

The path forward for the housing lease system of reunified Korea*

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South and North Korea have diametrically opposite property systems, the disparity of which is most evident in respect of immovables. While South Korea, a capitalist market economy, adopts an open market approach, North Korea under communist rule favors a heavily centralized and strictly regulated approach towards immovable property. Such a stark contrast will prove be very challenging in harmonizing the two systems if the time comes for reunification on the Korean peninsula. Although it is virtually impossible to predict the form and process by which reunification may occur, it is vital that we prepare for such an event. The objective of this paper is to do just that by considering some of the critical questions that are likely to arise in the process of harmonizing the property and housing systems of South and North Korea. One such question regards the matter of privatization. Given the general lack of housing in North Korea, we need to introduce special legislation in the Northern part of the Korean peninsula allowing for, as a rule, one house per household, at least during the initial stages of the reunification. Also, only those who are officially registered by the North Korean authorities as the lawful possessors of these houses should be recognized as being viable for acquiring house ownership. The other critical question addressed in the paper is the direction of reorganizing the housing lease system in post-reunification Korea. The current Housing Lease Protection Act of South Korea will be inadequate for applying in the North. The matters of its scope of application, the opposing power of the lessee, duration of lease, regulation of rent and the right to demand renewal of the lease contract are all dealt with in the paper.

Keywords: housing, privatization, ownership, usage right, South Korea, North Korea, reunification of Korea.

Introduction

Ever since the armistice of 1953 that brought the devastating 1950–1953 Korean War to an end¹, the Republic of Korea (hereinafter: South Korea) and the Democratic People's Republic of Korea (hereinafter: North Korea) have maintained radically different property systems. While South Korea, a capitalist market economy, adopted an open market approach, North Korea under communist rule favored a heavily centralized and strictly regulated approach towards immovable property. In the immediate wake of the armistice, North Korea developed a housing policy that was premised on the State's monopoly over

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¹ Armistice Negotiations // United Nations Command. Available at: <https://www.unc.mil/History/1951-1953-Armistice-Negotiations/> (accessed: 11.09.2021).

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the construction, supply and assignment of houses to its people², an approach that has formally stayed intact till the present day^{3, 4}, although due to economic hardships, especially since the 1990s⁵, the policy is largely regarded as being unsustainable and unsuccessful⁶. As such, during the last several decades, the disparity in the housing systems between the South and North has only kept growing⁷. A comparison of the provisions in the Civil Code of South⁸ and North Korea shows how the two are at odds with each other. According to article 211 (Contents of ownership) of the Civil Code of South Korea, “An owner has the right, within the scope of law, to use, take the profits of, and dispose of, the article owned”. As for the Civil Code of North Korea, article 3 (Principle of Socialist Property Regarding Means of Production)⁹ stipulates that “Socialist ownership regarding means of production is the economic foundation of the Democratic People’s Republic of Korea. The State shall strengthen in property relationships the planned administration and operation of the national economy which is founded in socialist ownership to constantly consolidate the socialist economic system”¹⁰. Unlike the Civil Code of South Korea that, as a rule, places no general restriction on the free ownership of all things, including immovable property, the Civil Code of North Korea, on the contrary, in principle does not allow for the ownership of the means of production, among which immovable property is most important.

Aside from the diametrically opposite legal systems regarding immovable property, North Korea is experiencing a severe housing shortage that is unlikely to be overcome in

² For a detailed description of the history of property ownership in North Korea, see *Kolja Naumann*. Distribution of Land Property in North Korea after Reunification: A Constitutional Point of View // North Korean Review. 2009. Vol. 5, no. 1. P.79–80.

³ According to article 3 of the Housing Act of North Korea (hereinafter: Housing Act), “It is a natural requisite of the socialist system of the Democratic People’s Republic of Korea to be responsible for and solve the housing problems of the people. The State constructs and distributes modern urban housing and rural housings at the cost of the state [살림집법 제3조(국가부담에 의한 살림집보장원칙) 인민들의 살림집문제를 국가가 책임지고 원만히 해결해주는 것은 우리 나라 사회주의제도의 본성적요구이다.]” (Translation of the provision is cited from: *Baek Cheong-Hoon et al.*, Mechanisms of housing marketisation in North Korea // Habitat International. 2021. Vol. 113. P.2).

⁴ Unfortunately, there is no official source of legal norms of North Korea in English. However, there are English translations of important legislative acts provided by various institutions online, although not many can be considered reliable. Therefore, for the sake of accuracy, aside from a few exceptions, all English translations of North Korean legal provisions will be accompanied by the original text in Korean. The Korean text of all North Korean law that is introduced in this paper is provided by a South Korean government institution at the following address: https://policy.nl.go.kr/search/searchDetail.do?rec_key=SH2_PLC20220283778 (accessed: 25.03.2022).

⁵ The acute economic problems that North Korea started facing in the 1990s was the result of the breakup of the socialist block in the 1980s (문흥안, “북한살림집법을 통해 본 북한부동산시장의 변화와 통일시 시사점”, 『비교사법』 제24권 제2호, 2017, 734면 [Moon Heung-Ahn. Changes in North Korean Real Estate Market Reflected on North Korea Housing Act and its Implications on Reunification // Journal of Comparative Private Law. 2017. Vol. 24, no. 2. P. 734]).

⁶ 법무부, “북한의 주택 제도 실태”, 『북한실태 연구보고』, 2011, 115면 [Ministry of Justice, Republic of Korea. The current situation of the housing system in North Korea // A study report of the situation in North Korea. 2011. P. 115].

⁷ For an overview of the housing status in North Korea, see *Baek Cheong-Hoon et al.*, Mechanisms of housing marketisation in North Korea // Habitat International. 2021. Vol. 113. P.2–4.

⁸ An English translation of the provisions of south Korea’s Civil Code and other legislative acts is provided by the Korea Law Translation Center at the Korea Legislation Research Institute, which is accessible at the following web page: https://elaw.klri.re.kr/eng_service/main.do (accessed: 12.03.2022).

⁹ 민법 제3조(생산수단에 대한 사회주의적소유의 원칙) 생산수단에 대한 사회주의적소유는 조선민주주의인민공화국의 경제적기초이다. 국가는 재산관계에서 사회주의적소유에 기초한 인민경제의 계획적관리를 영을 강화하여 사회주의경제제도를 끊임없이 공고히 하도록 한다.

¹⁰ The English translation of the provisions of the Civil Code of North Korea is provided by Law and North Korea, which is accessible at: <https://www.lawandnorthkorea.com/laws/civil-law-2007> (accessed: 14.03.2022).

the foreseeable future¹¹. Naturally, in the event of a reunification of the two Koreas, the matter of housing in the northern part of the Korean peninsula will be crucial for the success and, more importantly, the stability of post-reunification Korea. In this regard, one of the critical legal questions that will need to be addressed is whether houses in North Korea should be equally redistributed among its local population. Another vital matter is whether legal ownership (as opposed to mere usage rights) of such houses should be recognized, and if so, on what legal grounds. Even usage rights under current North Korean law will be far from easy to harmonize with South Korea's housing lease system. This is especially so since not only are there significant legal barriers that are difficult to overcome, but there will be numerous political, legislative and economic problems that will arise prior to, during and in the aftermath of the reunification. These problems will prove to be extremely challenging and will therefore require a comprehensive approach for their resolution. In this respect, the main provisions of the Housing Lease Protection Act of South Korea (hereinafter: Housing Lease Protection Act) and the special economic and social circumstances in North Korea, and its relevant legal norms, as well as the reunification experience of Germany need to be examined in detail.

Below I will delve into the matter of privatization of housing in North Korea, after which I discuss the path forward for the housing lease system of post-reunification Korea. The paper will end with a short conclusion of the conducted study.

1. The privatization problem of North Korean housing

1.1. The general direction of privatization of North Korean houses

In the event of a Korean reunification, we need to consider the following issues regarding the determination of the general direction of privatizing houses in North Korea.

First, in setting the general direction of privatizing houses in North Korea, we should consider the need to at least provide the same degree of protection of living conditions to North Korean residents, as of the moment of reunification. Here, deterioration can be understood both in material and legal terms.

Regarding the material aspect of living standards, it seems fair to say that North Koreans are expected to be better off as a result of reunification. As has been mentioned above, the living conditions of present-day North Koreans is quite dire, especially outside the capital city of Pyongyang and a few urban areas¹². This is largely because most houses are very old and have not been adequately renovated since the middle of the 1990s¹³. Since a combination of government policies and market forces will result in the flow of capital and funds into the North after reunification, renovations of current houses and construction of new houses in the northern part of the Korean peninsula will become active.

From a legal perspective, reunification should not weaken or decrease the legal rights of North Koreans. One must be aware of the fact that a legal enhancement of North Ko-

¹¹ North Korea suffers from housing shortage: report // Yonhap News Agency. 28 April, 2018. Available at: <https://en.yna.co.kr/view/AEN20180428002100320> (accessed: 12.12.2020).

¹² As of late, Pyongyang has witnessed an improvement in housing conditions, due to the construction projects launched in January of 2021. Although some construction movement can be seen in other parts of North Korea, it is a far cry from seeing an actual improvement in the living circumstances of the general public in the rest of North Korea. For a detailed analysis of the circumstances in North Korea, see 박희진, 북한의 주택건설 현황과 생활환경 실태, 『보건복지포럼』 제298권, 2021, 37-40면 [Park Hee-Jin. The Current Status of Housing Construction and Residential Environment in North Korea // Health and Welfare Policy Forum. Vol. 298. 2021. P.37-40].

¹³ 통일부 통일교육원, 『2016 북한 이해』, 서울: 통일교육원 교육개발과, 2015, 313면 [Ministry of Unification, National Institute for Unification Education. 2016 Understanding North Korea. Seoul: National Institute for Unification Education, 2015. P.313].

reans' rights is not automatically guaranteed by reunification. There must be a conscious decision towards such an objective. Considering this, we need to introduce special legislation in the Northern part of the Korean peninsula allowing for, as a rule, one house per household, at least during the initial stages of the reunification. Such special legislative measures will be necessary since South Korea knows no such restrictions regarding house ownership. Given the current housing situation in North Korea, recognizing full freedom of house ownership in the immediate wake of reunification will prove to be inappropriate.

Special attention should be given to the possible scenarios where certain individuals (e.g. high-level officials in the North Korean government) possess multiple houses. It is necessary to stipulate the legal grounds for denying ownership of houses in respect of such individuals. Most notably, ownership should not be permitted in the case of unlawful possession of multiple houses or de facto possession of a house which was not registered under North Korean law¹⁴. Of course, even here the legal conditions should not be applied formally. All relevant circumstances, including the status of the possessors, their economic standard of living and details of how the house was obtained should be considered when determining the matter of recognizing ownership of houses.

Second, post-reunification Korea must take measures necessary for allowing North Koreans to continue their residence in the houses that they will be occupying at the moment of reunification. Here, we should reflect on the German experience, where there was no shortage of East Germans who moved to West Germany due to economic problems in East Germany arising from actual and potential unemployment. Therefore, it is vital that North Koreans keep their places of work and thus maintain a sustainable environment that will be able to retain the labor force in North Korea. This means that rather than simply placing an emphasis on efficiency and implementing corporate privatization (as was the case in Germany), we will need to develop measures with a focus on rehabilitating corporations. Also, we need to avoid attempts at currency conversion (East-West exchange rate of 1:1) and high-wage policies that were implemented in Germany, which led to a sharp decline in the competitiveness of the overall East German industry, resulting in mass unemployment and migration to West Germany¹⁵.

Third, the general direction of privatization of North Korean houses needs to be comprehensive in nature, to contribute to the social and political stability of post-reunification Korea¹⁶. Currently, aside from individual property that is intended for consumption, most

¹⁴ Among the most important of such North Korean legislation are the Housing Act (살림집법), Real Estate Maintenance Act (부동산관리법) and others.

¹⁵ 김창권, "독일 통일 이후 구동독지역 인구이동 및 인구변화와 한반도 통일에 주는 정책적 시사점", 『경상논총』, 제28권 제1호, 2010, 51면 [Kim Chang-Kwon. Policy Implications for Korean Reunification of the Population Migration and Changes after German Reunification // *Kyongsang Law Review*. 2010. Vol. 28, no. 1. P. 51].

¹⁶ In order for post-reunification Korea to achieve its goal of social and political stability, it needs to minimize the costs of reunification. In the case of Germany, based on the expenditures in the public sector, it is estimated that the reunification costs amounted to 1.6 trillion Deutsch marks while per capita GDP of East Germany compared to that of West Germany rose from 33 to 63 % between 1991 and 1999. This means that annually around 6 % of West Germany's GDP had been transferred to the East. The number increases to around 7–8 % if we include the private sector. Such massive expenditures were related to measures enhancing social security. Of all the expenditure, about 12 % were spent on social indirect capital, whereas 51 % was spent on social security. The costs were so high since a significant amount was spent on insurance and unemployment benefits which were necessary to prevent large-scale movement of East Germans to West Germany and also reduce their sense of deprivation. We should consider the German case and prepare meticulously for the reunification of Korea by analyzing the appropriate scope of expenditure on social security and necessary budget (신민영·최문박, "독일 통일로 본 통일경제의 주요 이슈", 『LG Business Insight』 제1335호, 2015, 15–16면 [Shin Min-Young & Choi Moon-Bak. Main Issues of the Economy after Reunification Based on the German Experience // *LG Business Insight*. 2015. Vol. 1335. P. 15–16]).

properties, according to the principle of planned socialist economy, belong to the state and cooperative organizations¹⁷. Considering that compared to their neighbors in the South, North Koreans have less understanding of ownership and other legal rights under private law, and less experience in the accumulation of wealth and capital, we expect to see difficulties in the management and maintenance of property. Therefore, it is crucial to develop programs for enhancing the North Koreans' understanding of the capitalist system, the meaning of capital accumulation, the financial system, property management and other institutions in the process of reunification. Going ahead with the privatization of houses without having such measures in place will only lead to the same mistake that was made by the Germans in the 1990s. Such a situation will ultimately result in the capital rich South obtaining most of the ownership of houses in North Korea. This should be avoided at all costs.

As such, different problems on many different levels need to be addressed when tackling the matter of privatization of North Korean houses. Also, in setting the general direction of housing policies after the reunification of Korea, there should be introduced measures for constructing state-owned rental housing, as well as for the active development of real estate in the private sector. Given the realities of North Korea, the lack of housing will be a huge problem, and this is why increasing the supply of housing is essential. However, it is equally, if not more important to recognize the critical role of the private sector in rebuilding the housing sector in North Korea, since its vitalization will significantly impact the local economy of North Korea. It is however critical that we prevent reckless development from resulting in a sharp rise in property prices since speculation in the real estate market will most certainly pose a significant threat. All in all, in determining the general direction of privatization of North Korean houses, we need to prevent such problems like speculation and concentration of ownership in the hands of South Korean individuals and corporations.

1.2. The special problem of redistributing house ownership

After Korea's reunification it will be important to determine whether it is desirable to redistribute ownership to the actual occupants (at the time of reunification) of the houses in North Korea, or whether the scope of redistribution should be restricted to only those who are officially registered by the North Korean authorities as the lawful possessors of these houses. In this regard, we need to consider the Russian example of transferring ownership on a gratuitous basis¹⁸. The Russian Federation opted for gratuitously providing the ownership of state-owned rental housing to their possessors who were officially registered as lessees. I believe that the Russian method is optimal in setting the general direction of housing privatization after reunification in Korea. This is because although currently all houses in North Korea are state-owned and are strictly prohibited from being sold, in reality the sale of houses, albeit illegal, is becoming an increasingly prevalent phenomenon in

¹⁷ Article 20 of the North Korean Constitution stipulates as follows: In the Democratic People's Republic of Korea the means of production are owned by the State and social, cooperative organizations (조선민주주의인민공화국에서 생산수단은 국가와 사회협동단체가 소유한다). An English translation of the North Korean Constitution is available at: https://www.ncnk.org/resources/publications/dprk-constitution-2019.pdf/file_view (accessed: 29.06.2021).

¹⁸ As part of the privatization process, Russians were granted gratuitously the opportunity to acquire legal title to the state-owned apartments in which they lived, albeit for a certain amount of area (Additional space was available for purchase). For a detailed description of privatization in the Russian Federation, see *Frydman R., Rapaczynski. A., Earle J. S. et al.* The Privatization Process in Russia, the Ukraine, and the Baltic States. London: Central European University Press, 1993.

North Korea¹⁹. This means that if we approach the issue of distributing house ownership by including without exception all the current occupants as potential recipients, those who participated in illegal transactions would collect undue benefits. Therefore, limiting the subjects of privatization to those occupants who are lawfully registered by government agencies would be more appropriate. Although Russia adopted a two-track approach and differentiated between Moscow and other cities in implementing the policies of housing privatization²⁰, it would be more desirable for post-reunification Korea to refrain from pursuing a multi-layered approach and take a single unified approach in the whole territory of North Korea (which in terms of its area cannot be compared with that of Russia), thereby making the process more speedy as well as less complicated, and also contributing to enhancing social integration. Where one person has multiple houses, we need to look at how the houses were obtained. If the process of obtaining the house is deemed to be contrary to North Korean law, then as a rule, the ownership of such houses should not be attributed to that individual. Thus, the rule should be one house per household, and the rest of the houses should be redistributed to others who do not own a house.

2. The direction of reorganizing the housing lease system in post-reunification Korea

2.1. Scope of application

According to case law in South Korea, whether a building is a ‘building for residence’ for the purposes of article 2 of the Housing Lease Protection Act²¹, the standard of determination should not be public records, but the actual use of the building²². Moreover, unless the leased building is used primarily for non-residential purposes and only in part or secondarily for residential purposes, it will be subject to the Housing Lease Protection Act²³. However the above approach is inappropriate for applying to North Korea after reunification. We should keep in mind that North Korea will most likely not have a viable civil registration system, property registration system or cadastral records, which would mean that there will be no shortage of unlicensed buildings and illegal houses. This would in turn result in numerous contracts of lease being null and void according to North Korean law. Considering the situation that may be expected at the moment of reunification, we should in principle protect those who occupy a part of the a building, whatever the ratio between the residential and non-residential areas are, and regardless of whether the leases are null and void under North Korea law. This should be the general direction in which legislation develops.

2.2. Opposing power

Article 3 (Opposing power, etc) paragraph 1 of the Housing Lease Protection Act provides that “if the lessee is provided with a house and completes resident registration, the

¹⁹ Of course, to be accurate it is not the houses that are being traded, but rather the usage rights of such houses. Given the circumstances in North Korea, usage right is generally perceived as being virtually equal to a right of ownership.

²⁰ 김수한·조영관, 중국과 러시아의 주택 사유화와 주택개혁 비교 연구, 『중소연구』 제34권 제 1호, 2010, 155면 [Kim Su-Han & Jo Young-Kwan. A comparative study of housing privatization and reform in China and Russia // Sino-Soviet Affairs. 2010. Vol. 34, no. 1. P. 155].

²¹ Article 2 (Scope of Application) This Act shall apply to lease of the whole or part of buildings for residence (hereinafter referred to as “house”). This provision shall also apply in cases where a part of a leased house is used for any purpose other than residence.

²² Supreme Court Decision Decided on 31 May, 1996, Case No. 96Da5971.

²³ 박근영, 『주택상가임대차 상식과 해결』, 서울: 법문북스, 2010 [Park Keun-Young. Common sense and solutions of lease of houses and commercial buildings. Seoul: Bubmoon Books, 2010].

lease shall take effect against any third person²⁴. Unlike in other countries, the deposit in South Korea for housing lease is significant, especially compared to that of the price of the house²⁴. Considering such an environment, i) whether the lessee has opposing power towards third persons or not, and ii) precisely when the lessee has opposing power, must be evident and clear. Otherwise, it would be difficult to determine who is entitled to exercise their right first, the lessee or other creditors of the lessor. This would create uncertainties and ultimately lead to numerous legal disputes. Given all of the above, an institutional mechanism is necessary in order to protect the recovery of deposits of lessees who are in an inferior economic position, and at the same time, to consider the interests of the third person who have forged a legal relationship with the lessors. Therefore, resident registration which is a requirement for obtaining opposing power, is important for reasons of its function as providing public notice.

Meanwhile, in North Korea, the state issues ID cards to all who reach the age of 17²⁵. In this regard, it is believed that Pyeongyang has introduced a new ID card system²⁶. The new ID cards are known to be similar to the ones issued in South Korea. They are made from plastic and have a photo of the person and the holder's personal information, including name, gender, date and place of birth, nationality, place of residence, marital status, number and date of issuance. As mentioned before, given that the ID cards perform a similar role in both Koreas, it seems possible to use part of the information such as place of residence and ID number on their current ID cards for the purposes of recognizing opposing power, until they are registered anew under post-reunification Korean law²⁷.

2.3. Duration

If we decide to accord ownership to the current residents of North Korean houses, then it is expected that these residents will be able to enter into a contract of lease with third parties in respect of the house in part or in whole. Considering such a possibility, we must examine whether it is appropriate to apply the provision on duration stipulated in the Housing Lease Protection Act to the parties of the above contracts of lease. According to the current Housing Lease Protection Act of South Korea, the lessee is only required to notify of the termination of the contract to the lessor²⁸, who is considered to be the economically more powerful party. However, the reunification of Korea will bring about unprecedented social changes, and against this backdrop, it would not be desirable to apply the provision on the minimum duration of a lease to North Korean lessees. Moreover, it is vital that we take measures to ensure the emotional stability of North Koreans in the immediate wake of reunification. Guaranteeing the stability of residence for North Koreans would be among the most important of such measures discussed above. This would

²⁴ The ratio of rent and deposit may range anywhere on average between 1:10 and 1:50, at times going even further.

²⁵ Cf. Article 19 (Civil legal capacity of citizens) of the Civil Code of North Korea: A citizen acquires majority at the age of 17.

²⁶ 홍알벗, “북한 신분증에 감춰진 비밀은...”, 『자유아시아방송』, 2012. 6. 20 [Hong A. The secret behind North Korean ID cards is ... // Radio Free Asia. June 20, 2012]. Available at: http://www.rfa.org/korean/in_focus/idcard-06202012153901.html?searchterm (accessed: 09.12.2016).

²⁷ 김성욱, “북한 주택거주인의 보호방향에 관한 민사법적 고찰”, 『경희법학』 제49권 제2호, 2014, 96면 [Kim S.-W. A Civil Law Review of the Protection of North Korean Housing Occupants // Kyounghee Law Review. 2014. Vol. 49, no. 2. P.96].

²⁸ Article 6-2 (Termination of Contracts in Cases of Implied Renewal) (1) In cases where a contract has been renewed pursuant to Article 6 (1), notwithstanding paragraph (2) of the same Article, the lessee may notify at any time the lessor of termination of the contract.

(2) The termination referred to in paragraph (1) shall enter into force upon the lapse of three months from the date when the lessor has received the notification.

in turn help to ease tensions and avoid social unrest. Obviously, in order to determine the rational and appropriate duration of leases for North Korean lessees, it will be necessary to consider various circumstances of the initial phases of reunification.

2.4. Regulation of rent

Another aspect of providing the opportunity to lead a stable life in post-reunification North Korea concerns the matter of regulating rent within a reasonable scope. Currently according to the Housing Lease Protection Act, the increase in rent cannot exceed the amount equivalent to 1/20 (i. e. 5 %) of the rent agreed upon²⁹. Also, no request for such an increase can be made within one year after a lease contract is concluded or rent agreed upon is increased. It remains to be seen whether these provisions should apply to the lease contracts in North Korea after the reunification.

In any case we should consider the following in determining the matter of limiting the increase in rent. It is highly likely that reunification will bring about significant emotional chaos and conflict between South and North Koreans, just as was the case in post-reunification Germany. Therefore, numerous factors will need to be reflected in determining the prices of housing, deposits and rent for leases. The provisions of the Housing Lease Protection Act which were enacted for protecting the economically weak in South Korea may actually be contrary to the purposes of the Act if applied without any revision. Therefore, it is necessary to consider the emotional, political, economic circumstances that may give rise to conflict between the residents of South and North Korea in order to determine the appropriate level of restricting the increase of rent. It may very well be a political determination that will favor the specific validity of such provisions over their legal certainty. At the end of the day, the scope of restricting rent will have to reflect the situation immediately prior to the reunification, including circumstances surrounding the exchange rate between the currencies of South and North Korea, the price of houses in North Korea, the wage and expenses of North Koreans among other things³⁰.

2.5. The right to demand renewal of the lease contract

Given the sudden social changes that will be brought about by reunification, it will be necessary to institutionally guarantee North Korean residents the stability of living in a single place without being concerned about moving. According to art. 6-3 (Request for renewal of contract, etc.) of the Housing Lease Protection Act which was amended on July 30, 2020³¹, the lessor cannot without justifiable grounds deny renewal of the lease contract where the lessee gives notification of the intent to renew the lease within the period between six months and two months before the term of the lease expires. The lessee however can exercise this right only once. If exercised, the duration of the renewed lease

²⁹ Article 7 (Requests for Increase or Decrease of Rents) (1) If the stipulated rent or deposit becomes unreasonable due to increase or decrease of taxes, public dues, and other charges on the leased house, or a change in economic circumstances, the party concerned may request any increase or decrease thereof prospectively. In such cases, no request for an increase shall be made within one year after a lease contract is concluded or the rent or deposit agreed upon is increased.

(2) An increase requested under paragraph (1) shall not exceed 1/20 of the agreed rent or deposit [...]

³⁰ 김성욱, “북한 주택거주인의 보호방향에 관한 민사법적 고찰”, 『경희법학』 제49권 제2호, 2014, 97면 [Kim S.-W. A Civil Law Review of the Protection of North Korean Housing Occupants // *Kyounghee Law Review*. 2014. Vol. 49, no. 2. P.97].

³¹ Before the 2020 amendment, lessees did not enjoy the right to demand renewal of contract. Therefore, if the lessor declined to renew the contract, the lessee had no choice but to move.

is deemed to be 2 years, unless the lessee wishes to stay for a shorter period. With regard to the post-reunification situation, the current list of justifiable grounds³² should be expanded so as to better guarantee North Korean lessees the right to demand renewal of the lease contract. Of course, this may cause some to argue that such legislation can infringe upon the property rights of the lessors. In order to maintain a balance between the rights of the lessees and lessors, it may be worthwhile to recognize the right to demand renewal of contract, as well as determine individually the scope of increase of rent depending on the circumstances of each municipality and administrative region.

Conclusions

The housing lease institution of South Korea was built upon the liberal democratic principles of the Constitution from the viewpoint of social law. It will be necessary to examine the problems that exist under the current law in order to protect the lessees of North Korea after reunification. Reunification of South and North Korea and its concomitant harmonization of social institutions will undoubtedly be based on the liberal democratic principles of the Constitution. However, in doing so, we should take into consideration that North Korea's housing system was erected on principles of planned economy under socialism. Studying the history of how the Housing Lease Protection Act was revised throughout the years may help to prepare for post-reunification Korea. Considering that the reunification period will be tumultuous, the provisions on opposing power, rent, termination of contract and other matters will likely be subject to revision and modifications. Such a process will prove to be rational and effective in providing protection to North Koreans after reunification.

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³² Article 6-3 (Request for Renewal of Contract, etc.) (1) Notwithstanding Article 6, where a lessee requests the renewal of a contract within the period prescribed in the former part of Article 6 (1), a lessor shall not refuse the request without good reason: Provided, That the same shall not apply to any of the following cases:

- 1) Where the lessee has been in arrears with a rent equivalent to an amount of two months' rent;
- 2) Where the lessee has entered into a lease by fraud or other improper means;
- 3) Where the lessor has provided the lessee with substantial compensation by mutual consent;
- 4) Where the lessee has subleased all or part of the intended house without the consent of the lessor;
- 5) Where the lessee has caused damage to all or part of the leased house by intention or gross negligence;
- 6) Where the purpose of the lease is not fulfilled because all or part of the leased house has been destroyed;
- 7) Where the occupancy of the intended house needs to be recovered in order for the lessor to demolish or reconstruct all or part of such house on any of the following grounds:
 - a) Where, at the time of entering into the lease contract, the lessor notifies the lessee of a plan for demolition or reconstruction specifically including the time and required period of the relevant construction and complies with the plan;
 - b) Where a safety accident is likely to occur as the building is old, damaged, partially destroyed;
 - c) Where demolition or reconstruction is conducted pursuant to other statutes or regulations;
- 8) Where the lessor (including his/her lineal ascendants and lineal descendants) intends to actually reside in the intended house;
- 9) Where the lessee has seriously failed to fulfill the obligations as a lessor or has significant reasons making it difficult to continue the lease.

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Направление развития системы найма жилых домов в объединенной Корее

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Южная и Северная Кореи имеют противоположные системы правового регулирования имущественных отношений. Разница между двумя Кореями яснее всего видна в подходе к недвижимости. Южная Корея, будучи капиталистической страной, придерживается принципов рыночной экономики, а Северная Корея, которая является коммунистической страной, предпочитает централизованное и строгое регулирование отношений, возникающих по поводу использования недвижимого имущества. Такой разрыв в подходах будет создавать значительные барьеры для гармонизации двух правовых систем в процессе объединения Корейского полуострова. Хотя практически невозможно предсказать форму и процедуру такого объединения, мы должны быть готовы к нему. Эта статья рассматривает важные вопросы, которые могут возникнуть в процессе гармонизации правовых систем при решении вопросов о недвижимости и жилье. Одним из критических вопросов является приватизация. Учитывая недостаток жилья в Северной Корее, в ходе приватизации необходимо, как правило, ограничить возможности приобретения права собственности на дом, чтобы одна семья имела не больше одного жилого помещения хотя бы на первых порах после объединения. К тому же только те лица, которые были за-

конно зарегистрированы по месту проживания согласно северокорейскому праву, должны иметь возможность приобретения права собственности на жилье. Вторым вопросом, поставленным в данной статье, — это направление развития системы найма жилого помещения в объединенной Корее. Нынешний закон о защите найма жилого помещения Южной Кореи не адекватен для применения в Северной Корее после объединения. Статья рассматривает такие аспекты, как его сфера применения, срок договора найма жилого помещения, регулирование наемной платы и права на продление договора найма жилого помещения и др.

Ключевые слова: жилое помещение, приватизация, собственность, право пользования, Южная Корея, Северная Корея, объединение Корей.

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