USAID FROM THE AMERICAN PEOPLE | MUNICIPAL HEATING REFORM IN UKRAINE

MUNICIPAL HEATING REFORM PROJECT (MHR)

Analysis of Legal Framework for social protection and protection of housing and communal services customers rights

August 2009
This document was produced for review by the United States Agency for International Development (USAID).
It was prepared by the Municipal Development Institute within the USAID Municipal Heating Reform Project in Ukraine.

MUNICIPAL HEATING REFORM PROJECT (MHR)

Analysis of Legal Framework for social protection and protection of housing and communal services customers rights

ENERGY II IQC, TASK ORDER 9
Contract: EPP-I-00-03-00006-00

August 2009

This document was made possible through support provided by the U.S. Agency for International Development.
The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

Table of Contents

INTRODUCTION **5**

CHAPTER 1. LEGAL REGULATION OF PROTECTION OF CUSTOMERS RIGHTS IN HOUSING AND COMMUNAL SERVICES SECTOR **5**

1.1 LAW OF UKRAINE 5
1.1.1 Civil Code of Ukraine *6*
1.1.2 Commercial Code of Ukraine *7*
1.1.3 Housing Code *8*
1.1.4 Law on Privatization of State Residential Sector *8*
1.1.5 Law on Customer Protection *9*
1.1.6 Law on Housing and Communal Services *10*
1.1.7 Law on Heating Supply *11*
1.1.8 Law on Drinking Water and Drinking Water Supply *11*
1.1.9 CMU Resolution on Approval of the Rules for Provision of District Heating, Cold and Hot Tap Water Supply and Sewerage Services, and a Model Contract for Provision of District Heating, Cold and Hot Tap Water Supply and Sewerage Services *12*
1.1.10 CMU Resolution on Approval of the Rules for Provision of Gas Supply Services to Population *13*
1.1.11 CMU Resolution on Approval of the Tariff-Making Procedure for Maintenance of Buildings and Structures and Adjacent Territories *13*
1.1.12 Concept for the State Customer Protection Target Programme for 2008-2011 ..... *13*
1.1.13 District Heating and Hot Tap Water Supply Cut-off Procedure for Individual Premises of Residential Buildings If Customers Refuse from District Heating *14*
1.1.14 Rules for Maintenance of Buildings and Adjacent Territories and a Model List of Services on Maintenance of Buildings and Adjacent Territories and Refurbishment of Premises, Buildings, and Structures *14*
1.2 GENERAL CONCLUSIONS ON THE STATUS OF LEGAL REGULATION OF CUSTOMER PROTECTION IN THE HOUSING AND COMMUNAL SERVICES SECTOR 14

CHAPTER 2. ANALYSIS OF THE UKRAINIAN LEGISLATION REGULATING THE ISSUES OF SOCIAL PROTECTION IN THE HOUSING AND COMMUNAL SERVICES SECTOR **15**

2.1 GENERAL DESCRIPTION OF THE SOCIAL PROTECTION SYSTEM OF UKRAINE 15
2.2 GENERAL DESCRIPTION OF THE UKRAINIAN LEGISLATION REGULATING SOCIAL PROTECTION IN HOUSING AND COMMUNAL SERVICES SECTOR 16
2.3 HOUSING AND MUNICIPAL SERVICE PAYMENT PRIVILEGES 17
2.3.1 Law of Ukraine on the Status and Social Protection for the Citizens Who Suffered from Chornobyl Disaster *18*
2.3.2 Law of Ukraine on Rehabilitation of Political Repression Victims in Ukraine *18*
2.3.3 Law of Ukraine on the Status of Veterans of War and Their Social Protection Guarantees . *19*
2.3.4 Law of Ukraine on Nazi Prosecution Victims *22*
2.3.5 Law of Ukraine on Social Protection for Children of War *24*
2.4 SUBSIDIES FOR REIMBURSEMENT OF HOUSING AND UTILITY SERVICE PAYMENTS 24
2.5 GENERAL CONCLUSIONS ON THE STATUS OF THE UKRAINIAN LEGISLATION REGULATING THE ISSUES OF SOCIAL PROTECTION IN HOUSING AND UTILITY SERVICE SECTOR 25

CONCLUSIONS **26**

ANNEXES **27**

ANNEX 1: LAWS OF UKRAINE REGULATING THE ISSUES OF CUSTOMER PROTECTION IN THE HOUSING AND COMMUNAL SERVICES SECTOR 27
ANNEX 2: BILLS RELATED TO CUSTOMER PROTECTION IN THE HOUSING AND COMMUNAL SERVICES SECTOR 30
ANNEX 3: DRAFT REGULATIONS ON PROTECTION OF CUSTOMER RIGHTS IN HOUSING AND COMMUNAL SERVICES SECTOR 32

ANNEX 4: LEGISLATION ON SOCIAL PROTECTION FOR CUSTOMERS IN THE COMMUNAL SERVICES SECTOR..... 33
ANNEX 5: LEGISLATIVE ACTS OF UKRAINE ESTABLISHING PROFESSION-BASED PRIVILEGES FOR THE HOUSING AND UTILITY SERVICE PAYMENTS 36

Introduction

Quality of housing and utility services, as well as Customers' willingness and readiness to pay for them in time and in full to a considerable extend depend on the legal regulation of the Customer protection and Social Protection in the Housing and Communal Services Sector.

The current Ukrainian legislation regulating these aspects consists of many legislative acts and regulations, passed in different times, not always consistent with each other, and in some cases far from the modern needs of social relations.

Chapter 1. Legal Regulation of Protection of Customers Rights in Housing and Communal Services Sector

1.1 Law of Ukraine

Customer protection in the area of housing and utility services is regulated by:

1) general legislation setting out the status of operators, principles and means of legal protection of private rights, and service provision contractual relations;
2) special legislation defining the Customer status, the regime for provision of all and individual housing and utility services; and
3) a system of regulations issued by the Government of Ukraine and other public authorities which specify the content and quality of services to be provided.

The Customer protection legislation in the Housing and Communal Services Sector includes the following acts:

1) General Legislation:
   a. Civil Code of Ukraine (No. 435-IV of 16.01.2003);
   b. Commercial Code of Ukraine (No. 436-IV of 16.01.2003); and
   c. Housing Code of the Ukrainian SSR (No. 5464-X of 30.06.1983).
2) Special Legislation:
   a. Law of Ukraine on Privatisation of State Residential Sector (No. 2482-XII of 19.06.1992)
   b. Law of Ukraine on Customer Protection (No. 1023-XII of 12.05.1991);
   c. Law of Ukraine on Housing and Utility Services (No. 1876-IV of 24.06.2004);
   d. Law of Ukraine on Heating Supply (No. 2633-IV of 02.06.2005);
   e. Law of Ukraine on Drinking Water and Drinking Water Supply (No. 2918-III of 10.01.2002);
   f. Law of Ukraine on Electricity (No. 575/97-BP of 16.10.1997).
3) Regulations:
   a. CMU Resolution on Approval of the Rules for Provision of District Heating, Cold and Hot Tap Water Supply and Sewerage Services, and a Model Contract for Provision of District Heating, Cold and Hot Tap Water Supply and Sewerage Services (No.630 of 21.07.2005);

b. CMU Resolution on Approval of the Rules for Provision of Gas Supply Services to Population (No. 2246 of 09.12.1999);

c. CMU Resolution on Approval of the Electricity Use Rules for Population (No. 1357 of 26.07.1999);

d. CMU Resolution on Approval of the Tariff-Making Procedure for Maintenance of Buildings and Structures and Adjacent Territories and a Model Contract for Maintenance of Buildings and Structures and Adjacent Territories (No. 529 of 20.05.2009);

e. CMU Instruction on Approval of the Concept for the State Customer Protection Target Programme for 2008-2011 (No.649-p of 09.04.2008);

f. State Housing and Communal Services Sector (SHUS) Committee Order on Approval of Rules for Maintenance of Buildings and Adjacent Territories (No. 76 of 17.05.2005),

g. SHUS Committee Order on the Model List of Services on Maintenance of Buildings and Adjacent Territories and Refurbishment of Premises, Buildings, and Structures (No.150 of 10.08.2004);

h. Order of the Ministry of Construction, Architecture and HUS on Approval of the District Heating and Hot Tap Water Supply Cut-off Procedure for Individual Premises of Residential Buildings If Customers Refuse from District Heating (No.4 of 22.11.2005).

1.1.1 Civil Code of Ukraine

The Civil Code of Ukraine (the CivCU or the Code (for this section)) regulates civil relations in general, in particular such issues as protection of private and corporate rights, as well as defines the remedies for defence of such rights and outlines the Customer rights in the legal relations that emerge on the basis of residential lease contracts, purchase and exchange contracts, contractor agreements, service contracts etc.

The Code establishes the following legal remedies:

1) recognition of the right;
2) invalidation of a legal act;
3) termination of an action which violates any right;
4) restitution of the pre-violation status;
5) enforcement of an obligation;
6) change of the legal relations;
7) termination of legal relations;
8) indemnification of losses and other means of property damage indemnification;
9) indemnification of the moral (non-property) damage;
10) announcement of decisions, actions or omission of action by national public authorities, Crimean public authorities, local self-governance bodies, and their officials and servants to be illegal;
11) other means established by contract or law.

The Code establishes general principles for indemnification of the property and moral damages caused to a person, including a Customer.

It defines Customer rights and obligations, as well as the relations that develop on the basis of purchase, lease, contractor and service contracts and agreements.

The Code also sets the legal basis for Customer protection. It contains codified and general norms in relation to the special legislation described in more detail below.

The legal regulation on Customer protection in the area of housing and utility services can be improved without a need to amend the Civil Code.

1.1.2 Commercial Code of Ukraine

The Commercial Code of Ukraine (the ComCU or the Code (for this section)) lays down the legal grounds for business activities in Ukraine and regulates relations that emerge in the process of organisation and conduct of business activities between business operators, as well as between them and other participants of business relations.

Customers belong to the participants of business relations. Customer protection is one of the elements of the state economic policy. The CivCU and the ComCU offer a classification of Customer protection remedies which can be used both in relation to the Customers and business operators, in particular:

1) recognition of the availability and absence of rights;
2) full or partial invalidation of acts issued by public authorities and local self-governance bodies, other entities, which contradict the legislation or infringe rights and legal interests of business operators and Customers;
3) invalidation of business contracts on the grounds envisaged by law;
4) restitution of the pre-violation status;
5) termination of actions that violate the right or endanger its violation;
6) enforcement of an obligation;
7) indemnification of losses;
8) application of penalty sanctions;
9) application of operative and business sanctions;
10) application of administrative and business sanctions;
11) establishment, change, and termination of business relations;
12) other remedies envisaged by law.

A special chapter is dedicated to the Customer protection from unfair competition and monopolism.

The Code specifies the rights of a Customer as a participant of legal relations on purchase and use of goods, works, and services. It entitles Customers to:

1) state protection of their rights;
2) guaranteed consumption level;
3) proper quality of goods, works, and services;
4) goods, works, and services safety;

5) the necessary, accessible, and true information on the number, quality, and range of goods, works, and services;
6) indemnification of losses caused by goods, works, and services of improper quality, as well as the damage caused by the goods, works, and services that are dangers for human life and health in the cases envisaged by law;
7) a possibility to address the court and other competent public bodies to protect their violated rights and legal interests;
8) a possibility to unite voluntarily into Customer non-governmental organisations.

The Code contains a reference to the special Customer protection law.

The list of Customer rights set by the Code needs to be further reconciled with the international law in and EU directives.

1.1.3 Housing Code

The Housing Code (the HC or the Code (for this section)) regulates the issues related to the use and preservation of the residential sector.

It establishes the citizens' rights and obligations in terms of the use of housing resources, participation in the maintenance of buildings and adjacent territories. The Code also introduces the obligation to pay for utility services, which include water, gas, and heating supply and other services. It also envisages a possibility to introduce privileges for the payment for utility services.

The Code obliges housing and operation entities to repair and maintain the housing resources.

It also includes a number of provisions and norms which are not reconciled with other Ukrainian legislation in the area of housing and utility services and Customer protection; in particular the following amendments need to be done to the Code:

1) a number of provisions, which do not meet the current relations and cannot properly protect the right of a Ukrainian citizen to residence, need to be repealed;
2) the Code provisions need to be reconciled with the CivCU, the ComCU, and other legislation in this area; the norms of the special legislation on housing (in particular, the Law on Housing and Utility Services) need to be included into the Code;
3) there is a need to a clear and detailed regulation of relations among the residence owners, tenants, and managers (operators), the state, local self-governance bodies, and citizens in terms of security of their housing rights etc.

At the moment, there is a draft Housing Code (No.2307-1 of 30.03.2009) considered by the Ukrainian parliament aiming to regulate the relations in the area of housing and utility services, as well as the relations between Customers and building managers in a comprehensive way.

1.1.4 Law on Privatization of State Residential Sector

The Law sets the main principles for the further use and maintenance of the residences privatised by citizens. It also defines the legal regime for the maintenance and use of multi-flat buildings and the citizens involvement in their maintenance.

The Law has also introduced an obligation for the residence owners to participate in the general expenses related to the maintenance of the buildings and adjacent territories in

proportion to their part in the building property and in accordance with the procedure set by the Cabinet of Ministers.

This Law has also laid down certain principles for regulation of relations between the residence owners and providers of housing and utility services. These provisions are set in more detail in special legislation.

1.1.5 Law on Customer Protection

The Law regulates relations among Customers of goods, works, and services, producers/sellers of goods, performers of works, and service providers of various forms of ownership. It also establishes the Customer rights, as well as defines the mechanism of their protection and the principles of public policy in the area of Customer protection.

The Law defines the entities that are supposed to protect Customer rights, which include a special competent public executive authority for Customer protection, local state administration, public authorities and local self-governance bodies, and the court.

The Law lists the following Customer rights:

1) protection by the state;
2) proper quality of products and services;
3) products safety;
4) necessary, accessible, reliable, and timely information on the products, their quantity and quality, their range, as well on its producer (performer, seller);
5) indemnification of damage (losses) caused by the defective or falsified products or products of bad quality, as well as property and moral (non-property) damage caused by the products dangerous for the human health and life in the cases envisaged by law;
6) a possibility to address the court and other competent public authorities to defend the violated rights;
7) unification into non-governmental Customer organisations (Customer associations).

The above list of Customer rights is insignificantly different from the list set by the ComCU.

The Law describes in detail the Customer rights in case of violation of a service contract.

The most recent version was of the Law has been developed with due consideration of the international experience, in particular the Guidelines for Customer Protection approved by the General Assembly of the United National (Resolution No. 39/248 of 9 April 1985 as amended).

At the same time not all provisions suggested by the above Guidelines have been implemented in the Law. The list of the Customer rights recommended by international documents has not been fully borrowed, while certain Customer rights have been essentially restricted contrary to the international experience.

The Concept for Development of Technical Regulation and Customer Policy for 2006-2010 (approved by CMU Instruction No. 267-p of 11 May 2006) points out to the necessity to further improve the legislation on technical regulation and Customer protection in accordance with the WTO Agreement on Technical Barriers to Trade and EU directives.

Analysis of the norms set forth by the above Law evidences that the Law needs to be reconciled with the international law and EU directives, as well as improved in terms of extending the Customer rights and strengthening their protection.

Currently, there are amendments to the above Law (on strengthening liability for violation of Customer rights) (No.4059 of 13.02.2009) registered for consideration in Parliament. The amendments aim at improving the efficiency of Customer protection and strengthening liability for their violation (in particular, it is envisaged to increase the penalty sanctions for violation of Customer rights).

1.1.6 Law on Housing and Communal Services

The Law defines the main principles for organisation and business relations that emerge in the area of provision and consumption of housing and utility services among their producers, providers, and Customers, as well as their rights and obligations.

It sets out in detail the content of the housing and utility services, the tariff-making principles, rights and obligations of all participants of housing and utility services (producers, providers, and Customers) in the course of creation, provision, and consumption of housing and utility services. In addition, it also regulates the procedure for conclusion of service contracts.

The Law has its own definition of the "housing and utility service Customer", which, unlike in the Customer Protection Law, includes both individuals and corporations.

The Law defines the following rights of the housing and utility service Customers:

1) to receive housing and utility services of adequate quality in time and in accordance with legislation and conditions of housing and utility service contract;
2) to receive, in accordance with the procedure set by law, the necessary information on the list of housing and utility services, their cost, general monthly payment, the price/tariff structure, the consumption norms, the procedure for provision of housing and utility services, their consumption qualities etc;
3) to get an indemnification for the damage caused to their property and/or premises, as well as for the damage caused to their life or health due to the improper provision of housing and utility service or failure to provide them;
4) to have the defects, revealed in the provision of the housing and utility services, fixed within the period of time established by contract or law;
5) to make a decreased payment for the services, if they are not provided at all or in full, or if services are of worse quality, in accordance with the procedure established by contract or law;
6) to pay nothing for housing and utility services in the case of temporary absence of Customers and/or their family members, provided such absence is documented, as well as for the period of actual absence of housing and utility services defined by contract in accordance with the procedure established by CMU;
7) to get a compensation from the service provider in the amount envisaged by contract, court decision or law for the excess of the regulatory terms established for accident and restoration works;
8) to have housing and utility services quantity and quality checked in accordance with the procedure established by CMU.

Analysis of the Law evidences that it needs the following improvements:

1) specification of notions and categories of the Housing and Communal Services Sector and differentiation between the notions of "goods" and "services"; and
2) definition of rights and obligations of participants of housing and utility services.

1.1.7 Law on Heating Supply

The Law regulates production, transportation, supply, and use of heating energy, public oversight of the heating energy consumption regimes. It also sets out public policy principles in the area of hearting supply, which also include protection of Customer rights and interests.

The Law uses the notion of "the heating supply Customer" which includes both individuals and corporations. Under the Law, Customers are entitled to the following:

1) to chose one or more sources of heating energy or heating supply companies if it is possible with the existing technical conditions;
2) to receive information on the quality of heating supply, tariffs, prices, payment procedure, and heating supply consumption regimes;
3) to get the indemnification envisaged by law for the losses caused by violation of their rights provided they fulfil their obligations under the contract;
4) to get connected to the heating network in accordance with legislation;
5) to receive the volumes of heating energy in accordance with the contractual and standard parameters;
6) to have their heating supply bill recalculated with due consideration of the advance payment and the readings of the heating meters within one month upon the end of the heating period.

In terms of protection of the heating energy Customer rights, as well as the mechanism of such protection, the Law makes a reference to the Customer Protection Law.

Analysis of the Law evidences that it needs the following improvements:

1) specification of the legal status of the heating energy Customers in order to make it compliant with the Customer Protection Law and the Housing and Utility Services Law; and
2) extension of the Law to the relations dealing with hot tap water production, transportation, and supply.

1.1.8 Law on Drinking Water and Drinking Water Supply

The Law regulates relations in the area of drinking water and drinking water supply, including business activities on district and non-district water supply, tariff-making, and the rights of drinking water Customers.

Under the Law, drinking water Customers include both individuals and legal entities.

The Law establishes the conditions for conclusion of water supply contracts and defines the rights and obligations of both Customers and providers.

Drinking water Customers have the following rights:

1) to be provided with drinking water of the state standard quality; the quality and the regime of water supply should be defined on the contractual basis in the volumes that cannot be lower than the drinking water supply standards;
2) to receive, in accordance with the established procedure, full, reliable, and timely information on the quality of drinking water, volumes of its sale, supply regime, and tariff calculation procedure for the services of district water supply and sewerage;

3) to arrange and participate in public hearings to make decisions on the quality of drinking water and drinking water supply in accordance with the law;
4) representatives of the public can participate in the inspections arranged by public authorities with observance of the regime set for the access to the drinking water supply facilities;
5) to file claims with the court on indemnification of losses caused by the supply of law-quality drinking water which does not meet state standards, as well as by other violations in the area of drinking water and drinking water supply; and
6) to get connected to the district water supply and sewerage systems in accordance with the procedure established by law.

Analysis of the Law evidences that it needs to be reconciled with other legislation regulating activities in the area of housing and utility services, in particular as concerns the status of the drinking water Customers.

1.1.9 CMU Resolution on Approval of the Rules for Provision of District Heating, Cold and Hot Tap Water Supply and Sewerage Services, and a Model Contract for Provision of District Heating, Cold and Hot Tap Water Supply and Sewerage Services

The Resolution regulates relations between business operators providing housing and utility services and individuals and corporations which receive or intend to receive district heating, hot and cold tap water and sewerage services.

It also defines the rights and obligations of the parties, the conditions for provision and keeping record of the services. In particular, it specifies in more detail the following rights of the Customers of such services:

1) decreased payment if services are not provided in full, or if the Customer is absent etc;
2) elimination of the defects, revealed in the service provision, by service provider;
3) no payment for the period when they and their family members are temporary absent;
4) regularly checked service quantity and quality indicators;
5) apartment meters installed and registered;
6) periodic inspection, maintenance, and repair (including dismantling, transportation, and installation) of apartment meters;
7) provision of information on the legislation in the area of housing and utility services;
8) amendment of the contract and change of the amount of service fee on the agreement with the service provider;
7) no payment if services are not provided and a compensation if emergency works exceed the period established for their completion.

The Resolution also sets rules to monitor the quality of service and their provision.

Analysis of the act evidences that it needs the following improvements:

1) Customers should be ensured the right to information on the services, establishment of the fact of no services provided, provision of services in insufficient number or of improper quality; and

2) the procedure for settlement of disputes between Customers and service providers should be improved.

1.1.10 CMU Resolution on Approval of the Rules for Provision of Gas Supply Services to Population

The Rules regulate relations between gas supplying companies, gas distributing companies, and provide gas Customers (individuals). The act contains definitions, establishes the service provision procedures, as well as rights and obligations of service Customers, gas suppliers and distributors.

The Rules define a Customer as an individual enjoying the following rights:

1) uninterrupted receipt of gas of the relevant quality and in accordance with the procedure established by contract;
2) high quality and timely maintenance and fixing of damages of the internal building gas supply systems and outdoor gas pipelines;
3) receipt of services on installation, maintenance, and repair of gas devices and equipment, gas meters on their request;
4) inspection of the gas quality and quality of service provision;
5) decrease of the amount of payment if gas quality deteriorates and gas pressure decreases.

The above rules regulate in detail the procedure for service provision.

Analysis of the above act evidences that the following aspects need to be improved:

1) the procedure for provision of gas supply services;
2) mechanism of payment for the natural gas consumption;
3) liability provisions need to be specified.

1.1.11 CMU Resolution on Approval of the Tariff-Making Procedure for Maintenance of Buildings and Structures and Adjacent Territories

The Procedure sets the tariff-making mechanism for maintenance of buildings and structures and adjacent territories. It also offers a model agreement which defines the rights and obligations vested inherent in the Customers of the above services.

In the light of Customer protection through introduction of public oversight by the State Housing and Utility Inspection Office over the tariff-making process, the above Procedure needs to be amended accordingly.

The act also needs to be brought into compliance with the Laws of Ukraine on Housing and Utility Services and on Main Principles of Public Oversight (Control) in Business Activities as concerns establishment of the norm on state control over the observance of the Procedure.

1.1.12 Concept for the State Customer Protection Target Programme for 2008-2011

According to the Concept, the state targeted programme should aim at the protection of Customer rights, prevention of sale of dangerous and low-quality products, provision of reliable and comprehensible information on the products. It is also foreseen that the Programme should envisage certain legislative regulation measures, in particular:

1) development of new acts and bringing the current acts on Customer protection into compliance with the EU requirements; and

2) explanation of legislation on Customer protection to the public through the media and education institutions.

1.1.13 District Heating and Hot Tap Water Supply Cut-off Procedure for Individual Premises of Residential Buildings If Customers Refuse from District Heating

The Procedure defines the district heating and hot tap water supply cut-off rules.

Analysis of the act evidences that it needs the following amendments:

1) the Procedure needs to be brought into compliance with CMU Resolution No. 630 and the Laws on Heating Supply and on Customer Protection in terms of authorising owners of certain premises in the buildings (apartments etc) to do the cut-off;
2) the Customer right to refuse from the utility services needs to be further secured, in particular there should be a possibility to get disconnected from district heating and to keep the hot tap water supply services etc;
3) there is a need to eliminate the internal discrepancies in the regulation (the annex provisions do not meet the requirements of the regulation).

1.1.14 Rules for Maintenance of Buildings and Adjacent Territories and a Model List of Services on Maintenance of Buildings and Adjacent Territories and Refurbishment of Premises, Buildings, and Structures

The Rules establish the procedure for provision of buildings and adjacent territories maintenance services.

The List establishes the types of services that can be provided and their classification.

The above Rules define in detail the content of the services that should be provided to the housing and utility service Customers, the standards of their provision etc. They also envisage a possibility to assess the quality and quantity of the services provided.

1.2 General Conclusions on the Status of Legal Regulation of Customer Protection in the Housing and Communal Services Sector

Analysis of the above acts suggests the following conclusions:

1. The laws which regulate relations on Customer protection in the Housing and Communal Services Sector need to be further reconciled with the international law and EU directives.
2. Such laws also need to be further consistent and improved in terms of regulating relations among Customers, producers, and suppliers of housing and utility services, in particular as concerns strengthening of Customer protection.
3. The governmental resolutions and acts issued by other public authorities need to be brought into compliance with the laws.

Chapter 2. Analysis of the Ukrainian Legislation Regulating the Issues of Social Protection in the Housing and Communal Services Sector

2.1 General Description of the Social Protection System of Ukraine

Social Protection is a system of legal, economic, financial, and organisational means and measures aiming to protect the population from unfavourable social risks.

The Ukrainian Social Protection system consists of the following parts:

- State social aid; and
- Mandatory state social insurance.

State social aid is a system of measures on provision of material aid, social servicing and maintenance, and granting of privileges at the expense of the state and local budgets. The distinctive feature of this type of Social Protection is that it is provided independently of whether the beneficiary participates in the funding of the Social Protection measures (like in the case of social insurance). State social aid is provided in the cases defined by law due to certain life circumstances.

State social aid is provided in the following forms:

1) allowances;
2) privileges; and
3) subsidies.

It is privileges and subsidies that are used for Social Protection in the area of utility services.

Mandatory state social insurance is a system of Social Protection rights, obligations and guarantees that includes material support in case of illness, full, partial or temporary loss of working ability, loss of the breadwinner, unemployment due to insurmountable circumstances, as well as old age and in other cases envisaged by law at the expense of cash assets formed through the payment of insurance contributions by the owner or the body authorised thereby, by citizens, as well as at the expense of budget and other sources envisaged by law. Employees and other individuals defined by law are subject to mandatory state social insurance.

This type of Social Protection is provided on the basis of the following grounds:

a) the individual's direct or indirect participation in the funding of Social Protection measures (payment of insurance contributions by the individual or the individual's employer); and
b) occurrence of an insurance case (certain unfavourable circumstances in life (loss of work, loss of working ability etc).

This is the main distinctive feature of this kind of social care, and thus mandatory state social insurance is of no special interest for the Social Protection in the area of utility services.

In addition to the main state Social Protection system, there is also a so called additional social care, which envisages mainly non-material privileges and services for certain categories of citizens, in particular, employment and education privileges, provision of social services etc. This type of social care, however, also practically has nothing to do with the issues of social protection of utility service Customers.

In addition, it should be noted that together with allowances, privileges, and subsidies envisaged by the Social Protection legislation, the law, which defines the status of certain categories of individuals which are enrolled in the civil service and/or perform special functions, also envisages a special system of allowances and privileges for such individuals (military servants, command and rank staff, judges, members of parliament, and others). Many experts consider that the allowances and privileges (including on payment for housing and utility services) envisaged for this category of citizens cannot be attributed to the social care, being rather a special form of remuneration for the citizens, whose activities are important for the society, a special means to raise the level of social recognition.

In addition, to the state social care, there is also non-state Social Protection which only begins shaping in Ukraine. At the moment, it is represented in Ukraine only through non-state pension insurance and non-state social services.

2.2 General Description of the Ukrainian Legislation Regulating Social Protection in Housing and Communal Services Sector

Out of the above state Social Protection types, only the mandatory state social insurance is grounded on a basic legislative act (the Legislative Principles of Mandatory State Social Insurance in Ukraine).

In terms of state social aid, there are individual laws passed on individual types of social aid. Moreover, certain types of state social aid are no based on any legislative regulation, being governed only by by-laws (subsidies for reimbursement of expenses related to payments for housing and utility services, purchase of liquefied gas, solid and liquid stove fuel).

The legislation that regulates the issues of Social Protection in the Housing and Communal Services Sector is listed in Annex 4. The most important of them include the following:

1) Laws of Ukraine:
   - on the Status and Social Protection for the Citizens Who Suffered from Chornobyl Disaster (No.796-XII of 28.02.1991);
   - on Rehabilitation of Political Repression Victims in Ukraine (No. 962-XII of 17.04.1991);
   - on the Status of Veterans of War and Their Social Protection Guarantees (No.3551-XII of 22.10.1993);
   - on Nazi Prosecution Victims (No.1584-III of 23.03.2000);
   - on Social Protection for Children of War (No.2195-IV of 18.11.2004); and
   - on Social Protection State Social Standards and State Social Guarantees (No.2017-III of 05.10.2000).
2) CMU Resolutions:
   - on Establishment of Standards for the Use of Housing and Utility Services by the Citizens Enjoying Payment Privileges (No.879 of 01.08.1996);
   - on Simplified Procedure for Provision of Subsidies to Reimburse the Expenses Incurred Due to Payment for Housing and Utility Services, Purchase of Liquid Gas, Solid and Liquid Stove Fuel (No.848 of 21.10.1995); and

- on the New Amount of Expenses Related to Payments for Housing and Utility Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel in Case of Housing Subsidies Provided (No.1156 of 07.05.1998).

It should be noted that Article 46 of the Constitution of Ukraine mentions the subsistence minimum as a reference point for the minimal level of life to be ensured by pensions and other kinds of social allowances and aid (including privileges and subsidies).

The Law on State Social Standards and State Social Guarantees sets that the subsistence minimum is a cost value sufficient to ensure proper functioning of a human organism, preservation of a human's health, a set of food products, as well as a minimal set of non-food products and a minimal set of services necessary to ensure the main social and cultural needs of an individual.

In general, provisions of the above legislation on state social aid, and privileges and subsidies in particular, met his requirement. Under the conditions of transition economy, when the resources of the State Budget of Ukraine are limited, it is rather impossible to fulfil many of the social obligations proclaimed by the state. Therefore, there is a practice in Ukraine when validity of individual provisions of laws on provision of state social aid are stopped or specified by the State Budget Law for the relevant year. Most often this results in termination or reduction of certain payments for the current year.

The Constitutional Court has twice pointed out to the unlawfulness of this practice (Decision of 9 July 2007 on the case of social guarantees and Decision of 22 May 2008 on the case related to the subject and content of the State Budget Law).

At the same time, each State Budget Law establishes the subsistence minimums, minimal salary, and the list of family members of individuals with privileges for the next year. It also settles other issues that have direct or indirect impact on the social protection of utility service Customers. In such a way, the State Budget Law should also be attributed to the acts that regulate the issues of social protection of utility service Customers.

Even though the above Constitutional Court decisions cannot be regarded as legislation in its strict sense , they should still be taken into account and fulfilled in the context of Social Protection for the utility service Customers.

The fact that that these legislative acts were passed in different times, not very high quality of some of them and political bias have resulted in the lack of uniform terminology in the legislation related to the issues of Social Protection for utility service Customers. Such terminology is also not always reconciled with the legislation on housing and utility services. Thus, Article 12 of the Law on the Status of Veterans of War and Their Social Protection Guarantees uses the word "heating", Article 39 of the 2009 State Budget Law operates the term "heating supply", while Article 64 of the same Law refers to "heat energy". In the CMU Resolution on Simplified Procedure for Provision of Subsidies to Reimburse the Expenses Incurred Due to Payment for Housing and Utility Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel one can find both "heating supply" and "heating". In the above acts, the terms described are used as synonyms, through the terms "district heating" and "heating supply" are not identical in the sense of the Laws of Ukraine on Housing and Utility Services and on Heating Supply.

2.3 Housing and Municipal Service Payment Privileges

Article 19 of the Law on State Social Standards and State Social Guarantees sets that privileges on the payment of housing and utility, transportation, and communications services and criteria for their provision should be defined only by laws of Ukraine.

2.3.1 Law of Ukraine on the Status and Social Protection for the Citizens Who Suffered from Chornobyl Disaster

Law of Ukraine on the Status and Social Protection for the Citizens Who Suffered from Chornobyl Disaster envisages the following housing and utility service payment privileges:

2.3.1.1 Categories I and II Citizens:

a) 50%-discount for the use of residence (residential and building maintenance fees), utility services (gas, electricity, heating, water supply and sewerage, and other services) within the average consumption standards envisaged by law, telephone (the subscription fee, payment for local telephone calls made from apartment telephones and calculated on the by-second basis). The privileges mentioned in this section are also provided to the family members of the citizens who have suffered from Chornobyl disaster, and who love in the residential buildings (apartments) of all forms of ownership within the standards envisaged by law. Such family members include spouses, underage children, parents unable to work, an unmarried individual who lives with a Group I disabled individual and takes care of such individual; an individual who is under a guardianship of and lives together with an individual entitled to the privileges;

b) Individuals residing in the buildings without district heating are reimbursed 50% of the cost of the fuel purchased within the norms established for the sale to the population;

c) Individuals who live in the hall of residence are reimbursed 50% of the established payment.

The above privileges are also granted to the spouses of the deceased individual, whose death is related to the Chornobyl disaster, or to the guardian (for the period of guardianship) of the children of the deceased individual.

2.3.1.2 Category III Citizens:

Reimbursement of 50% of the cost of the fuel purchased within the standards, established for the sale to the population, to the individuals who reside on the territories of radioactive contamination before resettlement in the buildings without district heating.

2.3.1.3 Category IV Citizens:

Reimbursement of 50% of the cost of the fuel purchased within the standards, established for the sale to the population, to the individuals who reside in the buildings without district heating

It should be noted that the standards, within which the above privileges are provided, are defined not by the law itself (and not by a legislative act), but by a regulations (CMU Resolutions on Establishment of Standards for the Use of Housing and Utility Services by the Citizens Enjoying Payment Privileges (No.879 of 01.08.1996) and on Establishment of Minimal Norms to Proved the Population with Solid Fuel and Liquefied Gas and Their Cap Cost Indicators for Provision of Privileges and Housing Subsidies in 2009 at the Cost of Subventions from the State Budget to Local Budgets (No.73 of 11.02.2009).

2.3.2 Law of Ukraine on Rehabilitation of Political Repression Victims in Ukraine

Law of Ukraine on Rehabilitation of Political Repression Victims in Ukraine envisages the following housing and utility service payment privileges:

If a rehabilitated individual has become a disabled individual or is a pensioner, such individual gets a right to the "50%-discount on payment for the residential floor area and utility services within the standards envisaged by the current legislation".

The standards, within which the above privileges are provided, are set not by the Law, but by CMU resolutions.

2.3.3 Law of Ukraine on the Status of Veterans of War and Their Social Protection Guarantees

Law of Ukraine on the Status of Veterans of War and Their Social Protection Guarantees envisages the following housing and utility service payment privileges:

2.3.3.1 Individuals Disabled by War and Same Status Individuals:

a) 100%-discount on the accommodation payment within the standards established by law (21 m^2 of the total residential floor area per each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family);

b) 100%-discount on the payment for the use of utility services (gas, electricity, and other services) and liquefied gas for everyday purposes within average consumption standards;

The residential floor area, for which a heating payment discount is provided, makes up 21 m^2 of the heated area each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family).

The families which consist only of individuals unable to work get a 100%-discount for the use of gas for heating their residence provided for the double standard of the heated area (42 m^2 per each individual entitled to the discount and 21 m^2 per family).

The area for which a 100-% discount is calculated is defined in the maximal possible size within the general area of the residential premises (building) in accordance with the consumption standards, referred to above, independently of whether the family has individuals which are not entitled to a discount. If a family has individuals that are entitled to a smaller than 100%-discount, the 100%-discount is calculated first in the maximal possible amount.

c) 100%-discount on the cost of fuel, including liquefied fuel, within the standards established for the sale to the population, granted to the individuals who reside in the buildings without district heating;

The above housing, utility service, and fuel payment privileges are granted to the individuals disabled by war and their family members residing with them independently of the type of residence or form of its ownership.

d) priority free overhaul repair of private buildings and apartments.

2.3.3.2 Participants of Hostilities and Same Status Individuals:

a) 75%-discount on the accommodation payment within the standards established by law (21 m^2 of the total residential floor area per each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family);

b) 75%-discount on the payment for the use of utility services (gas, electricity, and other services) and liquefied gas for everyday purposes within average consumption standards;

The residential floor area, for which a heating payment discount is provided, makes up 21 m^2 of the heated area each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family).

The families which consist only of individuals unable to work get a 75%-discount for the use of gas for heating their residence provided for the double standard of the heated area (42 m^2 per each individual entitled to the discount and 21 m^2 per family).

The area for which a 75-% discount is calculated is defined in the maximal possible size within the general area of the residential premises (building) in accordance with the consumption standards, referred to above, independently of whether the family has individuals which are not entitled to a discount. If a family has individuals that are entitled to a smaller than 75%-discount, the 75%-discount is calculated first in the maximal possible amount

c) 75%-discount on the cost of fuel, including liquefied fuel, within the standards established for the sale to the population, granted to the individuals who reside in the buildings without district heating.

The above housing, utility service, and fuel payment privileges are granted to the participants of hostilities and their family members residing with them independently of the type of residence or form of its ownership.

2.3.3.3 War Participants:

a) 50%- discount on the accommodation payment within the standards established by law (21 m^2 of the total residential floor area per each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family);

b) 50%- discount on the payment for the use of utility services (gas, electricity, and other services) and liquefied gas for everyday purposes within average consumption standards;

The residential floor area, for which a heating payment discount is provided, makes up 21 m^2 of the heated area each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family).

The families which consist only of individuals unable to work get a 50%-discount for the use of gas for heating their residence provided for the double standard of the heated area (42 m^2 per each individual entitled to the discount and 21 m^2 per family).

The area for which a 75-% discount is calculated is defined in the maximal possible size within the general area of the residential premises (building) in accordance with the consumption standards, referred to above, independently of whether the family has individuals which are not entitled to a discount.

c) 50%-discount on the cost of fuel, including liquefied fuel, within the standards established for the sale to the population, granted to the individuals who reside in the buildings without district heating.

The above housing, utility service, and fuel payment privileges are granted to war participants and their family members residing with them independently of the type of residence or form of its ownership.

2.3.3.4 Other Individuals Covered by the Law:[1]

a) 50%- discount on the accommodation payment within the standards established by law (21 m2 of the total residential floor area per each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m2 per family);

b) 50%- discount on the payment for the use of utility services (gas, electricity, and other services) and liquefied gas for everyday purposes within average consumption standards;

The residential floor area, for which a heating payment discount is provided, makes up 21 m^2 of the heated area each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family).

The families which consist only of individuals unable to work get a 50%-discount for the use of gas for heating their residence provided for the double standard of the heated area (42 m^2 per each individual entitled to the discount and 21 m^2 per family).

The area for which a 75-% discount is calculated is defined in the maximal possible size within the general area of the residential premises (building) in accordance with the consumption standards, referred to above, independently of whether the family has individuals which are not entitled to a discount.

c) 50%-discount on the cost of fuel, including liquefied fuel, within the standards established for the sale to the population, granted to the individuals who reside in the buildings without district heating.

The above housing, utility service, and fuel payment privileges are granted to the individuals covered by the above Law and their family members residing with them independently of the type of residence or form of its ownership.

d) priority free overhaul repair of private residential buildings.

2.3.3.5 Individuals With Special Merits to the Motherland:

a) exemption of the above individuals and their family members residing with them from apartment payment independently of the form of ownership of the residential facilities, from the payment for utility services (water supply and sewerage, gas, electricity, hot tap water supply, district heating (in case of buildings without district heating – provision of the fuel purchased within the standards established for the sale to the population), and other types of utility services), from payment for liquefied gas for everyday needs, independently of the type of residential facilities;

The above privileges are preserved for the spouses and parents of the deceased Heroes of the Soviet Union, full holders of the Order of Glory, individuals awarded with four and more "For Courage" medals, as well as Heroes of Social Labour independently of the time of their death.

b) free overhaul repair of residential buildings (apartments) owned by them in accordance with the Regulation on the System of Technical Maintenance, Repair and Reconstruction of Residential Buildings.

[1] E.g. spouses, parents, children, and dependants of certain categories of privileged individuals mentioned above.

2.3.4 Law of Ukraine on Nazi Prosecution Victims

Law of Ukraine on Nazi Prosecution Victims envisages the following housing and utility service payment privileges г:

2.3.4.1 Former Juvenile Prisoners of Concentration Camps, Ghettoes, and Other Places of Forced Detention Recognised as Disabled Individuals:

a) 100%-discount on the accommodation payment within the standards established by law (21 m^2 of the total residential floor area per each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family);

b) 100%-discount on the payment for the use of utility services (gas, electricity, and other services) and liquefied gas for everyday purposes within average consumption standards;

The residential floor area, for which a heating payment discount is provided, makes up 21 m^2 of the heated area each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family).

The families which consist only of individuals unable to work get a 100%-discount for the use of gas for heating their residence provided for the double standard of the heated area (42 m^2 per each individual entitled to the discount and 21 m^2 per family).

The area for which a 100-% discount is calculated is defined in the maximal possible size within the general area of the residential premises (building) in accordance with the consumption standards, referred to above, independently of whether the family has individuals which are not entitled to a discount. If a family has individuals that are entitled to a smaller than 100%-discount, the 100%-discount is calculated first in the maximal possible amount.

c) 100%-discount on the cost of fuel, including liquefied fuel, within the standards established for the sale to the population, granted to the individuals who reside in the buildings without district heating;

d) priority free overhaul repair of private buildings and apartments.

2.3.4.2 Former Juvenile Prisoners of Concentration Camps, Ghettoes, and Other Places of Forced Detention:

a) 75%-discount on the accommodation payment within the standards established by law (21 m2 of the total residential floor area per each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m2 per family);

b) 75%-discount on the payment for the use of utility services (gas, electricity, and other services) and liquefied gas for everyday purposes within average consumption standards;

The residential floor area, for which a heating payment discount is provided, makes up 21 m^2 of the heated area each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family).

The families which consist only of individuals unable to work get a 75%-discount for the use of gas for heating their residence provided for the double standard of the heated area (42 m^2 per each individual entitled to the discount and 21 m^2 per family).

The area for which a 75-% discount is calculated is defined in the maximal possible size within the general area of the residential premises (building) in accordance with the consumption standards, referred to above, independently of whether the family has individuals which are not entitled to a discount. If a family has individuals that are entitled to a smaller than 75%-discount, the 75%-discount is calculated first in the maximal possible amount

c) 75%-discount on the cost of fuel, including liquefied fuel, within the standards established for the sale to the population, granted to the individuals who reside in the buildings without district heating.

2.3.4.3 Former Prisoners of Concentration Camps, Ghettoes, and Other Places of Forced Detention:

a) 50%- discount on the accommodation payment within the standards established by law (21 m2 of the total residential floor area per each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m2 per family);

b) 50%- discount on the payment for the use of utility services (gas, electricity, and other services) and liquefied gas for everyday purposes within average consumption standards;

The residential floor area, for which a heating payment discount is provided, makes up 21 m^2 of the heated area each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family).

The families which consist only of individuals unable to work get a 50%-discount for the use of gas for heating their residence provided for the double standard of the heated area (42 m^2 per each individual entitled to the discount and 21 m^2 per family).

The area for which a 75-% discount is calculated is defined in the maximal possible size within the general area of the residential premises (building) in accordance with the consumption standards, referred to above, independently of whether the family has individuals which are not entitled to a discount.

c) 50%-discount on the cost of fuel, including liquefied fuel, within the standards established for the sale to the population, granted to the individuals who reside in the buildings without district heating.

2.3.4.4 Souses of the Deceased Nazi Victims:

a) 50%- discount on the accommodation payment within the standards established by law (21 m2 of the total residential floor area per each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m2 per family);

b) 50%- discount on the payment for the use of utility services (gas, electricity, and other services) and liquefied gas for everyday purposes within average consumption standards;

The residential floor area, for which a heating payment discount is provided, makes up 21 m^2 of the heated area each individual residing on the same residential premises (building) and entitled to the discount and additionally 10.5 m^2 per family).

The families which consist only of individuals unable to work get a 50%-discount for the use of gas for heating their residence provided for the double standard of the heated area (42 m^2 per each individual entitled to the discount and 21 m^2 per family).

The area for which a 75-% discount is calculated is defined in the maximal possible size within the general area of the residential premises (building) in accordance with the consumption standards, referred to above, independently of whether the family has individuals which are not entitled to a discount.

c) 50%-discount on the cost of fuel, including liquefied fuel, within the standards established for the sale to the population, granted to the individuals who reside in the buildings without district heating.

d) priority free overhaul repair of private buildings and apartments

The above housing, utility service, and fuel payment privileges are granted to the Nazi victims and their family members residing with them independently of the type of residence or form of its ownership

2.3.5 Law of Ukraine on Social Protection for Children of War

Law of Ukraine on Social Protection for Children of War envisages the right of a 25%-discount on housing and utility service payments within the limits of average consumption standards for the category of citizens attributed to the children of war.

The "average consumption standards" that this and some other laws above refer to are not established by legislation. The legislation also establishes no mechanism for their definition and approval. Therefore, in practice such average consumption standards are replaced by the standards defined by the CMU Resolution on Housing and Utility Service Consumption Standards for the Individuals That Enjoy Payment Privileges.

The procedure for the funding of the above privileges is set by the CMU Resolutions on Approval of the Procedure for Funding of Local Budget Allocations for the Measures Aiming At Implementation of Social Protection State Programmes at the State Budget Expense (No.256 of 04.03.2002), on Approval of the Procedure for the Use of State Budget Funds for the Implementation of Programmes Related to the Social Protection of Citizens That Have Suffered from Chornobyl Disaster (No.936 of 20.09.2005), and a number of other acts.

Analysis of the above legislation evidences that the current law of Ukraine envisages no privileges for disabled individuals and low-income families. At the same time, it foresees a series of housing and utility service payment privileges not on the basis of lack of social care, but rather on a professional basis for military servants, law-enforcement command and rank staff, judges and others. As mentioned above, such privileges do not belong to the Social Protection area, but are rather a special form of remuneration of the citizens whose activity is important for the society, a special method to improve the level of their social recognition. The legislative acts that grant such privileges are listed in Annex 5.

2.4 Subsidies for Reimbursement of Housing and Utility Service Payments

The above privileges are provided to reimburse expenses incurred due to the payment for housing and utility serviced, purchase of liquefied gas, solid and liquid stove fuel. Unlike the majority of other types of state social aid, their provision is regulated not by laws, but rather by regulative acts (CMU Resolution on Simplified Procedure for Provision of Subsidies to Reimburse the Expenses Incurred Due to Payment for Housing and Utility Services, Purchase of Liquid Gas, Solid and Liquid Stove Fuel and CMU Resolution on the New Amount of Expenses Related to Payments for Housing and Utility Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel in Case of Housing Subsidies Provided, and some others).

A subsidy is granted as a difference between the amount of the payment for the housing and utility services, liquefied gas, solid and liquid stove fuel and the amount of the mandatory

percentage of the payment granted by the CMU to a citizen (20% or 15% of the accumulative income). A subsidy is not granted to the citizens directly (with some exceptions), but is transferred to the companies that provide housing and utility services to such citizens.

In such a way, the amount of the payment for housing and utility services, which is paid by subsidy beneficiaries within the consumption standards (the mandatory payment percentage), depends only on the amount of the accumulative family income, and not on the tariffs established for housing and utility services. This differentiates subsidies from the privileges described above, where a change of tariffs for housing and utility service has an impact on the payment made to the privilege beneficiaries.

Another distinction is that subsidies are allocated in a targeted manner, depending on the material status of the applicant, while privileges are granted to a big category of citizens without due consideration of the true material status of each specific privilege beneficiary (amendments to individual laws, which aimed at making privileges dependent on the beneficiary's material status, were recognised unconstitutional).

Allocation of subsidies and oversight of their targeted use is done by local labour and Social Protection authorities. Subsidies are paid from the State Budget of Ukraine and, in some cases, partially from local budgets.

2.5 General Conclusions on the Status of the Ukrainian Legislation Regulating the Issues of Social Protection in Housing and Utility Service Sector

Analysis of the legislation regulating the issues of Social Protection in the housing and utility service sector suggests the following conclusions on its status:

1. The above legislation consists of a big number of laws and regulative acts using inconsistent terminology; they are also often not reconciled with the legislation on housing and utility services.
2. The housing and utility service payment privileges are often provided to a big category of citizens independently of their material status and their need for social care.
3. The system of housing and utility service payment privileges is not balanced: in parallel with the system of Social Protection privileges, there is also a system of privileges granted on the basis of profession to the citizens, which cannot be attributed to the vulnerable social group; at the same time, there are categories which need Social Protection (law income families, disabled individuals) and get no housing and utility service payment privileges.
4. The housing and utility service payment privileges and subsidies do not extent (with some exceptions) to the payment for the overhaul repair of buildings and apartments. This deprives the low-income owners of any incentives for the overhaul repair of their residence (including for energy efficient measures, like heat insulation of protecting structures etc.)
5. The housing and utility service consumption standards, within which privileges are provided, are defined in a different way by different regulative acts, including in by-laws (despite of the lack of sufficient legislative grounds), while some categories of citizens get privileges without any restriction by consumption standards.

Conclusions

The current law of Ukraine which regulates the issues of Customer protection and Social Protection in Housing and Communal Services Sector needs to be improved.

The main drawbacks which need to be corrected are as follows:

1. Legislative acts are not reconciled with each other; regulative acts are not always compliant with the legislative ones.
2. Ukrainian laws need to be made compliant with international law and EU directives in this area.
3. The laws, which regulate Customer rights in the Housing and Communal Services Sector, need to be reconciled and improved in terms of regulation of relations between Customers, producers, and suppliers of housing and utility services in order to strengthen the Customer rights.
4. The system of housing and utility payment privileges needs to be reviewed:
   - Such privileges are provided to a big category of citizens independently of their material status and their need for social care;
   - The housing and utility service consumption standards, within which privileges are provided, are defined in a different way by different regulative acts, including in by-laws (despite of the lack of sufficient legislative grounds), while some categories of citizens get privileges without any restriction by consumption standards;
   - In parallel with the system of Social Protection privileges, there is also a system of privileges granted on the basis of profession to the citizens, which cannot be attributed to the vulnerable social group; at the same time, there are categories which need Social Protection (law income families, disabled individuals) and get no housing and utility service payment privileges.
5. The housing and utility service payment privileges and subsidies do not extent (with some exceptions) to the payment for the overhaul repair of buildings and apartments. This deprives the low-income owners of any incentives for the overhaul repair of their residence.

Annexes

Annex 1:
Laws of Ukraine Regulating the Issues of Customer Protection in the Housing and Communal Services Sector

No.	Law of Ukraine	Adoption Date and Number	Competence	Consultant's Improvement Notes
1	Civil Code	No. 435-IV of 16.01.2003	Regulating civil relations in general, the Code also governs protection of private and corporate rights, as well as defines the remedies for defence of such rights and outlines the Customer rights in the legal relations that emerge on the basis of residential lease contracts, purchase and exchange contracts, contractor agreements, service contracts etc.	Norms and provisions of the Code on the status of individuals, ownership, contracts, and protection of rights can be used as a basis for developing legal environment for protection of Customers of housing and utility services.
2	Commercial Code	No. 436-IV of 16.01.2003	The Code lays down the legal grounds for business activities in Ukraine and regulates relations that emerge in the process of organisation and conduct of business activities between business operators, as well as between them and other participants of business relations. Customers belong to the participants of business relations. Customer protection is one of the elements of the state economic policy. The CivCU and the ComCU offer a classification of Customer protection remedies which can be used both in relation to the Customers and business operators. The ComCU defines remedies for protection of rights.	Provisions of the Code on protection from unfair competition and monopolism define Customer rights as an object of commercial violations.
3	Housing Code of the Ukrainian SSR	No. 5464-X of 30.06.1983	The Code regulates the issues related to the use and preservation of the residential sector. It establishes the citizens' rights and obligations in terms of the use of housing resources, participation in the maintenance of buildings and adjacent territories. The Code also introduces the obligation to pay for utility services, which include water, gas, and heating supply and other services. It also envisages a possibility to introduce privileges for the payment for utility services.	The Code needs to be either amended or presented in a new version for the following improvements to be done: 1) a number of provisions, which do not meet the current relations and cannot properly protect the right of a Ukrainian citizen to residence, need to be repealed; 2) the Code provisions need to be reconciled with CivCU, ComCU, and other legislation in this area;

No.	Law of Ukraine	Adoption Date and Number	Competence	Consultant's Improvement Notes
			The Code obliges housing and operation entities to repair and maintain the housing resources. It also includes a number of provisions and norms which are not reconciled with other Ukrainian legislation in the area of housing and utility services and Customer protection.	the norms of the special legislation on housing (in particular, the Law on Housing and Utility Services) need to be included into the Code; 3) relations among the residence owners, tenants, and managers (operators), the state, local self-governance bodies, and citizens should be defined more clearly in terms of security of housing rights etc.
4	Law on Privatisation of State Resid.Sector	No. 2482-XII of 19.06.1992	The Law sets the main principles for the further use and maintenance of the residences privatised by citizens; defines the legal regime for the maintenance and use of multi-flat buildings and the citizens involvement in their maintenance.	
5	Law on Customer Protection	No. 1023-XII of 12.05.1991	The Law regulates relations between Customers of goods, works, and services, producers/sellers of goods, performers of works, and service providers of various forms of ownership. It also establishes the Customer rights, as well as defines the mechanism of their protection and the principles of public policy in the area of Customer protection.	Analysis of the norms set forth by the above Law evidences that the Law needs to be reconciled with the international law and EU directives, as well as improved in terms of extending the Customer rights and strengthening their protection.
6	Law on Housing and Utility Services	No. 1876-IV of 24.06.2004	The Law defines the main principles for organisation and business relations that emerge in the area of provision and consumption of housing and utility services among their producers, providers, and Customers, as well as their rights and obligations. It sets out in detail the content of the housing and utility services, the tariff-making principles, rights and obligations of all participants of housing and utility services (producers, providers, and Customers) in the course of creation, provision, and consumption of housing and utility services. In addition, it also regulates the procedure for conclusion of service contracts.	Analysis of the Law evidences that it needs the following improvements: 3) specification of notions and categories of the Housing and Communal Services Sector and differentiation between the notions of "goods" and "services"; 4) definition of rights and obligations of participants of housing and utility services.
7	Law on Heating Supply	No. 2633-IV of 02.06.2005	The Law regulates production, transportation, supply, and use of heating energy, public oversight of the heating energy consumption regimes. It also sets out public policy principles in	Analysis of the Law evidences that it needs the following improvements: 1) specification of the legal status of the heating

No.	Law of Ukraine	Adoption Date and Number	Competence	Consultant's Improvement Notes
			the area of hearting supply, which also include protection of Customer rights and interests.	energy Customers in order to make it compliant with the Customer Protection Law and the Housing and Utility Services Law; 2) extension of the Law to the relations dealing with hot tap water production, transportation, and supply.
8	Law on Electricity	No. 575/97-BP of 16.10.1997	The Law defines legal, economic, and organisation principles of activities in the electricity sector and regulates relations that concern production, transmission, supply, and use of electricity, energy security of Ukraine, competition, and protection of Customers and employees.	
9	Law on Drinking Water and Drinking Water Supply	No. 2918-III of 10.01.2002	The Law regulates relations in the area of drinking water and drinking water supply, including business activities on district and non-district water supply, tariff-making, and the rights of drinking water Customers. Under the Law, drinking water Customers include both individuals and legal entities. The Law establishes the conditions for conclusion of water supply contracts and defines the rights and obligations of both Customers and providers.	Analysis of the Law evidences that it needs to be reconciled with other legislation regulating activities in the area of housing and utility services, in particular as concerns the status of the drinking water Customers.

Annex 2:
Bills Related to Customer Protection in the Housing and Communal Services Sector

No.	Title	Registration No. and Date	Sponsor	Key Developer	Competence	Consultant's Improvement Notes
	Bill on Amendment of the Law on Housing and Utility Services (on the use of a privileged tariff for housing and utility services)	3667 of 28.01.2009	MP		The bill envisages introduction of a privileged housing and utility services tariff for the disciplined payers. For the first time, this is proposed to be introduced for the entire country. It is expected that this norm will help to improve the payment levels. It also introduces a new stimulating function into the payment mechanism. The bill aims to make the changes that would strengthen the current Law in terms of powers of the local self-governance bodies in the Housing and Communal Services Sector.	
	Bill on Amendment of the Law on Housing and Utility Services	4686 of 23.06.2009	CMU	Ministry of Housing and Communal Services Sector	The bill has been developed for further improvement of the legislation which regulates relations in the area of utility services (district hot and cold tap water supply, water sewerage, electricity and gas supply), housing services (building, structure, and adjacent territory maintenance services; repair of buildings and structures, waste management) and services on building and structure management.	
	Draft Housing Code of Ukraine	2307-1 of 30.03.2009	CMU	Ministry of Housing and Communal Services Sector	The draft Code aims to regulate all aspects of housing relations, including housing and utility services.	The draft Code does not take into account a number of acts which should be included into it (Law on Housing and Utility Services) and be cancelled; some of its norms are incompliant with the Constitution; the proposed needs to be essentially improved.

No.	Title	Registration No. and Date	Sponsor	Key Developer	Competence	Consultant's Improvement Notes
	Bill on Amendment of the Law on Heating Supply (on regulation of the legal relations in the area of hot tap water supply)	5032 of 29.07.2009	MP		The bill enhances the coverage of the Heating Supply Law by extending it to the relations dealing with hot tap water production, transportation, and supply. For this purpose, a number of new definitions are introduced (e.g. "hot water", "hot water supply", "hot water producer", "hot water quality"), while the existing ones are specified. The bill also defines the rights, obligations, and responsibility of hot tap water producers and Customers. In addition, the bill focuses on relations between hot water producers and drinking water (cold) water producers. Under the bill, hot water producers are obliged to purchase drinking (cold) water from its producer or supplier in accordance with the procedure envisaged by Law on Drinking Water and Drinking Water Supply on the basis of a contract and the tariffs approved in accordance with the established procedure.	

Annex 3:
Draft Regulations on Protection of Customer Rights in Housing and Communal Services Sector

No.	Draft Regulation	Status	Developer	Description	Consultant's Notes
1	Draft CMU Resolution on Extension of the Regulation on Tariff-Making for Maintenance of Buildings, Structures, and Adjacent Territories	20.07.2009 Regulation Publication Notification	Ministry of Housing and Communal Services Sector	The draft resolution brings the Regulation on Tariff-Making for Maintenance of Buildings, Structures, and Adjacent Territories, approved by CMU Resolution No. 529 of 20.05.2009 (the Regulation) into compliance with the Laws on Housing and Utility Services and on Main Principles of State Oversight (Control) in Business as concerns establishment of standards for state control over the observance of the Regulation.	The Regulation is supplemented with a new section "State Control Over the Observance of This Regulation" and a new paragraph 37 on the exercise of state control over the fulfilment of the Regulation.
2	Draft CMU Resolution on Approval of Amendments to the Rules for Provision of Gas Supply Services to the Population	16.06.2009 Regulation Publication Notification	National Commission for Electricity Regulation	The Rules approved by CMU Resolution No. 2246 of 09.12.1999 need to be approved as concerns: - the procedure for provision of gas supply services; - payment mechanism for the consumption of natural gas; and - specification of responsibility provisions.	
3	Draft Order of the Ministry of Housing and Communal Services Sector on Approval of the Regulation on Public Inspector in the Housing and Communal Services Sector	07.07. 2009	Ministry of Housing and Communal Services Sector	The draft order has been developed on the basis of Part 1 Article 9 of the Housing and Utility Services Law and Paragraph 13 of the Regulation on the State Housing and Utility Inspection approved by CMU Resolution No. 798 of 10.09.2008 No. 798. The order approves the Regulation on the Public Inspector in Housing and Communal Services Sector.	

Annex 4:
Legislation on Social Protection for Customers in the Communal Services Sector

No.	Legislation	Competence
1.	**Laws of Ukraine**	
1.1.	Law of Ukraine on the Status and Social Protection for the Citizens Who Suffered from Chornobyl Disaster (No.796-XII of 28.02.1991);	The Law defines the main principles for the exercise of the constitutional rights of the citizens, which have suffered from Chornobyl disaster, for protection of their health and life and establishes the integral procedure for the definition of zone categories of the radioactively contaminated territories, living and working conditions, and social care.
1.2.	Law of Ukraine on Rehabilitation of Political Repression Victims in Ukraine (No. 962-XII of 17.04.1991)	The Law restores the rights and establishes compensation for illegal repressions and privileges for the rehabilitated individuals.
1.3.	Law of Ukraine the Status of War Veterans and Their Social Protection Guarantees (No.3551-XII of 22.10.1993)	The Law defines the legal status of war veterans, ensures development proper living conditions for them, and promotes respectful attitude to them in the society.
1.4.	Law of Ukraine on Nazi Prosecution Victims (No.1584-III of 23.03.2000)	The Law defines legal, economic, and organisational principles of the state policies in relation to the Nazi prosecution victims and aims at their social protection and preservation of their memory.
1.5.	Law of Ukraine on Social Protection for Children of War (No.2195-IV of 18.11.2004)	The Law establishes the legal status of the children of war, defines the principles of their social car, and guarantees social security to them through provision of privileges and state social support.
1.6.	Law of Ukraine on Social Protection State Social Standards and State Social Guarantees (No.2017-III of 05.10.2000	The Law sets legal principles for the formation and application of state social standards and norms aiming at the implementation of the main social guarantees established by the Constitution and laws of Ukraine.
1.7.	Law of Ukraine on the 2009 State Budget (No.835-VI of 26.12.2008)	In terms of the social protection issues, the Law establishes the amounts the living standards, minimal salaries, the list of the privileged individuals' family members etc.
2.	**Cabinet of Ministers (CMU) Resolutions**	
2.1.	CMU Resolution on Certain Issues for Definition of the Accumulative Family Income for Certain Types of Social Aid (No.1084 of 20.12.2008)	
2.2.	CMU Resolution on Establishment of Minimal Standards for Provision of Solid Fuel and Liquefied Gas to the Population and Cap Indicators of Their Cost for Provision of Privileges and Housing Subsidies in 2008 at	

No.	Legislation	Competence
	the Expense of State Budget Subventions to Local Budgets (No.150 of 05.03.2008)	
2.3.	CMU Resolution on Establishment of Minimal Standards for Provision of Solid Fuel and Liquefied Gas to the Population and Cap Indicators of Their Cost for Provision of Privileges and Housing Subsidies in 2009 at the Expense of State Budget Subventions to Local Budgets (No.73 of 11.02.2009)	
2.4.	CMU Resolution on Establishment of Standards for the Use of Housing and Utility Services by Individuals Enjoying Payment Privileges (No.879 of 01.08.1996)	
2.5.	CMU Resolution on Establishment of Temporary Standards for Private Consumption of Electricity and Natural Gas Paid with a Subsidy (No.959 of 01.12.1995)	
2.6.	CMU Resolution on Approval of Standards for Private Unmetered Gas Consumption (No.619 of 08.06.1996)	
2.7.	CMU Resolution on Approval of the Procedure for the Use of State Budget Funds for Implementation of Programmes Related to the Social Protection for Citizens That Have Suffered from Chornobyl Disaster (No.936 of 20.09.2005)	
2.8.	CMU Resolution on Approval of the Procedure for the Transfer of State Budget Subventions to Local Budgets in 2009 for Provision of Privileges, Subsidies, and Compensations (No.20 of 11.01.2005)	
2.9.	CMU Resolution on Approval of the Procedure for Funding Local Budget Allocations for Implementation of Measures Aiming at Implementation of State Social Protection Programmes at the Expense of State Budget Subventions (No.256 of 04.03.2002)	
2.10.	CMU Resolution on Provision of Cash Subsidies to the Population to Compensate Expenditures for the Purchase of Liquefied Gas, Solid, and Liquid Stove Fuel (No.1763 of 12.12.2001)	
2.11.	CMU Resolution on the New Amount of Subsidised Expenditures for Housing and Utility Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel (No.1156 of 07.05.1998)	
2.12.	CMU Resolution on the Procedure for Attributing Certain Categories of Citizens to the Relevant Categories of Citizens Who Have Suffered from	

No.	Legislation	Competence
	Chornobyl Disaster (No.674 of 02.12.1992)	
2.13.	CMU Resolution on Allocation of Subsidies to the Citizens, Who Temporary Reside In the Exclusion and Unconditional (Mandatory) Resettlement Zones, to Reimburse Expenditures for Housing and Utility Services, Purchase of Liquefied Gas, Solid and Liquid Stove Fuel (No.1833 of 26.11.2003)	
2.14.	CMU Resolution on Simplified Procedure for Provision of Subsidies to Reimburse the Expenses Incurred Due to Payment for Housing and Utility Services, Purchase of Liquid Gas, Solid and Liquid Stove Fuel (No.848 of 21.10.1995)	The Resolution approves the regulation which establishes the conditions for granting and the procedure for provision of monthly targeted cashless subsidies to citizens to reimburse them for their housing and utility services expenses. The regulation also establishes the procedure for the payment of a cash subsidy for the purchase of liquefied gas, solid and liquid stove fuel.
3.	**Orders of Other Central Executive Authorities**	
3.1.	Order of the Ministry of Labour and State Taxation Administration on Approval of the Procedure for Provision by State Tax Inspection Office of Information on Incomes of Individuals Requesting Social Aid (No.82/171 of 13.04.2000)	
3.2.	Order of the Ministry of Labour, Ministry of Economy, Ministry of Finance, State Statistics Committee, State Committee for Youth and Sport Affairs on Approval of the Guidelines for Calculation of Cumulate Family Income for All Types of Social Aid (No.486/202/ 524/455/ 3370 of 15.11.2001)	
3.3.	Order of the Ministry of Labour, Ministry of Finance, and Ministry of Justice on Approval of the Procedure for the Return of Funds Paid in Excess Under the Allocated Subsidies (No.39/283/90/5 of 29.12.1997)	
3.4.	Order of the Ministry of Labour, Ministry of Finance, Ministry of Economy, State Committee for Youth and Sport Affairs, State Construction Committee, State Statistics Committee on Approval of the Procedure for Inspection of the Targeted Use of Budget Allocation Envisaged for the Provision of Subsidies and Targeted Social Aid to the Population (No.119/167/ 96/114/ 175/266 of 21.07.1999)	

Annex 5:
Legislative Acts of Ukraine Establishing Profession-Based Privileges for the Housing and Utility Service Payments

No.	Legislative Act
1.	Law of Ukraine on Militia (No. 565-XII of 20.12.1990)
2.	Law of Ukraine on Education (No. 1060-XII of 23.05.1991)
3.	Law of Ukraine on Public Prosecution (No. 1789-XII of 05.11.1991)
4.	Law of Ukraine on Social and Legal Protection of Military Servants and Their Family Members (No. 2011-XII of 20.12.1991)
5.	Law of Ukraine on the Status of Judges (No. 3913-XII of 02.02.1994)
6.	Law of Ukraine on Veterinary Medicine (No. 4045-XII of 25.02.1994)
7.	Law of Ukraine on Fire Safety (No. 618/97-BP of 05.11.1997)
8.	Law of Ukraine on the Status of Veterans of Military Service, Law-Enforcement Bodies, and Some Other Individuals and Their Social Protection (No. 203/98-BP of 24.03.1998)