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FEATURES OF PUBLIC LEGAL RELATIONS REGARDING THE PROTECTION OF RIGHTS OF BUSINESS ENTITIES IN UKRAINE

Abstract. ***Purpose.*** The aim of the article is to distinguish features of public legal relations regarding the protection of the rights of business entities in Ukraine.

Results. The article determines that in case of violation of the rights of business entities by private persons (for example, other business entities), this dispute is subject to private law, that is, regulated by the relevant legislation and provides for a wide range of forms of its realization. At the same time, if the business entity activates its subjective right to appeal to the court, the administrative body or the very competent body on human rights, the relations between the business entity and the authority are subject to public law and are the basis of the legal category "administrative and legal protection".

Conclusions. It is formulated that the features that are inherent in these public legal relations are: a) general one – interrelation between actors of a large variety of constitutional roles, where one of the actors necessarily is the authority, effects thereof is due to the use of administrative instruments; the behaviour of the participants of interrelation normalised by legal regulations, to a greater extent provisions of administrative legislation; dynamism, capability to develop and be terminated; the presence of privileged position of one of the participants of interrelation, in particular the person over the authority, which is manifested in the right to act or omit the realization of the functions of the State, or the authority over the person in case of recognition as an objective regulatory component of such person's behaviour; they are caused by the realization of public interest; b) special ones – a special objective elements of legal relations, that is, the need to organize protection, its realization by means prescribed by the provisions of administrative legislation or the fact of violation of the rights of a business entity in Ukraine by the authority; unification within the mechanism for the protection of the rights of business entities in Ukraine of public legal relations regarding the organization of proper protection of the rights of entrepreneurs and the procedure for its realization in case of initiation of administrative and legal protection of the rights of business entities in Ukraine or the fact of violation of the rights of business entities by the authority; parallel existence of public and private legal relations regarding protection of rights of business entities in Ukraine.

Key words: protection, features, rights of business entities, private legal relations, public legal relations.

1. Introduction

Any legal relations are a form of implementing social relations. They always develop, as they arise on the basis of relevant legal provisions. Such provisions are established and provided by the State and are in constant dynamics (Danylenko, 2021, p. 12). All business legal relations, in particular those regarding the protection of the rights of business entities, are comprehensive and include both public-legal and private legal elements (Biriukov, 2013, p. 56). The main question is what ratio between them.

Peculiarities of entrepreneurial activity and the essence of public legal relations are sufficiently studied in scientific research. In particular, significant scientific developments have been made by such scientists as: O. Banchuk, V. Bevzenko, I. Berestova, V. Biriukov, A. Danylenko, O. Krupchan, O. Kharytonova, N. Khliborob, Yu. Tsvirkun, and others. However, the proposed consideration of this issue has not been under focus of their scientific studies, that is, they are still not regulated and some of its provisions need further research.

The aim of the article is to distinguish features of public legal relations concerning the protection of the rights of business entities in Ukraine.

2. Specificities of public and private relations

According to I. Berestova (Berestova, 2019), it is the person, his/her life and health, honour and dignity, immunity and safety as the highest social value of the state is the sole purpose of law. At the same time, public and private law is not a purpose, but is a different means of achieving it. The main task of private law and public law is an enabling environment for the most complete self-realization of the interests of society, individuals and their satisfaction by the State. Additional goals are formed and implemented in practice by functions that are necessary homogeneous, expedient areas of private and public law, caused by the necessity to satisfy objective needs of society, separate interests of the State. Public law should ensure full realization of private law without distorting it. However, without public law, private law is insufficiently effective or even ineffective (Bakaeva, 2010, pp. 20-21).

The consideration of the issue on the nature of public and private law has led to the formation of two areas in legal science: one of them is based on the well-known Ulpian's sentence (Publicum jus est, quod ad statum rei romanae spectat, privatum quod ad sintgulorum utilitatem pertinet) and derives from the difference in goals and interests subject to legal protection, while the second is based on the principle of inadmissibility of changing public legal provisions by private agreements, also presented by Roman lawyers (Publicum jus pactis privatorum mutari non potest) and derives from the difference in the nature of provisions or in the subject of will affected by the violation of private and public rights (Ioffe, 1949; Kharytonova, 2002, p. 36).

The scientist O. Banchuk argues that during the delimitation of public and private relations it is necessary to take into account a number of features. Among these criteria, the scientist identifies the following: 1) difference between the parties to relations – public relationship requires that a participant must be a person involved in them for the purpose of exercising public authorities granted to him/her. However, it is important that the public authority exercises its powers in these relations; 2) the difference in the legal status of the participants of the relations – in public legal relations a certain party (private persons or lower public authorities) is subordinate to another authority. Subordination is manifested in the ability of the authority in the course of exercising its powers to solve the question of the rights and duties of the person who participates in legal relations; 3) difference in the content of legal relations – in public relations their participants may commit such actions and fulfil their duties only in the manner expressly provided for in law; 4) the difference in the forms of protection of rights – public legal relations (criminal and administrative), due to subordination of private persons to the will of the authorities, realized in public authorities, should be considered by the court in view of the comprehensive protection of the rights of the actually weaker party in relations (private person); the nature of dominant interest in relations – in public and legal relations the interests of the State, the people, the national minority, the territorial community, individual persons may be expressed (Banchuk, 2011, pp. 145-148).

Accordingly, public law regulates relations through imperative orders, which cannot be changed by any individual's private will. The imperative method determines the nature of the relationship, one of the parties thereof is the public authority. In public-legal relations, all is subordinated to the will of State power. And the ability of the State body to exercise powers is an important feature of the latter. However, this ability is practical, provided it becomes an exercise of these powers to fulfil the duties of the authority (Tsvirkun, 2013, p. 25).

It should also be taken into account that these relations may arise both between the authority, on the one hand, and legal, physical persons, on the other, and between two authorities (Khliborob, 2010). In particular, according to O. Kharytonova, two main types of public legal relations can be identified: those that directly express the basic formula of the managerial influence of the "actor – object", in which the power of administration is manifested, are relations of authority-subordination; and those which are outside the direct imperious influence of the actor on the object, but are organically related to its implementation. They are an organizational prerequisite for the emergence of power relations. Sometimes these legal relations are called subordination and coordination, while the latter reject the existence of authoritarianism inherent in public law. Nevertheless, this is not quite true, because coordination is a part of the legal power manifestations of public authority. In addition, a large number of public legal relations arise between the parties not directly subordinated. But in these cases, one of the parties, due to its competence, is entitled to issue legal regulations, binding for the party, organizationally not subject to the authority. For example, this is typical for inter-branch management relations. In addition, public authorities may issue binding regulations addressed to citizens, public organizations, etc., not directly subordinated to them. Regardless of the nature of the subordination, the main feature of public legal relations remains – the legal inequality of the parties,

the legal dependence of one party on another, which is conditioned by the legal powers necessary to resolve one or the other issue of one party – the public authority (Kharytonova, 2002, pp. 42-43).

Therefore, public legal relations are governed by legal regulations, to a greater extent by the provisions of administrative legislation, interrelation between parties of different constitutional roles, where one of the parties necessarily has powers that represent the exercise of functions of the state for the provision, realization, protection of public interest.

3. The essence of public relations to protect the rights of business entities

With regard to the essence of public legal relations of protection of rights of business entities, it should be noted that, in our opinion, it is their dualistic nature, where, on the one hand, its content is determined by the necessity of protection of rights of entrepreneurs, and on the other, by the procedure for its realization in case of: a) initiation of administrative and legal protection of the rights of business entities in Ukraine; b) the existence of a violation of the rights of a business entity by the authority.

In order to justify the above, it is necessary to focus on the formulation of Art. 20 of the Economic Code of Ukraine, namely: "The State provides protection of rights and legitimate interests of business entities. Considering that the provisions of civil and economic law regulate exclusively private legal relations, it can be stated that the protection of the rights of the entities under study is a public sector. In this case, unequivocally public legal relations should be considered, and more precisely their first type – public legal relations concerning the organization of proper protection of the rights of entrepreneurs in Ukraine. That is, the administrative activity of the public authorities related to proper protection of the rights of entrepreneurs in Ukraine is the basis for its practical realization in the appropriate manner.

It should be considered that in case of violation of the rights of business entities by private persons (for example, other business entities), this dispute is subject to private law, that is, regulated by the relevant legislation and provides for a wide range of forms of its realization. At the same time, if the business entity activates its subjective right to appeal to the court, the administrative body or the very competent body on human rights, the relationship between the business entity and the authority is subject to public law and is the basis of the legal category "administrative and legal protection."

In addition, the relations where both the dispute over the law and the procedure of its resolution are public should be considered. This is particularly true if the public authorities violate the rights of entrepreneurs (regulatory, supervisory or by other actions), while other authorities directly protect them.

4. Conclusions

The analysis conducted makes it possible to state that public legal relations regarding the protection of the rights of business entities in Ukraine have features that are inherent in all public legal relations: the presence of privileged position of one of the participants of interrelation, in particular the person over the authority, which is manifested in the right to act or omit the realization of the functions of the State, or the authority over the person in case of recognition as an objective regulatory component of such person's behaviour; they are caused by the realization of public interest;

– interrelation between actors of a large variety of constitutional roles, where one of the actors necessarily is the authority, effects thereof is due to the use of administrative instruments;

– the behaviour of the participants of interrelation normalised by legal regulations, to greater extent provisions of administrative legislation;

– dynamism, capability to develop and be terminated;

– the presence of privileged position of one of the participants of interrelation, in particular the person over the authority, which is manifested in the right to act or omit the realization of the functions of the State, or the authority over the person in case of recognition as an objective regulatory component of such person's behaviour;

– they are caused by the realization of public interest.

Specificity of legal relations under analysis is determined by special features, such as:

– special objective elements of legal relations, that is, the need to organize protection, its realization by means prescribed by the provisions of administrative legislation or the fact of violation of the rights of a business entity in Ukraine by the authority;

– unification within the mechanism for the protection of the rights of business entities in Ukraine of public legal relations regarding the organization of proper protection of the rights of entrepreneurs and the procedure for its realization in case of initiation of administrative and legal protection of the rights of business entities in Ukraine or the fact of violation of the rights of business entities by the authority;

– parallel existence of public and private legal relations regarding protection of rights of business entities in Ukraine.

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ОЗНАКИ ПУБЛІЧНИХ ПРАВОВІДНОСИН ЩОДО ЗАХИСТУ ПРАВ СУБ'ЄКТІВ ПІДПРИЄМНИЦЬКОЇ ДІЯЛЬНОСТІ В УКРАЇНІ

Анотація. ***Метою статті*** є виокремлення ознак публічних правовідносин щодо захисту прав суб'єктів підприємницької діяльності в Україні.

Результати. У статті визначено, що в разі порушення прав суб'єктів підприємницької діяльності приватними особами (наприклад, іншими суб'єктами господарювання) цей спір є приватноправовим, регулюється відповідним законодавством та передбачає досить широке коло форм його реалізації. Водночас якщо суб'єкт підприємницької діяльності активізує своє суб'єктивне право на звернення до суду, адміністративного органу чи безпосередньо органу правозахисної компетенції, відносини між суб'єктом підприємницької діяльності та суб'єктом владних повноважень є публічно-правовими, а також основою правової категорії «адміністративно-правовий захист».

Висновки. Обґрунтовано, що цим публічним правовідносинам притаманні загальні та спеціальні ознаки. Загальними ознаками є: а) наявність зв'язку між суб'єктами здебільшого різної конституційної ролі, де один із суб'єктів обов'язково має владні повноваження, реалізація яких має свій вияв у застосуванні ним інструментів адміністративної діяльності; б) урегульованість поведінки учасників взаємозв'язку правовими актами, здебільшого нормами адміністративного законодавства; в) динамічність, здатність до розвитку та припинення; г) наявність привілейованого становища одного з учасників взаємозв'язку порівняно з іншим, зокрема особи над суб'єктом владних повноважень, що проявляється в наявності права вимоги щодо вчинення чи утримання від дій, які репрезентують реалізацію функцій держави, або суб'єкта владних повноважень над особою в разі визнання об'єктним складником регулювання поведінки такої особи; ґ) зумовленість реалізацією публічного інтересу. Натомість спеціальними ознаками публічних правовідносин є: а) особливий

об'єктний склад правовідносин – необхідність організації захисту, його здійснення засобами, передбаченими в нормах адміністративного законодавства, чи наявність факту порушення прав суб'єкта підприємницької діяльності в Україні суб'єктом владних повноважень; б) об'єднання в межах механізму забезпечення захисту прав суб'єктів підприємницької діяльності в Україні публічних правовідносин щодо організації належного захисту прав підприємців та процедури його здійснення в разі ініціації адміністративно-правового захисту прав суб'єктів підприємницької діяльності в Україні або наявності факту порушення прав суб'єкта підприємницької діяльності суб'єктом владних повноважень; в) паралельне існування публічних і приватних правовідносин щодо захисту прав суб'єктів підприємницької діяльності в Україні.

Ключові слова: захист, ознаки, права суб'єктів підприємницької діяльності, приватні правовідносини, публічні правовідносини.

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