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## PROPERTY RELATIONS IN THE ASSOCIATIONS OF LEGAL ENTITIES UNDER THE LEGISLATION OF UKRAINE

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### Summary

Various kinds of associations of legal entities which activities are mainly regulated by civil and economic law play the important role among civil relations in the civil and commercial sales. The scientific article has been devoted to the theoretical analysis of legal regulation of property relations in associations of legal entities under the legislation of Ukraine. The Economic Code of Ukraine determines the general principles for property relations regulation in the associations of enterprises. Thus, making the proprietary contribution for admission, membership or other targeted contributions shall be performed under terms and procedure as provided by the constituent documents of the associations of enterprises. Nevertheless, inadequate legal regulation of certain relations, outlined in the current legislation of Ukraine, creates diverse practice of the relevant legislative provisions. On the basis of the study, own approach has been formulated related to the feasibility to make amendments to the current legislation of Ukraine in order to improve regulation of property relations of the enterprises associations' members.

**Key words:** property relations, legal entity, association, enterprise.

### Анотація

Среди участников гражданских отношений в процессе гражданского и хозяйственного оборота существенную роль играют различного рода объединения юридических лиц, деятельность которых в основном регламентирована нормами гражданского и хозяйственного законодательства. Статья посвящена теоретическому анализу правового регулирования имущественных отношений в объединениях юридических лиц по законодательству Украины. Хозяйственный кодекс Украины определяет общие принципы регулирования имущественных отношений в объединениях предприятий. Так, внесение имущественных вступительных, членских целевых или иных взносов осуществляется на условиях и в порядке, предусмотренных учредительными документами объединения предприятий. Несмотря на это, несовершенство правового регулирования определенных отношений в действующем законодательстве Украины порождает разностороннюю практику применения соответствующих законодательных норм. На основе проведенного исследования сформулирован собственный подход относительно целесообразности внесения изменений в действующее законодательство Украины с целью усовершенствования регулирования имущественных отношений участников хозяйственных объединений.

**Ключевые слова:** имущественные отношения, юридическое лицо, объединение, предприятие.

**Problem statement.** Various kinds of associations of legal entities which activities are mainly regulated by Chapter XII "Associations of enterprises" of the Economic Code of Ukraine [1] play the important role among civil relations in the civil and commercial sales. However, legal regulation of property relations of such associations' members in various economic sectors still doesn't comply with the historical and economic conditions. Thus, according to the Association Agreement between the European Union, European Atomic Energy Community, its Member States, on the one hand, and Ukraine, on the other hand [2], Ukraine brings, in particular, its competition

law and applying practice, to the EU acquis (for example, concerning Council Regulation (EU) No. 139/2004 of January 20, 2004 on control over the cluster between enterprises (the EU Merger Regulation), Article 1, Articles 5 (1), (2) and Article 20 of the Regulation shall be implemented within three years upon this Agreement. In addition, inadequate legal regulation of relations, outlined in the current legislation of Ukraine, creates diverse practice of the relevant legislative provisions.

**Actual issues of the research.** Actual issues of the research of property relations of members of legal entities' associations have been caused by many factors. Those



include not only the national legislator's own approach, in comparison with the other European countries, regarding the legal status of such associations, their legal organizational forms, grounds for establishment and operation etc., but also the existing gaps in national legal regulation of the defined relations and imperfect legislative technique. The above circumstances give rise to problems of scientific and practical character, which in particular, have been manifested in different ways of law enforcement and in unequal judicial practice. As a result, the legal regulation of property relations of members of legal entities' associations requires the detailed theoretical analysis and approaches creation to improve the current legal framework.

**State of the research.** Many scientists, among whom are O.M. Vinnyk, V.M. Kossak, V.K. Mamutov, V.I. Tsikalo, V.S. Shcherbyna, V.O. Dzhurynskyi and many others, have devoted their works to the problems research of legal regulation of property relations in the legal entities' associations. At the same time, the development of market relations and modern novelization of civil and economic legislation of Ukraine necessitate a detailed study of these issues and, accordingly, additionally reason the chosen topic actuality of the scientific article.

**Purpose and objectives of the article.** The purpose of this research is to carry out a theoretical analysis of legal regulation of property relations in legal entities' associations under the legislation of Ukraine and to develop the relevant conclusions and suggestions for improvement of the current legislation of Ukraine on its basis.

**Primary material statement.** The Economic Code of Ukraine (Art. 123) defines the general principles of regulation of property relations in the associations of enterprises. Thus, making the property contributions for admission, membership or other targeted contributions shall be carried out under terms and according to the procedure as provided by the constituent documents of the enterprises association. The property shall be transferred into the economic control or operational management. However, the law does not prohibit the business associations to form unitary enterprises, branch offices, representative offices

as well as to be a member (founder) of business partnerships. Moreover, in the legal literature, membership in organizations that manage their participants' activities (including their activity coordination) and are secondary structures [3, p. 234], constitute features of business associations; and it is stated the opinion according to which the provisions of Chapter "Associations of the enterprises" are applicable to the associations of other economic entities with the status of legal entity: economic organizations established under the Civil Code of Ukraine and other legal entities that carry out economic activity and are registered as prescribed by law (credit unions, charities and other non-profit organizations) [4, p. 201].

As stated in the legal literature, there are essential differences between the right of operational management and economic control as the legal regimes of the economic entities' property (legal entities). Firstly, they differ in subject matter. Legal entities-entrepreneurs operate on the basis of the right of economic control; legal entities which are not entrepreneurs operate on the basis of the right of operational management. Secondly, they differ in their designated purpose. The right of economic control is used to carry out commercial activities (entrepreneurship); the right of operational management is used to carry out non-commercial activities. Thirdly, they differ in content. According to the scope of authorities, the right of operational management is more limited than the right of economic control. In the enforcement of operational management, all this entity's authorities are clearly defined by the acts of economic legislation and by the owner (agency authorized by the latter). For example, according to clause 5 of the Art. 76 of the Economic Code of Ukraine, the agency competent to manage state-owned enterprise, shall permit the state-owned enterprise to carry out its economic activity and determine the types of goods (works, services), production and sales of which are covered by the aforementioned permit [5, p. 234].

The association of enterprises shall not be liable for its members' obligations and member companies shall not be responsible for the association's obligations, unless otherwise is provided by the Memorandum or Articles of

Association. This provision of the Economic Code of Ukraine usually is specified in other legislative acts, providing special legal regulation of certain types of economic associations and their statutory documents. For example, according to the clause 7 of the Art. 26 of the Law of Ukraine No. 469/97-BP dated 17.07.1997 "On Agricultural Cooperation" [6], the association shall not be liable for its members' obligations and association's members shall not be liable for the association's obligations, unless otherwise is provided by the Articles of Association; according to par. 11 of the Articles of Associations of the State Concern of alcohol and alcoholic beverage industry, approved by the resolution No. 1039 of the Cabinet of Ministers of Ukraine on 04.09.1996, the concern shall not be liable for the enterprises' (associations') obligations, that are its members, and the enterprises (associations), that are concern's members, shall not be liable for the concern's obligations [7]. In turn, V.S. Shcherbyna underlines that the following functions features the association of enterprises: execution of tasks defined by the contract, Articles of Association, Deed of the association foundation (industrial activity, construction, transport activity, etc.); solution of groupwide issues, in particular, issues of social and economic development; implementation of scientific-technical policy, common for the field (product quality improvement, technical level of production improvement, efficient capacity utilization, international economic activity, etc.); if necessary, performance of the target functions whether provided by the Articles of Association or Memorandum; coordination functions; defense of rights and representation of the association of enterprises, etc. [8, p. 182–183].

Right to voluntarily withdraw from the association on the terms and in the procedure specified by the economic association's Memorandum or the Articles of Association, as well as to receive a share of the association of enterprises' profits in accordance with its Articles of Association, are an important guarantee of associations of legal entities' property rights, provided by the Art. 121 of the Economic Code of Ukraine. However, property rights (interests) of members (owners, founders) are sometimes unprotected and judicial practice has not



yet produced a single mechanism to choose remedies. Thus, in the event of property alienation, secured to the economic associations, in violation of their Articles of Association and current legislation, both legally binding and proprietary remedies shall be used in similar situations. For example, the following case occurred in judicial practice. On July 5, 2013, Deputy Prosecutor filed a lawsuit in Brody District Court of Lviv region on behalf of the government, represented by the Ministry, against Person 1, seeking rescission of purchase and sale contract, concluded on 28.07.2009 between Concern "1" and Person 1 and binding Person 1 to return the premises of the store to state ownership of the Ministry for the full economic control of Concern "1". By the decision of Brody District Court of Lviv region dated December 5, 2013, the claim was dismissed. By the decision of Appeal Court of Lviv region on February 27, 2014, the Deputy Prosecutor's appeal petition was settled in part, the decision of Brody District Court of Lviv region on December 5, 2013 was changed, the claims were dismissed due to expiration of period of limitation of actions. By the decision of Superior Specialized Civil and Criminal Court dated June 11, 2014, the Deputy Prosecutor's cassation was settled in part; the decision of the Appeal Court of Lviv region dated February 27, 2014 was canceled and the case was submitted to a new trial in the court of appeal. By the decision of Appeal Court of Lviv region dated December 22, 2014, the Deputy Prosecutor's appeal petition was settled, the new decision was adopted, which settled the claim seeking rescission of the purchase and sale agreement of the real estate and etc. Purchase and sale contract of the store's premises, concluded between Concern "1" and Person 1 was recognized invalid, Person 1 was obligated to return the store's premises to Concern "1"; Concern "1" was obliged to return 412,051.2 hryvnias to Person 1. The Appeal Court of Lviv region explained its decision dated December 22, 2014, in particular, based on the fact that no decisions were taken on permission of alienation of the disputed property, conclusion of the disputed purchase and sale contract by the Ministry as the management entity of Concern "1", in accordance with the Procedure for alienation of state property, approved by

the resolution No. 803 of the Cabinet of Ministers of Ukraine dated June 6, 2007, and the State Property Fund didn't agree on any permission for such alienation (no permission for such alienation was granted) [9].

However, in Articles 15, 16 of the Civil Code of Ukraine [10] a list of substantive remedies for protection of violated, disclaimed and/or imperfect rights and interests has been established. In fact, by their means, the property status of the person can be renewed, obstacles to execute the right or the uncertainty of the legal situation and the facts are removed. In addition, it is necessary to emphasize that Person 1 within the meaning of the Art. 330 of the Civil Code of Ukraine acted as a purchaser in a good faith, as according to the law and on a competitive basis, bought the property as the winner of public auction by means of taking part among other participants in the public auction, and all obligations to organize the public auction and receive any permits for property sale shall be undertaken by the person which provides the economic control over this property. Furthermore, the Civil Code of Ukraine provides the principles of property rights protection. In particular, Article 387 of the Civil Code of Ukraine gives the right to the owner to reclaim property from illegal possession. According to the clause 1 of the Art. 388 of the Civil Code of Ukraine, if the property was purchased on the basis of the commutative contract from a person that wasn't entitled to alienate it, and the purchaser wasn't aware and could not be aware of (purchaser in a good faith), the owner shall be entitled to reclaim this property from the purchaser only in case if the property was lost by the owner or person to whose possession it was transferred by the owner; was stolen from the owner or the person to whose possession it was transferred by the owner; withdrawn from the possession of the owner or person to whose possession it was transferred by the owner, by other way not according to their will.

Therefore, as it appears to be, it is necessary to take into account that in such cases that the property relations of the entities associations' members, including concerns, according to the current legislation of Ukraine, are based on different principles. That means that the associations of enterprises do not

possess the property that has been secured to them. As stated above, the property is secured to such organizations on the right of economic control or operational management. Therefore, if such entities conclude alienation agreements of the aforementioned property that doesn't comply with the owner's will, in our opinion, the owner shall file an action in replevin instead of a claim seeking to invalidate a contract. Furthermore, in accordance with the paragraph 2 of Conclusions of the Supreme Court of Ukraine adopted on March 1, 2013, according to the outcome of consideration of the application to reconsider the decision on the grounds referred to in paragraph 1 of the Art. 355 of the Civil Procedural Code of Ukraine, in the second half of 2012, according to the Art. 387 of the Civil Code of Ukraine, the person shall be entitled to claim the property from illegal ownership. Acquirement in a good will in the meaning of the Art. 388 of the Civil Code of Ukraine is possible only if the property was purchased not directly from the owner, but from a person who wasn't entitled to alienate this property; the result of an agreement concluded with such a breach shall be not the bilateral restitution but the return of property from illegal possession [11].

In addition, in a similar case (No. 22-3-30/336-07-9260), the Supreme Court of Ukraine, taking the decision on October 31, 2012, made the following conclusion: the right of a person who considers himself to be the property's owner, shall not subject to protection by means of claim settlement against a purchaser in a good faith, using the legal mechanism established by the Art. 215, 216 of the Civil Code of Ukraine. Such protection may be possible excluded by settlement of action in replevin, if there are reasons for it under the Art. 388 of the Civil Code of Ukraine, which give the right to reclaim the property from a purchaser in a good faith [12]. A similar opinion is set forth in resolutions of the Supreme Economic Court of Ukraine dated February 12, 2013 in the case No. 16/34/2012/5003 [13] and June 18, 2008 in the case No. 8/382пд [14].

**Conclusions.** Summarizing the abovementioned, specifying certain problems, we consider that it is necessary to note the following. The legal status of associations of enterprises is regulated



by Chapter 12 of the Economic Code of Ukraine, and clause 2 of the Art. 123 of the Civil Code of Ukraine stipulates that the property shall be transferred to the association by its members for the economic control or operational management on the basis of Memorandum or the decision to establish the association. On the basis of the aforementioned the following conclusion can be made that under the current Economic Code of Ukraine, the concerns, consortiums, associations, corporations and others are independent organizational and legal forms of legal entities. Thus, according to the clause 1 of the Art. 137 of the Economic Code of Ukraine, if limits for possession, use and disposal of property, secured within the legal regime of operational management may be set by the owner of such property, limitation of resolutions validity on certain types of property under the consent of the owner shall be determined exclusively in cases stipulated by the Economic Code and other laws of Ukraine, in accordance with clause 1 of the Art. 136 of the Economic Code of Ukraine, in the case of right of the economic control. However, neither the Economic Code of Ukraine nor the other legislative provisions, do not provide the obligation of different legal forms associations of enterprises (except state and municipal) to receive owner's consent, whether approval for alienation of the property secured to them. In turn, clause 3 of the Art. 119 of the Economic Code of Ukraine provides that economic associations are entitled to act not only on the basis of the Articles of Association, but also on the basis of the Memorandum, approved by their founders. On the basis of the abovementioned, it seems appropriate to make amendments to the current legislation, which will provide the right of founders (participants) to contractually set limits for possession, use or disposition of property of all legal forms of legal entities' associations.

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