

## Legal Problems of Reforming the Sphere of Unauthorized Construction of Residential Premises

**Kurbanova Khurshida**

Lecturer at the Tashkent State law university, independent researcher

**Annotation:** The article analyzes the concept of unauthorized constructions, their legal consequences, forms of determining the ownership of such structures, the conditions for extrajudicial determination of ownership and proposals for improving the current procedural legislation.

**Keywords:** unauthorized construction, transfer of ownership, violation of the device.

Housing is one of the natural and inalienable human needs<sup>1</sup>. It is the availability of housing that serves as one of the main means of the social status of a person, as a member of society, when entering into social relations<sup>2</sup>. Therefore, determining the ownership of residential premises is important.

One of the most unstable institutions of civil law from the point of view of normative regulation is the institution of unauthorized construction<sup>3</sup>. This situation is explained by changes in economic, social and political factors, legal regulation of unauthorized construction or increased legalization of unauthorized construction with a subsequent change in the direction of its liberalization<sup>4</sup>.

Unauthorized construction is widespread in Uzbekistan. The reasons were ignorance of the legal institution for construction, lack of knowledge on acquiring ownership of residential premises, lack of criticism from the authorities and society, negligence of local executive authorities, especially land cadastre, architecture and construction<sup>5</sup>.

Unauthorized construction sites are often demolished. On the one hand, this negatively affects the property status of its owners, and on the other hand, it serves to protect violated rights<sup>6</sup>. The presence

<sup>1</sup> Савина, Анна Владимировна. "Правовой режим самовольной постройки." *АВ Савина. – автореф. дисс. на соиск. уч. степ. канд. юр. наук, М* (2010).

<sup>2</sup> Ibratova, Feruza. "Legal Problems of the Concepts Legality, Justification and Justice by Judicial Acts." *Middle European Scientific Bulletin* 16 (2021).

<sup>3</sup> Барышова, Мария Владимировна, et al. "Социальное предпринимательство: научные исследования и практика." (2019): 60-60.

<sup>4</sup> Полетаева, Екатерина Леонидовна. "Самовольная постройка индивидуального жилого дома: снести или узаконить?." *ББК 67.404 П78* (2017): 100.

<sup>5</sup> Ibratova, F. "Problems of a settlement in bankruptcy cases in economic courts." *Norwegian Journal of Development of the International Science* 28-3 (2019): 23-25.

<sup>6</sup> Кусаинова, Айман Кудайбергеновна, and Бахыт Молдадыевич Нурғалиев. "Самовольная постройка как категория гражданского права." *Актуальные проблемы современности* 2 (2016): 19-23.

of two such conflicting consequences necessitates a scientific and theoretical study of the grounds for the demolition of an unauthorized structure and the determination of property rights<sup>7</sup>.

Persons guilty of unauthorized construction or reconstruction are liable under Article 99 of the Code of Administrative Responsibility of the Republic of Uzbekistan.

In addition to administrative liability for illegal construction work, civil liability measures may also be applied. For example, they are obliged to eliminate the committed offense at their own expense by demolishing an unauthorized structure or restoring the land to its original state<sup>8</sup>.

Illegal construction of unauthorized buildings has certain negative consequences<sup>9</sup>. That is, firstly, as required by Article 212 of the current Civil Code, a person who has carried out unauthorized construction cannot acquire ownership of it. Has no right to dispose of this building: sell, donate, lease, perform other actions; secondly, the unauthorized construction should be demolished in a judicial proceeding.

Sometimes an unauthorized building does not interfere with anyone, does not violate the rights and legitimate interests of other persons, and will be built within the territory of certain areas. The lack of necessary supporting documents for housing causes social problems among the population. For example, even if you have lived for many years, paid taxes and paid for utilities, and treated the property as your own, you will not be able to register, own and dispose of this property<sup>10</sup>. As a result, this can lead to serious consequences such as economic stagnation and homelessness of the person concerned. Therefore, the definition of ownership of such objects is expedient and requires determination at the legislative level.

There are ways to get ownership of unauthorized buildings. According to him, there are judicial and extrajudicial procedures for the legalization of unauthorized construction<sup>11</sup>.

Legal scholar N.S. Kartseva argues that the lawsuit to legalize unauthorized buildings was conceived as an exception to the general rule<sup>12</sup>. However, in practice, the judicial procedure is used more often than "other". Article 212 of the Civil Code of the Republic of Uzbekistan does not provide for "other procedures".

In law enforcement practice, the transfer of ownership of an unauthorized building is rare<sup>13</sup>. In practice, there is no mechanism for determining the ownership of a building built on a properly allocated land plot<sup>14</sup>.

<sup>7</sup> Ибратова, Ф. Б. "ПРАВОВЫЕ ПРОБЛЕМЫ МИРОВОГО СОГЛАШЕНИЯ ПРИ РАССМОТРЕНИИ ДЕЛ О БАНКРОТСТВЕ В ЭКОНОМИЧЕСКИХ СУДАХ РЕСПУБЛИКИ УЗБЕКИСТАН." *ПЕРСПЕКТИВЫ РАЗВИТИЯ НАУКИ В СОВРЕМЕННОМ МИРЕ*. 2019.

<sup>8</sup> Лескова, Ю. Г., and Н. Д. Кобылинский. "Самовольная постройка в системе объектов гражданских правоотношений." *Власть закона* 2 (2016): 31.

<sup>9</sup> Ибратова, Феруза Бабакуловна. "Гражданско-правовые проблемы признания банкротами индивидуальных предпринимателей в Республике Узбекистан." *Вопросы современной юриспруденции* 5-6 (47) (2015).

<sup>10</sup> Ибратова, Ф. Б. "ПРАВОВЫЕ ПОСЛЕДСТВИЯ БАНКРОТСТВА ИНДИВИДУАЛЬНОГО ПРЕДПРИНИМАТЕЛЯ ИЛИ ФИЗИЧЕСКОГО ЛИЦА, УТРАТИВШЕГО СТАТУС ИНДИВИДУАЛЬНОГО ПРЕДПРИНИМАТЕЛЯ." *Polish Journal of Science* 38-2 (2021): 20-24.

<sup>11</sup> Ibratova, F. "Bankrotlik to 'g 'risidagi ishlarda prokuror ishtiroki."

<sup>12</sup> Карцева, Наталья Сергеевна, and Наталья Валерьевна Шурышева. "Самовольная постройка в свете изменений гражданского законодательства РФ." *Проблемы правового обеспечения безопасности личности, общества и государства*. 2016.

<sup>13</sup> Лескова, Ю. Г., and Н. Д. Кобылинский. "Самовольная постройка как способ возникновения права собственности по законодательству Российской Федерации." *World science* 3.1 (5) (2016): 52-54.

Article 212 of the current Civil Code states that the right to own a dwelling without permits can be recognized by a court. However, the law does not provide for the establishment of the right of lifetime inheritable possession of property, which is a land plot on which construction has been carried out in a different manner. At the same time, it is not prohibited to determine the right of ownership out of court. The right of ownership of an unauthorized construction may be established by the owner of the land plot who carried out the unauthorized construction.

On April 20, 2018, the President of the Republic of Uzbekistan launched a one-time nationwide campaign “On additional measures for social support of citizens and holding a one-time nationwide campaign to recognize the ownership of unauthorized residential premises”<sup>15</sup> and in order to ensure its implementation, the Cabinet of Ministers of the Republic of Uzbekistan adopted Resolution No. 461 dated June 21, 2018<sup>16</sup>.

According to the Regulations, a one-time nationwide campaign has been announced to recognize the right of ownership of illegally constructed land plots or residential premises built without building permits and lasted until May 1, 2019<sup>17</sup>.

As part of this nationwide action, a procedure has been established for recognizing the ownership of citizens to residential premises built on land plots not allocated for construction or without permits for construction. However, it does not apply to multi-storey buildings and adjacent land plots, as well as to non-residential buildings.

As a result of the nationwide action, the property of more than half a million people was legally registered. This means that half a million families have become the legal owners of their homes, who tomorrow will be able to inherit their homes or sell and mortgage their homes<sup>18</sup>.

At the same time, within the framework of the action, no decisions were made on the basis of some statements. In particular, out of 36,568 appeals from Tashkent, 71% were positively resolved, 17% were rejected, and 12% are under consideration by the commission's working group for subjective and objective reasons.<sup>19</sup>

It should be noted that the Decree of the President on the announcement of the action “cancels the provisions of civil law on recognizing the right of ownership of unauthorized buildings after the expiration of the one-time action” and “strengthen the responsibility for unauthorized buildings””. As a result, amendments have been made to the current legislation, excluding norms that can be recognized as property rights to buildings built without permission.

<sup>14</sup> Ibratova, F. B. "The Concept and Characteristics of Bankruptcy Procedures for Business Entities With the Status of a Legal Entity." *Middle European Scientific Bulletin* 20 (2022): 143-147.

<sup>15</sup> [https://buxgalter.uz/doc?id=541063\\_ukaz\\_prezidenta\\_respubliki\\_uzbekistan\\_ot\\_20\\_04\\_2018\\_g\\_n\\_up-5421\\_o\\_dopolnitelnyh\\_merakh\\_po\\_socialnoy\\_podderjke\\_grajdan\\_i\\_provedenii\\_razovoy\\_obshchegosudarstvennoy\\_akcii\\_po\\_priznaniyu\\_prava\\_sobstvennosti\\_na\\_samovolno\\_postroennye\\_jilye\\_pomeshcheniya&prodid=1\\_vse\\_zakonodatelstvo\\_uzbekistana](https://buxgalter.uz/doc?id=541063_ukaz_prezidenta_respubliki_uzbekistan_ot_20_04_2018_g_n_up-5421_o_dopolnitelnyh_merakh_po_socialnoy_podderjke_grajdan_i_provedenii_razovoy_obshchegosudarstvennoy_akcii_po_priznaniyu_prava_sobstvennosti_na_samovolno_postroennye_jilye_pomeshcheniya&prodid=1_vse_zakonodatelstvo_uzbekistana)

<sup>16</sup> [https://buxgalter.uz/ru/doc?id=588720\\_&prodid=1\\_vse\\_zakonodatelstvo\\_uzbekistana](https://buxgalter.uz/ru/doc?id=588720_&prodid=1_vse_zakonodatelstvo_uzbekistana)

<sup>17</sup> [https://buxgalter.uz/doc?id=541063\\_ukaz\\_prezidenta\\_respubliki\\_uzbekistan\\_ot\\_20\\_04\\_2018\\_g\\_n\\_up-5421\\_o\\_dopolnitelnyh\\_merakh\\_po\\_socialnoy\\_podderjke\\_grajdan\\_i\\_provedenii\\_razovoy\\_obshchegosudarstvennoy\\_akcii\\_po\\_priznaniyu\\_prava\\_sobstvennosti\\_na\\_samovolno\\_postroennye\\_jilye\\_pomeshcheniya&prodid=1\\_vse\\_zakonodatelstvo\\_uzbekistana](https://buxgalter.uz/doc?id=541063_ukaz_prezidenta_respubliki_uzbekistan_ot_20_04_2018_g_n_up-5421_o_dopolnitelnyh_merakh_po_socialnoy_podderjke_grajdan_i_provedenii_razovoy_obshchegosudarstvennoy_akcii_po_priznaniyu_prava_sobstvennosti_na_samovolno_postroennye_jilye_pomeshcheniya&prodid=1_vse_zakonodatelstvo_uzbekistana)

<sup>18</sup> Кирсанов, Андрей Романович. "Самовольная постройка: признать нельзя снести?." *Имущественные отношения в Российской Федерации* 9 (180) (2016): 16-24.

<sup>19</sup> Ibratova, F. "BANKRUPTCY OF A LIQUIDATED BUSINESS ENTITY: PROBLEMS AND SOLUTIONS." *Norwegian Journal of development of the International Science* 2021 (2021): 45.

As of today, the nationwide promotion has expired. Now there will be no such action. The building owner may be held liable. However, there are those who, for some reason, do not use such opportunities. It is natural for a family living in illegal housing to imagine that they will be left without a homeland<sup>20</sup>. The question arises: is the right of ownership of randomly constructed buildings granted? If so, how can ownership be determined?

According to statistics, the number of lawsuits (demolition of illegal buildings) related to unauthorized buildings in the country is growing every year<sup>21</sup>. This means that the legal institution for illegal construction needs to be revised.

When considering the issue of legalizing unauthorized construction, it is necessary to take into account the priority of the right to land. There are a number of conditions for recognizing ownership of such a building, which include:

Firstly, it is necessary to own the land plot on which the unauthorized structure is built, to inherit it for life and use it permanently (indefinitely) from the person who built the unauthorized structure. This is the basis for drawing up the cadastral passport of the object and (or) the conclusion of the cadastral specialist on the demarcation of the land plot.

The second condition for recognizing the right of unauthorized construction is that the actual use of the land must correspond to its purpose and the permitted right to use it.

The third condition for recognizing the right to unauthorized construction is that construction is carried out in accordance with building codes and regulations, while the rights and legally protected interests of others are not violated, and there are no threats to the life and health of citizens.

The fourth condition for recognizing the right to unauthorized construction is the unauthorized adoption by the owner of measures to legalize the construction<sup>22</sup>.

If all of the above conditions are met, it will be possible to consider the issue of determining the right of ownership in relation to an unauthorized building.

The norms on the direct determination of the right of ownership by local self-government bodies in the laws of the Republic of Uzbekistan on local authorities and self-government bodies of citizens, i.e. out of court, not available. After all, the decision to allocate land, which is the basis for construction, is made by the state body (khokimiyats). The building department issues a building permit.

In the absence of a dispute about rights, the court's determination of the ownership of an unauthorized building appears illogical. This is because litigation can be time-consuming and costly, and sometimes costly. Therefore, local government bodies have full authority to make decisions on issues.

The procedure for recognizing the ownership of unauthorized construction through khokimiyats seems to be more reasonable and justified, especially in cases where the developer and the owner of the land plot are the same person. In this case, an administrative procedure is preferable to recognize the ownership of the unauthorized structure.

<sup>20</sup> Зайцев, Вячеслав Владимирович. "Самовольная постройка как способ приобретения права собственности на земельный участок." *Эпомен* 23 (2019): 135-138.

<sup>21</sup> Тихомирова, Л. В., and М. Ю. Тихомиров. "Самовольная постройка: комментарии, официальные разъяснения, судебная практика/под ред." *МЮ Тихомирова. М.: Изд-во Тихомирова МЮ* (2010).

<sup>22</sup> Ibratova, Feruza. "TERMS IN CIVIL LAW AND THEIR APPLICATION IN LEGAL PROTECTION OF CITIZENS IN THE REPUBLIC OF UZBEKISTAN."

The out-of-court procedure for determining the ownership of an unauthorized building is a logical continuation of the allocation of a land plot. It is necessary to introduce a clear mechanism for such a procedure for recognizing the right of ownership of an unauthorized building, to draw up a list of documents sufficient for the khokimiyat to make a legal and justified decision to leave the building in its place.

In order to determine the ownership of an unauthorized construction, I consider it appropriate to make the following proposals:

1. Transfer the authority to determine the ownership of unauthorized buildings directly to the relevant state authorities;
2. Submission of an application to determine the ownership of an individual dwelling to the relevant state bodies or through a single interactive portal of public services (including in electronic form);
3. In order to introduce an extrajudicial procedure for establishing the right of ownership, the conclusions of the following bodies are required. That is, the conclusion of the department of land resources and the state cadastre; conclusion of the district (city) department of construction; the conclusion of the district (city) inspection of ecology and environmental protection; conclusion of the district (city) state sanitary doctor; certificate from the district (city) department of internal affairs; certificate from the district (city) state tax office; conclusion of the district (city) fire safety inspector;
4. The commission under the khokimiyat makes a decision on the possibility / impossibility of recognizing the ownership of the unauthorized building. If a decision is made to grant ownership of a building, the decision must also grant the owner of the unauthorized building the right of lifetime ownership of the land plot (part of the plot) on which the building is built;
5. The law should establish a clear time limit, such as one month, for establishing or depriving a citizen of the right of ownership of an unauthorized building, which must be carried out promptly, without delay, harassment and convenience.

It should be noted that the out-of-court procedure for the transfer of ownership should be applied only in the absence of a permit for construction or reconstruction.

It should be noted that the out-of-court procedure for the transfer of ownership should be applied only in the absence of a permit for construction or reconstruction.

6. The law must also establish a fee for determining the ownership of an unauthorized building. This will help cover the costs of researching the unauthorized building with the participation of experts and the formation of a local budget.
7. Introducing amendments to the current Civil Code, providing for judicial review of such claims in the event of a dispute between the parties regarding an unauthorized building;
8. The law should also specify the circumstances in which ownership cannot be recognized in respect of an unauthorized building. In particular, buildings located in conflict with the general plans of settlements; buildings located in the protected areas of main pipelines, railways and roads, power lines and communications, water protection and sanitary protection zones, as well as near airfields and landfills for waste and other toxic substances; buildings located in protected natural areas, the construction of which is prohibited by law; if the buildings built on the unauthorized occupied land plot are built in violation of urban planning norms and rules, the preservation of which violates the rights and legally protected interests of other persons or creates a danger to the life and health of citizens.



In the absence of grounds for recognizing the ownership of the unauthorized building, the person concerned will have to issue a letter of refusal. A person dissatisfied with such a response may appeal against the actions of the official in the relevant administrative court.

It turns out that local governments can allow the storage of unauthorized buildings. Therefore, it is advisable to widely introduce an out-of-court procedure for determining property rights. In addition, the recognition of ownership of an unauthorized building is fully consistent with the powers of local governments.

In short, an unauthorized building requires a special legal regime. At the same time, it is time to improve existing legal norms and mechanisms for their application in practice. After all, all the reforms carried out in our country should serve the people and their interests.

## REFERENCES

1. Савина, Анна Владимировна. "Правовой режим самовольной постройки." *АВ Савина. – автореф. дисс. на соиск. уч. степ. канд. юр. наук, М* (2010).
2. Ibratova, Feruza. "Legal Problems of the Concepts Legality, Justification and Justice by Judicial Acts." *Middle European Scientific Bulletin* 16 (2021).
3. Барышова, Мария Владимировна, et al. "Социальное предпринимательство: научные исследования и практика." (2019): 60-60.
4. Полетаева, Екатерина Леонидовна. "Самовольная постройка индивидуального жилого дома: снести или узаконить?." *ББК 67.404 П78* (2017): 100.
5. Ibratova, F. "Problems of a settlement in bankruptcy cases in economic courts." *Norwegian Journal of Development of the International Science* 28-3 (2019): 23-25.
6. Кусаинова, Айман Кудайбергеновна, and Бахыт Молдатыевич Нургалиев. "Самовольная постройка как категория гражданского права." *Актуальные проблемы современности* 2 (2016): 19-23.
7. Ибратова, Ф. Б. "ПРАВОВЫЕ ПРОБЛЕМЫ МИРОВОГО СОГЛАШЕНИЯ ПРИ РАССМОТРЕНИИ ДЕЛ О БАНКРОТСТВЕ В ЭКОНОМИЧЕСКИХ СУДАХ РЕСПУБЛИКИ УЗБЕКИСТАН." *ПЕРСПЕКТИВЫ РАЗВИТИЯ НАУКИ В СОВРЕМЕННОМ МИРЕ*. 2019.
8. Лескова, Ю. Г., and Н. Д. Кобылинский. "Самовольная постройка в системе объектов гражданских правоотношений." *Власть закона* 2 (2016): 31.
9. Ибратова, Феруза Бабакуловна. "Гражданско-правовые проблемы признания банкротами индивидуальных предпринимателей в Республике Узбекистан." *Вопросы современной юриспруденции* 5-6 (47) (2015).
10. Ибратова, Ф. Б. "ПРАВОВЫЕ ПОСЛЕДСТВИЯ БАНКРОТСТВА ИНДИВИДУАЛЬНОГО ПРЕДПРИНИМАТЕЛЯ ИЛИ ФИЗИЧЕСКОГО ЛИЦА, УТРАТИВШЕГО СТАТУС ИНДИВИДУАЛЬНОГО ПРЕДПРИНИМАТЕЛЯ." *Polish Journal of Science* 38-2 (2021): 20-24.
11. Ibratova, F. "Bankrotlik to ‘g ‘risidagi ishlarda prokuror ishtiroki."
12. Карцева, Наталья Сергеевна, and Наталья Валерьевна Шурышева. "Самовольная постройка в свете изменений гражданского законодательства РФ." *Проблемы правового обеспечения безопасности личности, общества и государства*. 2016.

13. Лескова, Ю. Г., and Н. Д. Кобылинский. "Самовольная постройка как способ возникновения права собственности по законодательству Российской Федерации." *World science* 3.1 (5) (2016): 52-54.
14. Ibratova, F. B. "The Concept and Characteristics of Bankruptcy Procedures for Business Entities With the Status of a Legal Entity." *Middle European Scientific Bulletin* 20 (2022): 143-147.
15. [https://buxgalter.uz/doc?id=541063\\_ukaz\\_prezidenta\\_respubliki\\_uzbekistan\\_ot\\_20\\_04\\_2018\\_g\\_n\\_up-5421\\_o\\_dopolnitelnyh\\_merah\\_po\\_socialnoy\\_podderjke\\_grajdan\\_i\\_provedenii\\_razovoy\\_obshche\\_gosudarstvennoy\\_akkii\\_po\\_priznaniyu\\_prava\\_sobstvennosti\\_na\\_samovolno\\_postroennye\\_jilye\\_pomeshcheniya&prodid=1\\_vse\\_zakonodatelstvo\\_uzbekistana](https://buxgalter.uz/doc?id=541063_ukaz_prezidenta_respubliki_uzbekistan_ot_20_04_2018_g_n_up-5421_o_dopolnitelnyh_merah_po_socialnoy_podderjke_grajdan_i_provedenii_razovoy_obshche_gosudarstvennoy_akkii_po_priznaniyu_prava_sobstvennosti_na_samovolno_postroennye_jilye_pomeshcheniya&prodid=1_vse_zakonodatelstvo_uzbekistana)
16. [https://buxgalter.uz/ru/doc?id=588720\\_&prodid=1\\_vse\\_zakonodatelstvo\\_uzbekistana](https://buxgalter.uz/ru/doc?id=588720_&prodid=1_vse_zakonodatelstvo_uzbekistana)
17. [https://buxgalter.uz/doc?id=541063\\_ukaz\\_prezidenta\\_respubliki\\_uzbekistan\\_ot\\_20\\_04\\_2018\\_g\\_n\\_up-5421\\_o\\_dopolnitelnyh\\_merah\\_po\\_socialnoy\\_podderjke\\_grajdan\\_i\\_provedenii\\_razovoy\\_obshche\\_gosudarstvennoy\\_akkii\\_po\\_priznaniyu\\_prava\\_sobstvennosti\\_na\\_samovolno\\_postroennye\\_jilye\\_pomeshcheniya&prodid=1\\_vse\\_zakonodatelstvo\\_uzbekistana](https://buxgalter.uz/doc?id=541063_ukaz_prezidenta_respubliki_uzbekistan_ot_20_04_2018_g_n_up-5421_o_dopolnitelnyh_merah_po_socialnoy_podderjke_grajdan_i_provedenii_razovoy_obshche_gosudarstvennoy_akkii_po_priznaniyu_prava_sobstvennosti_na_samovolno_postroennye_jilye_pomeshcheniya&prodid=1_vse_zakonodatelstvo_uzbekistana)
18. Кирсанов, Андрей Романович. "Самовольная постройка: признать нельзя нести?." *Имущественные отношения в Российской Федерации* 9 (180) (2016): 16-24.
19. Ibratova, F. "BANKRUPTCY OF A LIQUIDATED BUSINESS ENTITY: PROBLEMS AND SOLUTIONS." *Norwegian Journal of development of the International Science* 2021 (2021): 45.
20. Зайцев, Вячеслав Владимирович. "Самовольная постройка как способ приобретения права собственности на земельный участок." *Эпомен* 23 (2019): 135-138.
21. Тихомирова, Л. В., and М. Ю. Тихомиров. "Самовольная постройка: комментарии, официальные разъяснения, судебная практика/под ред." МЮ Тихомирова. М.: Изд-во Тихомирова МЮ (2010).
22. Ibratova, Feruza. "TERMS IN CIVIL LAW AND THEIR APPLICATION IN LEGAL PROTECTION OF CITIZENS IN THE REPUBLIC OF UZBEKISTAN."