regulatory legal literature has several views on the state registration in general and state registration of rights in real estate in particular. State registration of proprietary interests in real estate is regarded as: the type of administrative proceedings, the institute of law and legislation, administrative service, as well as a way to perform management functions by the state. At that the scientists do not come to a consensus as to which institution the state registration of proprietary interests in real estate should be included to: administrative, civil or inter-sectoral.

The theoretical basis for the study of the legal nature of the state registration of proprietary interests in real estate became research papers of well-known theorists of law, in particular: V.B. Averyanov, Yu.P. Bytyak, B.M. Droniv, O.A. Zadyhaylo, M.M. Eydelberg, R.V. Ihonin, A.R. Kirsanov, S. Krilov, K.V. Nikolaenko, O.O. Pifko, V.V. Senchuk, S.A. Slobodyanyuk, and others.

The aim is to clarify the essence of the legal nature of the state registration of proprietary interests in real estate, namely the definition of state registration of the rights in real estate as an institute of law and what place takes the institute of the state registration of rights in administrative and legal field.

If generalize all views of academic lawyers on issues of state registration of rights in terms of its consideration as a set of legal rules, we can build the next system of assumptions and alternatives. First, the state registration of rights in real property may be institute of administrative or civil law or interdisciplinary institute. Second, if it is an institute of administrative law, which part of it: the material that is actually an administrative or procedural law that is the administrative process.

In this regard it should be noted that the state registration of rights has a legal-administrative connotation and is completely absorbed by the subject matter of regulation of administrative law.
The state registration of rights in real estate as an institute of law is purely administrative and legal institute, the contents of which constitute legal provisions, defining the institutional construction of entities, vested with powers on carrying out of the state registration of rights and which regulate the procedure of state registration of rights by regulation of appropriate procedure, implementation of the rights and duties of its members.

However, it should be noted that some civilians consider state registration of rights in real estate as an institute of civil law.

Bearing in mind the mentioned question – what exactly legal provisions and rules constitute a civil-legal institute of state registration of rights in real estate?

The state registration is at the border of private and public law. Thus, if analyze the nature of state registration of proprietary interests in real estate or state registration of transactions with real estate through the prism of their title properties and public law nature, we can say that it is a unique and special public legal formation in private-legal relations, a kind of “public-legal element” in the legal mechanisms of origin, transition and termination of rights.

Another issue that should be clarified is what kind of place the institute of state registration of rights takes in administrative and legal field. Is the state registration of rights the institute of administrative law or process? It is “pulled” to the law by provisions regarding the entities of implementation of registration functions and features of the relationship between the applicant and the relevant entity. However, the procedural part of the state registration of rights, which lies in the regulations that directly regulate the procedure of state registration “pulls” the state registration of the rights to the mainstream of the administrative process.

Taking into account the provisions of the legislation of Ukraine, as well as modern scientific views on the nature of administrative services it can be concluded that the state registration of proprietary interests in real estate and their encumbrances is an administrative service due to the fact that, in the essence, state registration of the rights in real estate is inherent all main features of administrative services, namely, that it (a) is provided by public authority (b) at the request of an individual or legal
entity, and (c) is aimed at ensuring the implementation by the said persons of their rights and legal interests.

State registration as a way to achieve the objectives of the state is a mechanism for the implementation of such basic functions of the state as regulatory and security functions.

Performance of these functions cannot be attributed solely to those that are peculiar to the state registration as a procedure that is the type of administrative proceeding or to the legal fact. These functions are associated with both types of registration and are, mostly, a “derived” consequence of implementation of basic functions. If the basic function of the state registration of rights in real estate should be considered a title and security, the additional “derivative” functions of state registration are the registration, organizing, preventive, informative functions.

State registration of proprietary interests in real estate is interdisciplinary in nature, related to the administrative and legal, civil and law, civil and procedural, criminal and procedural and other legal relations. At the same time, state registration of proprietary rights in real estate is an institute of administrative law, the content of which make up the legal provisions, defining the institutional construction of entities vested with powers on carrying out the state registration of rights and regulating the procedure of state registration of rights through regulation of the relevant procedure, implementation of the rights and duties of its members.

In the system of administrative law specified institution belongs to a special part of administrative law.