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## ROLE OF JUDICIAL PRINCIPLES AT CONSIDERATION OF BUSINESSES ABOUT OFFENCE OF COMPETITION LEGISLATION

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*Legal norms stipulate application of and compliance with the procedural fundamentals. This is an important element of the participants equality principle during investigations and considerations of cases on competition law violation. Therefore the article describes basic legal norms that are applied by the bodies of the Antimonopoly Committee of Ukraine about the regulation of competition.*

**Keywords:** *Antimonopoly Committee of Ukraine, competition law, violation, judicial principles.*

**Introduction.** In Ukraine there is rapid development of market economy and competitive. State (represented by competent authorities and officials) must provide high-quality development, in particular through the development and implementation of government competition policy, actions and regulations of the competition. Competitive policy in our country is a complex of organizational and legal measures aimed at the development and protection of competition, monopolistic tendencies and overcome the unfair competition in Ukraine, the regulation of natural monopolies, promotion of financial, technical, information, innovation, advisory and other support entities that provide competition and development is carried out by authorized state bodies, local authorities and bodies of administrative management and control. State regulation of economic competition is carried out through a system of measures taken by the Antimonopoly Committee of Ukraine.

**Analysis of recent researches and publications.** Implementation research the substantive direction necessitated recourse to developments of scientists who studied some aspects of the Antimonopoly Committee of Ukraine. In particular, protection of competitive relationships studied L.Bila, A. Bakalinska, Y. Zhuryk, N. Korczak, S. Kuzimina, A. Chernelevska, I. Shumilo and others; general problems of regulatory impact on the state 's economy looked A. Andriiko, L. Voronov, T. Kravtsov, A. Oleschenko and others. Thus, in the present research on administrative law issues of administrative and legal status of the Antimonopoly Committee of Ukraine studied fragments, hence the need for the implementation of a comprehensive scientific

analysis. In addition, the contradictions in the existing antitrust law determines the need for systemic changes in the formation of laws and regulations.

**Previously unsettled problem constituent.** The organs of the Antimonopoly committee (farther – to Committee) begin consideration of businesses about violation of legislation about defence of economic competition after grounds certain the article of a 36 Law of Ukraine "About defence of economic competition" (farther is Law) [1]. The process of realization in matters about violation of competition legislation consists of such stages: raising action, investigation in business, decision-making, implementation of decision, verification of decision and second thought.

**Main purpose of the article.** In this scientific article it is identified the basic legal norms that are applied by the bodies of the Antimonopoly Committee of Ukraine about the regulation of competition. Legal norms stipulate application of and compliance with the procedural fundamentals. This is an important element of the participants equality principle during investigations and considerations of cases on competition law violation.

**Results and discussions.** A legislation about defence of economic competition, in accordance with the article of 3 Laws, consists of Laws of Ukraine "About defence of economic competition" [1], "About the Antimonopoly committee of Ukraine" [2], "About protecting from an unfair competition" [3] etc. Judicial norms of divisions of VI-IX of Law regulate realization in matters about violation of legislation about defence of economic competition, that is statutory and by Law "About defence of economic competition" [1], "About protecting from an unfair competition" [3]. At the same time the law "About protecting from an unfair competition" [3] contains the separate special judicial norms that set the features of realization in matters about an unfair competition.

Separate judicial norms, that explain the judicial norms of the marked Laws, set by Rules of consideration of businesses about violation of legislation about defence of economic competition [4], ratified by the order of the Antimonopoly committee of Ukraine from April, 19, 1994 №5, registered in Ministry of Justice of Ukraine on May, 6, 1994 after № 90/299, in the release, ratified by the order of the Antimonopoly committee of Ukraine from June, 29, 1998 №169-p. with next changes and additions. Article 35. Consideration of businesses is about violation of legislation about defence of economic competition.

1. Consideration of businesses is about violation of legislation about defence of economic competition begun with the acceptance of order about beginning of trial of business and closes by a decision-making in business.

2. At the trial of business about violation of legislation about defence of economic to the competition organs of the Antimonopoly committee of Ukraine: collect and analyse documents, conclusions of experts, explanation of persons, other information that is proof in business, and make decision in business

within the limits of the plenary powers; get explanations of persons, that participate in business, or any persons, after their solicitor or on own initiative.

An order about beginning of trial of business about violation of legislation about defence of economic competition is a judicial document (by a judicial form), is the initial stage of competition process, the aim of that is to define the subjects of corresponding law-enforcement relations – participants of process – defendant, declarant, third persons, organ of the Antimonopoly committee, define an object and article of these relations (corresponding qualification of actions). From the moment of acceptance of order about beginning of trial of business the participants of process have judicial rights and judicial duties [5].

Trial of business has for an object complete, exact and objective establishment of all circumstances that matter for the correct competition-legal estimation of certain act and him consequences, establishment of fact of violation of legislation about defence of economic competition, bringing in of violators to responsibility and removal of negative consequences of perfect violation.

Realization in business about violation of legislation about defence of economic competition closed by a decision-making in business in accordance with the article of a 48 Law from the moment of closing of realization the judicial right and duties, related to the trial of business cease in business.

During the trial of business about violation of legislation about defence of economic competition the organs of the Antimonopoly committee conduct judicial actions. sent to establishment of actual circumstances of business.

A law does not conduct a clear limit between prosecuting an inquiry in business and by an acceptance a decision in business, including these two judicial stages of trial of business in a term "trial of business". At the same time, differentiation of these stages of the masses important value, taking into account that. that a decision-making on results the trial of business Law mainly attributes to the competence of collective organs, in what realized, though not fully (in the separate categories of businesses made decision the state authorized agents of the Antimonopoly committee individually), principle of collective nature at making decision in business. On the stage of investigation of business judicial actions in relation to collection and analysis of proofs are conducted by the office workers of the Antimonopoly committee, him territorial separations, what authorized agents on it by those organs of the Antimonopoly committee, that began the trial of business, about what registers in an order about beginning of trial of business. In accordance with points 20' and 20 Rules of consideration of businesses about violation of legislation about defence of economic competition of order about beginning of trial of business are accepted by such organs of the Antimonopoly committee – state authorized agent of the Antimonopoly committee and administrative college of territorial separation of the Antimonopoly committee [5].

An order about beginning of trial of business about violation of legislation about defence of economic competition can be accepted only at presence of signs of violation of legislation about defence of economic competition, including consequences of such violation.

Violation of legislation about defence of economic competition is acts that encroach on by legislation about defence of economic competition public relations. The types of such протиправних acts are envisaged in the article of a 50 Law, articles of a 4 – 19 Law of Ukraine "About protecting from an unfair competition" [3]. Fixing in the law of offences means determination of them legally meaningful signs inherent all offence of certain kind. Mostly there are the envisaged signs of objective side of offence in the marked Laws.

Founding for raising action is sufficientness of data that specify in the presence of signs of violation of legislation about defence of economic competition. Sufficient are such data, that testify to the presence of certain actions the signs of that are envisaged in the article of a 50 Law, articles of a 4- 19 Law of Ukraine "About protecting from an unfair competition" [3]. Thus not necessarily, that they represented an act full and all-round. Establishment of these circumstances is the task of the next stage of realization in matters about violation of legislation about defence of economic competition.

Raising action means bringing in to responsibility of person, the acts of that have signs of statutory violation, id est person in relation to that raised action. From the moment of acceptance of order about beginning trial of business about violation of legislation about defence of economic competition this person acquires judicial status of defendant. From this moment such person is right to know in which one violation legislations about defence of economic competition she is accused, acquires other rights for a defendant, that can avail in compliance with the legislation for the defence, and duties of defendant, that be under an obligation to execute. From the moment of raising action in relation to this person – a defendant is pulled down also corresponding judicial rights and duties corresponding organs of the Antimonopoly committee.

From the moment of raising action a declarant acquires corresponding judicial status. An order about beginning of trial of business is sent during three working days term from the day of his acceptance.

In an order about beginning of trial of business those circumstances(data) that testify to the presence of signs of concrete violation of legislation about defence of economic competition must be marked.

The article of a 39 Law of Ukraine "About defence of economic competition" [1] determines the circle of those persons, that participate in business and have the corresponding judicial status envisaged, in particular, in the article of a 40 Law, articles 25, 26. 29, 31 and to 32 Laws of Ukraine "About protecting from an unfair

competition" [3], separate norms and rules of consideration of businesses about violation of legislation about defence of economic competition.

A defendant in business is a person the acts of that contain the signs of violation of legislation about defence of economic competition. A person, that is marked in an order about beginning of trial of business about violation of legislation about defence of economic competition the acts of that contain such signs, confesses a defendant.

During realization in business at presence of corresponding circumstances a defendant can be transferable. In case of establishment during realization in business, that to responsibility must be attracted another or a few persons, they are attracted as defendants in business.

About replacement or bringing in of defendant disposing of is accepted that organ of the Antimonopoly committee, that jurisdiction question about raising action.

Replacement or bringing in of defendant can come true only within the limits of signs of that violation and after those actions after that begun on the right. In another cases in relation to these persons other business must be excited in the set order, and instead of replacement of defendant – new business is excited in relation to other person and, if necessary, already broken in relation to a person business is subject to closing in accordance with the article of a 49 Law. Replacement of defendant is possible in case of his reorganization – change of legal form of defendant, joining of him to other person, confluence with other person.

A declarant is a person that gave to the organs of the Antimonopoly committee in the set order statement about violation of legislation about defence of economic competition. In the cases when in accordance with an indention fifth of part of the first article of a 36 Law on the right broken on own initiative of organ of the Antimonopoly committee on the basis of corresponding statements and solicitors, person that handed in an application also is a declarant.

A declarant public authority, organ of local self-government, is considered also, the organ of administrative management and control brought in that idea about violation of legislation about defence of economic competition.

If a decision in business can substantially brush against rights and interests, охоронювані by this Law. Other person, these persons are brought over to participating of person in quality of the third persons. About confession the third person the organs of the Antimonopoly committee of Ukraine are accept an order, about what it is reported to the persons that participate in business, including person confessed by the third person.

About confession the third person, disposing of is accepted that organ of the Antimonopoly committee, that jurisdiction question about raising action.

Persons that participate in business have a right with the aim of defence of the interests to meet with materials of business. At the same time this right for the marked persons does not arise up from the moment of raising action, as to

prosecuting an inquiry in business, to establishment of circumstances necessary for the all-round, complete and objective decision of business, the possible actions of persons that participate in business must not prevent the assembly of necessary proofs, what of them can accomplish (for example, to destroy possible proofs), knowing yet on the initial stage of investigation in business about the yet not set circumstances, about facilities and methods of investigation, source of receipt of proofs and others like that. On the stage of investigation of business to establishment of all necessary circumstances the secret of investigation is in business kept.

All necessary for a correct decision matters of circumstance are set by means of proofs. By proofs in business there can be any fact sheets that give an opportunity to set a presence or absence of violation.

The article of a 41 Law of Ukraine "About defence of economic competition" [1] regulates the duty of finishing telling

Under fact sheets it is necessary to understand not facts, but information about them. Facts are events, phenomena of reality, that can not be added to business. Therefore at finishing telling of presence or absence of these facts office workers and organs of the Antimonopoly committee, persons that participate in business, even if they perceived these events and phenomena directly, operate information about these facts, that get from explanations of parties and third persons, explanations of official persons and citizens, conclusions of experts and others like that. Information about circumstances is fixed in corresponding documents in the order set by Law.

Explanation is: verbal or writing report by the face of information about any circumstances that is subject to establishment in business. Verbal explanations of parties, third persons, that contain data, that testify to the presence or absence of violation, fixed in protocol.

Proofs in business are also explanations of persons, that does not participate in business and are not the judicial figures of process of realization in business, – official or post persons and citizens, that contain data that testify to the presence or absence of violation. These verbal explanations are reported. Protocol must be signed by a person that gives explanation, and at the refuse of person to sign protocol, about it registers in protocol.

Before the grant of explanations a person that must give them is warned of responsibility at a grant in an incomplete volume or unreliable information. Organs of the Antimonopoly committee, authorized agents persons have a right to require the grant of verbal or writing explanations by them. In this case persons it is required from that are warned of responsibility for backing-away of information.

Organs of the Antimonopoly committee of Ukraine on own initiative or after the solicitor of person that participates in business, have a right to appoint examination, what an order (The article of 43 Laws of Ukraine is "About defence of economic competition" [1]) is accepted about.

Appointing examination and setting the circle of questions, that it follows to put before experts, the corresponding organ of the Antimonopoly committee of Ukraine has a right to ask suggestions of parties and other persons that participate in business. In an order about setting of examination questions are marked, on what necessary conclusions of experts, and person that will examine.

Realization of examination is one of judicial facilities, necessary for establishment actual circumstances of business and comes true only under the Law.

An expert is a person that owns scientific, technical, sociological, economic or other knowledge, that for the order of organ of the Antimonopoly committee it is incumbent to conduct examination and dates on her results conclusion.

Examination is research on the basis of the special knowledge of material objects, phenomena And processes, that contain information about circumstances that is subject to establishment in business.

Conclusions are on results investigation and research of businesses. In the process of trial of business about violation of legislation about defence of economic competition the organs of Committee, in accordance with the article of a 46 Law of Ukraine "About defence of economic competition" [1], have a right to give recommendations. Recommendations of organs of Committee are subject to obligatory consideration organs or persons that they are given.

Recommendations are given by those organs of Committee, that jurisdiction business about violations in relation to those actions, concerning that recommendations are given. On condition of implementation of positions of recommendations in case if violation: did not result in substantial limitation or distortion of competition, did not inflict considerable losses to the individuals or society and it is used corresponding measures for the removal of consequences of violation, – the organs of Committee make decision about closing of realization in business on the basis of sex 46, 48 and indention seventh of the article of a 49 Law of Ukraine "About defence of economic competition" [1].

On completion of collection and analysis of proofs the office workers of Committee, separation is presentation with previous conclusions, that is introduced organs of Committee, that jurisdiction business.

As a rule, the office workers of Committee, separation is one idea about previous conclusions in business – regardless of amount of defendants. A previous decision can be appealed in the order certain the article 60 of this Law, in fifteen daily term from the day of his receipt. This term can not be renewed. In case of closing of trial of business in connection with unleading to of feasance of violation a defendant can appeal to the economic court about a compensation by the subject of menage, that handed in an application in accordance with part first it to become, him, losses inflicted in connection with the acceptance of previous decision [6].

A previous decision, if more short space is not marked in him, loses an action from the day of receipt of the decision accepted on results the trial of business a defendant. Previous decision in business by c means for the distraction (non-admission) of negative consequences that can come for the subjects of menage as a result of perfect violation. Initiative in relation to the acceptance of previous decision in business belongs to the subjects of menage, that can test such negative consequences. At the same time, determination of expediency of application of such judicial means depends upon the organs of the Antimonopoly committee depending on validity of requirements of declarant.

A previous decision in business it can be accepted only in relation to a defendant in business about violation of legislation about defence of economic competition. If the feaseance of violation of legislation will not be well-proven a defendant about defence of economic competition, he is right to appeal to the set order in a court about the compensation of menage the losses, inflicted by implementation of previous decision of organ of the Antimonopoly committee accepted on the statement of this subject of menage, a subject.

A law does not envisage the compensation of losses a defendant from the subject of menage on the statement of that a previous decision is accepted, in case if decision in business about confession of defendant such, that violated a legislation about defence of economic competition, cramps it is confessed by invalid. In this case the inflicted damages are subject to the compensation the Antimonopoly committee or him a territorial separation, depending on that, whose organ made decision in business. On results consideration of businesses about violation of legislation about defence of economic competition the organs of the Antimonopoly committee of Ukraine make decision.

Examining business about violation of legislation about defence of economic competition, for that on the subjects of menage – legal or physical entities, or on the group of subjects of menage, that confess the only subject of menage, a fine can be imposed in accordance with the article of 52 Laws of Ukraine "About defence of economic competition" [1] and article of a 21 Law of Ukraine "About protecting from an unfair competition" [3], organs of Committee, that jurisdiction business, obliged to summon data about the profit (profit yield) of subject of menage from realization of products (commodities, works, services) for the last financial year, that was preceded to the year a fine is laid on in that.

Observance of judicial principles about investigation of businesses : association two or anymore businesses, bringing in of new defendants, stop of realization on business and his renewal and others like that.

The article of a 38 Law of Ukraine "About defence of economic competition" [1] envisages : an association and selection of businesses, stop of trial of business and his renewal. This article envisages possibility of association a few the businesses in



one, if it is expedient to carry out their consideration in one realization that assists a judicial economy. In particular, hook expediency magician place if in different businesses in relation to different defendants the the same circumstances of feasance of violation are set the legislations about defence of economic competition, related to the feasance by them the same concrete violation, for example – the anticompetition concerted actions, or violations are perfect by them closely constrained inter se, for example, when it is perfect one defendant of violation it is conditioned by perfect violation by the second defendant. Businesses can unite in relation to one defendant, though after different violations, if it is related to the necessity of establishment of far of circumstances that matter for leading to of both violations.

A question about the selection of business for separate consideration appears in the cases when

a) realization of investigation and decision-making in business in relation to одною from a few violations or one of defendants it is more expedient to carry out in other (territorial or judicial) organ of the Antimonopoly committee;

б) realization of investigation and decision-making in relation to one of defendants it is expedient to carry out separately with the aim of defence at his interests, for example, in relation to a declarant in relation to perfect to them and by other subjects of manage the anticompetition concerted actions;

c) in business after a few violations one of them is well-proven, and leading to needs other additional investigation;

d) in business after a few violations of leading to of all circumstances of one of them is the impossible to the decision economic court of constrained and by them by the circumstances of business or to the decision a public organ related to these circumstances of other question that змушье to stop realization at part of investigation of these circumstances;

e) investigation of violations it is expedient to carry out in the process of realization other business that needs the association of realizations;

f) it is set during completion of realization or decision-making on business signs of new violation or in relation to new defendants, and the proofs collected in business are necessary for leading to of this violation.

In particular, the article 49 determines grounds at that realization is in business closed without bringing in of person to responsibility [7].

It is necessary also to mark that limitation of bringing in is to responsibility for violation of legislation about defence of economic competition. (The article of 42 Laws of Ukraine is "About defence of economic competition" [1]).

Under limitation of bringing in to responsibility register understands from the moment of feasance of violation of legislation about defence of economic competition or from the moment of completion of триваючого violation term after completion that responsibility and application of approvals are eliminated.

A law is set two limitations of bringing in to responsibility, depending on degrees of public harm of violations – general and special. General limitation of bringing in to responsibility presents five years from the moment of feance of violation of legislation about defence of economic competition or from the moment of completion of триваючого violation.

General limitation of bringing in to responsibility is used in the cases of bringing in to responsibility for the violations envisaged by the points of a 1 – 12. 17-20 article of a 50 Law of Ukraine "About defence of economic competition" [1].

The special limitation of bringing in is to responsibility for the violations envisaged by the points of a 13-16 article of a 50 Law presents three years from the moment of feance of violation of legislation about defence of economic competition or from the moment of completion of триваючого violation.

Limitation of bringing in is to responsibility for violations statutory Ukraine "About protecting from an unfair competition" [3] straight not set. It is considered that in relation to these violations also operates general five-year term of bringing in to responsibility, despite on the step is set a six-month term for an appeal after the protection of the broken rights(what can be continued by the organs of the Antimonopoly committee on a corresponding statement).

Limitation of bringing in to responsibility means a term during that a person can be attracted to responsibility – id est, when in relation to a person the trial of business will be begun about violation of legislation about defence of economic competition.

In a time of trial of such business motion of limitation of bringing in of responsibility is stopped. Motion of limitation begins after closing the case about violation on the basis of the article of a 49 Law.

With the aim of realization of state control after inhibition of legislation about defence of economic competition, legislations about protecting from an unfair competition organs the Antimonopoly committee of Ukraine is conducted by planed and not provided for by the plan departure verifications of inhibition of legislation about defence of economic competition during realization of economic activity by the subjects of menage and during realization of plenary powers by government bodies, organs of local self-government, organs of administrative management and control in relation to the subjects of menage.

During 2007 the organs of Committee are conduct 798 verifications of observance of requirements of legislation about defence of economic competition (in 2006 – 810), including 589 verifications of subjects of menage and 209 verifications of public organs. On results these verifications consideration is begun 269 businesses about violation of legislation about defence of economic competition and 415 recommendations are given in relation to stopping of actions(to inactivity) that contained the signs of such offences.

Judicial practice as has a source of competitive of right outstanding value for the home system of defence of competition, as swims out from the decisions accepted by courts on results consideration of spores in the field of competitive relations. Thus, the norms of competitive legislation are used courts system, in intercommunication with other norms of legislation of Ukraine. Judicial practice presents a base for further development and improvement of competitive legislation and is one of instruments of realization of competition politics of the state.

It is without an overstatement possible to establish, that decisions, that was accepted by the Higher economic court and economic courts of Autonomous Republic of Crimea, regional and bridge of Kyiv and Sevastopol the concrete businesses constrained from adjusting spores in the field of a competition, allowed to shut out destruction form for the last seven years of the organizational and legal system of defence of economic competition in Ukraine, to prevent the attempts of separate subjects of menage, by the decision of spores in economic courts, practically to stop activity of Committee and do impossible the job of realization of state control fixed on Committee processing after the observance of antitrust legislation.

2007 witnessed the mutual understanding between the organs of Committee and courts in relation to prevention and stopping of violations of legislation about defence of economic competition, that found the reflection in a number of made decision courts from the questions of application of competitiveness legislation.

The formed is certain positive practice at consideration in the courts of businesses about confession invalid decisions of organs of Committee.

During 2007 in 269 cases applied in a court with lawsuits in accordance with the article of a 25 Law of Ukraine "About Antimonopoly Committee of Ukraine" [2]. During a financial year 148 decisions of AMC of Ukraine that folds a 10.4% made decision for a year are appealed in courts.

**Conclusions and further researches directions.** Development of competitive legislation and completion of forming of the integral system of defence of economic competition in Ukraine are a process that is indissolubly related to the increase of legal and enterprise culture of society. The most perfect legal norms, state and law mechanisms are not able to provide effective enough defence and development of competition, if ideas and values of market economy (similarly as ideas and values of democracy, legal state and others like that) are not perceived by society on the whole.

Therefore we must attain the that state, when every participant of competitive relations (both businessman and official) will realize a necessity to operate in this process only honestly and legitimately, straight binding the conscientious competition behavior and high competition of market economy to the increase of own and public welfare, when it is inalienable part of his civil position.

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**РОЛЬ ЮРИДИЧНИХ ПРИНЦИПІВ ПРИ РОЗГЛЯДІ ПОРУШЕНЬ ЗАКОНОДАВСТВА  
У СФЕРІ КОНКУРЕНЦІЇ**

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*Правові норми передбачають застосування і дотримання процесуальних засад, що є важливим елементом принципу рівності учасників при розслідуванні і розгляді результатів справ про порушення законодавства у сфері конкуренції. Таким чином, у статті окреслюються основні законодавчі норми, які застосовують органи Антимонопольного комітету України з приводу регулювання у сфері конкуренції.*

**Ключові слова:** Антимонопольний комітет України, законодавство у сфері конкуренції, правопорушення, юридичні принципи.

**РОЛЬ ЮРИДИЧЕСКИХ ПРИНЦИПОВ ПРИ РАССМОТРЕНИИ НАРУШЕНИЙ  
ЗАКОНОДАТЕЛЬСТВА В СФЕРЕ КОНКУРЕНЦИИ**

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*Правовые нормы предусматривают применение и соблюдение процессуальных требований, что является важным принципом равенства участников при расследовании и рассмотрении результатов дел о нарушении законодательства в сфере конкуренции. Поэтому в статье очерчены основные законодательные нормы, которые применяют органы Антимонопольного комитета Украины при осуществлении регулирования в сфере конкуренции.*

**Ключевые слова:** Антимонопольный комитет Украины, законодательство в сфере конкуренции, правонарушения, юридические принципы.