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MODELLING ORGANIZATIONAL FORMS OF ENTERPRISES AS A TENDENCY OF ECONOMIC LEGISLATION DEVELOPMENT

The concept of economic entity, the legal nature of the types of business entities, their classification, history of their formation are analyzed. Legal configuration of organizational-legal forms of managing certain types of corporate associations are disclosed.

Key words: economic law of Ukraine, legal forms of business organizations, business entities, modeling the organizational-legal forms of business organizations.

Problem setting. Since Ukraine was proclaimed a sovereign, independent, democratic, social, and legal state, a new stage of its development, namely market economy formation, has begun. At this particular time, under conditions of liquidation of the system of directive planning and administrative managing the economy, prices of government regulation, and a privatization process, the authority and population looked forward to automatic functioning, self-governing, and legal support of democratic basics in the economic sphere. They, in turn, became three of reasons of significant miscounts and errors in the government economic policy. Globalization processes, crisis phenomena, expansion of development, and extension of these processes in all the economic sectors, emergence of new economic sectors, and changes of the structure and dynamics of the domestic social and political environments objectively lead to a process of complication of the economic environment structure and economic relations in general as well as emergence of diversity of legal entities, each of which has own unique legal status. Diversity and

variety of organizational and legal forms of business entities complicate and undoubtedly lead to a disturbing situation – the absence of stable legal support of the latter. Such situation encouraged inevitable processes in the national economy, namely a capital concentration process, where integrated business-groups (a so-called «economic elite») take up a monopolistic or leading position in nearly all major industries of the economic system. Thus, the legislative economic policy forms under rigorous supervision of the latter. Legal formation of a new mechanism for economic development includes exactly their interests. Nevertheless, processes of emergence and formation of new or alternative markets is accompanied by a process of the change of business-elite conjuncture. However, this process does not change the sense of the case in coordination of a legislative process.

Thereby, importance of scientific developments in the jurisprudence sphere challenges analyzing a problem of an economic entity regarding evolution of development of its organizational and legal forms for stable legal support of all existing forms of its functioning. Thus, absence of optimal methodological approaches and theoretical researches in the law regarding the institution of organizational and legal forms of business entities and modern economic realities of their formation and practical functioning is a considerable obstacle for formation of the adequate legislative basis in the economic environment.

Recent research and publication analysis. Some aspects concerned with economic agents began to form in the national legal science in the middle of the 20th century on the level of scientists of two competing legal sciences – civil law (usually, from the standpoint of its types) and economic law (corporate law). A majority of aspects was considered by representatives of the civil law school such as S. S. Alekseiev (1999), V. I. Borysova (2002), V. V. Baranenko (2003), I. V. Spasibo-Fateieva (1998), etc. and representatives of the economic law school such as V. K. Mamutov (2002, 2010), D. V. Zadykhailo (2012), H. L. Znamenskyi (2012), Ye. R. Kibenko (2005), O. M. Vinnyk (2003, 2004), V. M. Shcherbyna (2003), O. V. Bryntsev (2000), O. P. Podtserkovnyi (2010), I. V. Lukach (2015), K. O. Kacherhina (2005), etc. Foreign scientists have begun to develop this matter significantly earlier. F. Easterbrook (1996), D. L. Fischell (1996), J. S. Davis (1917), etc. have considerably contributed to the institution of organizational and legal forms of economic agents. S. M. Makukha (2012) have touched on a matter of an economic agent in the economic science. Simultaneously, the mentioned scientists did not pay considerable attention to the very concept of an economic agent as well as a problem concerned with evolution of development of organizational and legal forms of the subject. Since emergence of new configurations of social and economic interests in the process of market relations development leads to unadjustment of legal frameworks of the latter, the above-mentioned

problem is a key factor of the process stabilization of legal support of all existing forms of its functioning.

Paper objective. The article purpose is to develop a legislative conception of determination of the content of organizational and legal forms of economic agents, improvement of current legislation regarding the mentioned matter, and construction of more useful models of organizational and legal forms of the economic activity.

Paper main body. Economic and social spheres of vital activity are closely related to the economic activity of humans. Numerous social groups of humans included in a production process or any other economic process (e.g., providing various services) appear in the role of channels of transformation of different interactions and interrelations between economic and social spheres. Economic relations and activity are the basis for social, political, spiritual, and other processes of the social life. Naturally, these relations and activity are determinative for the mentioned interactions and interrelations.

A subjectivity feature is the main feature of any economic relations in the process of their conduct. Research of the mentioned legal category of legal personality or economic agent in the science of law occurs on the ground of results of social researches. Nevertheless, absence of a general theory on a subject of law and absence of a category of «economic law» in the national legislation as well as in the legal doctrine do not answer this inquiry. Thus, a category of the «economic agent» as a concept is referred to as a «subject of business relations» or an «economic entity» in the juridical literature. In the legislative context, these concepts are considered as synonyms. However, there is a concept in a broader sense such as a «participator of economic relations». It is referred to as an organization being a legal relations party, which is not belonged to a category of economic organization. In the non-law literature (for instance, technical), a «subject of economic relations» is defined as «a person (an individual or a legal entity) acting in an economy, who can make decisions, independently develop business plans, and operate according to the latter, receive orders, establish goals concerned with production or distribution of some or other goods and services, or play the role of a purchaser». The economic dictionary defines a «subject of economic relations» as «an economic operating subject that conducts economic and business activity and can assume the form of a person, a family of entrepreneurs, an enterprise, or a state».

Thus, under conditions of the current legal dimension, economic agents are referred to as subjects and economic relation participators, who conduct economic (most often, business) activity. It stands to reason that part 4 of Article 13 of the Constitution of Ukraine focuses on protection of rights of all the property right

subjects as well as economic agents. Norms of the Economic and the Civil Codes and certain laws of Ukraine regulate establishing and the activity of economic agents in Ukraine.

Article 55 of the Economic Code of Ukraine recognizes business entities as parties to economic relationships that carry out economic activity, exercising their economic competence (integrity of economic rights and obligations), have separate property and bear responsibility for their liabilities within property, except in cases envisaged by the law. The law doctrine determines the following features of business entities, which in conjunction characterize their economic sense: a) organizational unity, which enables business entities to participate in business turnover as an economic relation participator. They are subjects of economic law only under conditions of business relations. The economic law does not prohibit them to enter into relations in the business sphere (civil, financial, administrative, etc.); b) direct carrying out economic activity aimed at satisfaction of public or other priced needs. Business entities differ in this feature from other economic relation participators, which conduct activity within part 3 of Article 3 of the Economic Code of Ukraine as non-business entities, including government and municipal bodies, which exercise economic competence, and are not recognized as business entities according to part 1 of Article 8 of the Economic Code of Ukraine; c) possession of economic competences (a set of economic rights and obligations), which is implemented in the process of carrying out business activity. The theory of economic law determines this feature as business legal personality, which consists in government acknowledgement of an opportunity of an economic relation subject as subject to rights (to have and exercise economic rights and obligations, to be responsible for their appropriate observance, and to have legal opportunity to protect own rights and lawful interests against possible violations); d) existence of separate capital, which is essential for carrying out economic activity. Depending on a form of capital separateness of a property right, an economic entity exercises its economic competency on the basis of a property right, a right of business disposal, a right to operative managing in compliance with a definition of these competence in the legislation (part 3, Article 55 of the Economic Code); e) a fact of economic entity legitimation, i.e. government confirmation of legitimacy of its entrance into a business sphere and carrying out business activity. Legitimacy of economic entity existence contemplates a necessity of adherence to peculiar requirements to establishing, state registration, and official acknowledgement of its existence, which, in some cases, include a procedure of licensing and patenting of some types of activity; f) individual responsibility for own actions in the economic turnover sphere. Business entities should bear responsibility according to legal requirements (part 1, Article of the Economic Code).

Certainly, business entities and economic law subjects are based on a diversity principle being a key criterion of a classification. Exercising their right to carrying out economic activity, an economic entity independently determines the most convenient way of organizing and carrying out. The entity can choose an individual or a collective way of actions grounded on joining assets and entrepreneurial efforts with other persons in order to earn profit and appropriation of the additional product. The theory of property relations divides all participators of a business process, which is considered as appropriation of nature products with the use of labor productivity in the process of public production, into subjects of individual and group appropriation. Thus, there are individual and joint business entities: physical persons (entrepreneurs) and collective unions (organizations). Naturally, economic diversity as a principle of organizing the economic life in Ukraine is expressed through providing the following components: diversity of forms of ownership for economic assets creates the property basis of the economy and includes property of the people of Ukraine, public, communal, private corporate, cooperative, and other forms of ownership; diversity of organizational and legal forms of entrepreneurship; diversity of forms of commercial and non-commercial economic activity, particularly labor, scientific and technical, investment, business and production, consumptive and self-providing, etc.; diversity of structures and segments of the national economy includes small, medium-seize, and large, and transnational companies and foreign, public, cooperative forms of business, etc. The government should guarantee providing and development of economic diversity, carry out monitoring of its state, and give government support for its important components as a necessary condition of resistance and potential of national economy development.

According to Article 42 of the Constitution of Ukraine, «everyone shall have the right to entrepreneurial activity that is not prohibited by law». According to the legislation, a citizen is acknowledged as an economic entity whether the citizen conduct entrepreneurial activity in case of state registration as an entrepreneur without the legal entity status. An entrepreneur, who is a citizen of Ukraine, conduct own activity on the grounds of freedom of entrepreneurship. At the same time, entrepreneurship is referred to as independent, initiative, systematic activity at own risk that is not prohibited by law and is aimed at production of goods, execution of work, providing services, and trade in order to earn profit. Citizen of Ukraine, citizen of other countries, and stateless persons can conduct the entrepreneurial activity. The entrepreneurial activity of deputies, officials, and officers of the bodies of state power and local self-government, military men, staff of prosecutor's offices, courts, and a security service are restricted.

In the legislation, individual subjects are presented in the form of a physical person (an entrepreneur) and collective business entities are presented in the form

of legal entities, which have another legal status. Legal determination of the latter is outlined in part 2 of Article 55 of the Economic Code, which contains a list of business entities in the form of legal entities. There are different legal entities according to formation procedure as well as an activity direction, which were formed owing to existence of different activity purposes. Therefore, the legislation outlines the following business entities: economic organizations – legal entities established in accordance with the Civil Code of Ukraine, state, municipal and other enterprises established in accordance with the present Code, as well as other legal entities that conduct economic activity and are registered in compliance with the procedure established by the law; citizens of Ukraine, foreigners and stateless persons that conduct business activity and are registered as entrepreneurs according to the law. Nevertheless, there are some forms of business entities, which cannot be strictly referred to any of the mentioned categories. This article does not take into account such business entities, particularly unit investment funds, which are formed on a contractual basis and do not have the status of a legal entity (the Law of Ukraine «On Institutions of Common Investments (unit and corporate investment funds)), an individual agricultural household (the legal status is determined by the Law of Ukraine «On an Individual Agricultural Household» of 15.05.2003), which can sell surpluses of agricultural products and provide services of green tourism on a paid basis, but are not recognized as a legal entity and are not subject to entrepreneurship and state registration (however, they are subject to accounting that is done by village and town councils in an area of allocation).

Having observed the Ukrainian legislation from 1991 to nowadays (peculiarly, those Ukrainian laws, which expired as the Economic Code of Ukraine came into force), we may conclude that legislative and doctrinal views on economic relation subjects considerably changed. It happened because the latter was considered as conglomeration of an entrepreneur and a legal entity. An economic entity concept was frequently used, but there was not universal definition for this concept (that used in all cases of economic and legal practices). Thus, an economic agent was considered with the use of a mixed concept of two separate subjects being different in nature and a legal form. For instance, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On Entrepreneurship» on 7 February 1991 (expired on 01.01.2004), which fixed a legislator view on a subject of entrepreneurial activity. This subject was transformed into a physical person-entrepreneur and an organization and legal form of a legal entity as the ECU came into force. Therefore, according to the Law, namely its Article 2, «subjects of entrepreneurial activity (entrepreneurs) can encompass: Ukrainian citizens, citizens of other countries, stateless persons, who are not limited in their ability to act and the legal ability; legal entities of all forms of ownership determined by the Law of Ukraine «On Property»; unions

of legal entities, who conduct activity in Ukraine on conditions of an agreement on division of products. As for legal entities and the citizens, for which entrepreneurial activity is not the main one, this Law is applied to that part of their activity, which is entrepreneurial».

Certainly, such view does not cardinaly differ from the current view of the ECU on a physical person-entrepreneur. In addition, on 27 March 1991 the Verkhovna Rada adopted the Law of Ukraine «On Enterprises in Ukraine». Article 1 of this Law determines that «an enterprise is an independent business statutory subject, which has rights of a legal entity and conduct production, scientific and research, and commercial activities in order to earn corresponding profit». That is to say, according to this Law, an enterprise was called a separate economic agent. In addition, this Law presented a list of enterprises: a private enterprise; a collective enterprise; economic partnership; enterprises based on the ownership of citizens' associations; utility enterprises; state-owned enterprises.

In the process of development of the Civil and the Economic Codes, the view on entrepreneurship as subject to law was inappropriate for economists, because this approach does not take into consideration relations of internal structural units of organizations and enterprises. Certainly, the civilists have not taken into account staff of an internal structural department of an enterprise as a conscious participant of economic relations. At the same time, they have prepared the ground for hyperbolization of importance of a legal entity and its role in the economic life or a process of national economic activity. From the standpoint of civil social reality, relations can take the form of legal relations if collective organizations function as legal entities. Otherwise, relations of any subjects of law with collective organizations (primarily, it is concerned with property matters, including business ones) cannot be juridical. At the very outside, they become organizational and technical relations. Nevertheless, such event did not express a real situation in the national as well as foreign dimensions. A system of legal regulation of economic activity, for example, highlights diversity of legal forms of business entities in Germany. Thus, the legislators understood that the former terminological apparatus for economic agents was inappropriate. Subsequently, they began to use a concept of «economic entity». The Law of Ukraine «On Economic Activity in the Armed Forces of Ukraine» of 21.09.1999 and the Law of Ukraine «On Protection of Economic Competition» of 11.01.2001 contained first legislative attempts in this direction. These laws defined an economic entity as a legal entity regardless of its administrative and legal form and its ownership form or an individual performing activities associated with manufacture, sale and purchase of commodities, other economic activities, including those associated with exercising supervision over another legal entity or an individual; group of the economic entities if one or sev-

eral of them exercise supervision over the other. Economic entities shall also include state agencies, bodies of local self-government, as well as administrative and control bodies performing activities associated with manufacture, sale and procurement of commodities or other economic activities. The economic activities shall not include activities performed by individual purchasing consumer goods for ultimate consumption.

Certainly, absence of the stable theoretical basis causes insufficiency of legal substantiation of an economic law subject category and determination of its role in any sphere as well as the norm-centrism approach to the legal view, where a normative act «prohibits», «permits», and «regulates». As a result, a subject of law is a passive executor of vicarious normative regulations. Therefore, this brings up the question regarding legal regulation of the modern economic activity: Is legal support of organizing economic activity based on the private and legal form? Nowadays, there is juridical blind concerned with perception of the very category of «legal entity» as a fiction or a figment being virtually concentrated by the science of law. At the same time, a category of «state» (which appears in the role of a definitive subject (directly or as a control and revision supervisor)) is limited to the legal entity status or loses its legal identification in the form of a separate category as a member of an economic entity or any other activity. Thus, the mentioned realities confirm isolation of functioning of the law from real life. Absence of doctrinal general categories regarding the legal view on a subject of law leads to an enormous extent of this gap. Moreover, some economic institutions characterize the legal reality as that containing exclusively law norms. For instance, the legal basis of hairdressing activity comprises several norms of the Tax Code of Ukraine and several executive orders. The telecommunication sphere being super dynamic in all of its aspects is regulated due to the law of 2003. Naturally, such view influences the category of a subject of law. Simultaneously, almost an entire process of activity will concentrate on functions and actions of the latter, e.g. a hairdressing business. Under the mentioned conditions, a system of subjects of any industry, sphere, or an institution of law should be comprehensively considered.

Thorough analysis of economic, legal, and legislative development of Ukraine during the last sixteen years enables to indicate significant changes of the structure and content of economic relations, which are as follows: cessation of state monopolies in almost all the sectors of the economic system; transformation of private ownership into one of the main ownership forms in the national economy; diversity of ownership forms, formation of new economic activity forms being adequate to changes of property relations; complication, formation, and overcoming legal indefiniteness in formation of the infrastructure and market mechanisms. Certainly, the market form of economy, which functions in the country, has formed on

the grounds of private ownership and it cannot exist in the absence of the latter. However, this form of ownership has own peculiarities and fundamental types of its conjuncture, which took different associated (corporate) forms (collective, group, joint stock) rather than individual one owing to evolution.

Thus, classifying the latter, there is a need to emphasize that Article 79 of the Economic Code of Ukraine determines business partnerships as enterprises or other business entities established by legal entities and/or individuals by means of uniting their property and participation in entrepreneurial activity of the partnership with the purpose of earning profit. Therefore, the legislator highlights their close interrelation with the institution of entrepreneurship and a concept of «legal entity». As a result, the very concept of «business partnership» denotes several independent types of private law (a generic category). There are common features of these types of private law: carrying out commercial activity in order to earn profit and to distribute it among members; distribution of charter capital into stocks.

It is worth noting that the current legislation does not strictly define a concept of an organizational and legal form of business partnerships. The author think that solution of a problem of intrinsic rather than empirical understanding the concept of the organizational and legal form of business partnerships on the theoretical level is possible through application of system approach methodology. K. O. Kocherhina (2005) states that this approach enables to consider the organizational and legal form of business partnerships as a complicated social system, which contains some «legal» subsystems – «founders/members» and «legal entities». The latter has own substructure in the form of a subsystem of an asset complex, the legal ability, and management. Indicating the complicated hierarchic structure of an entire system of the organizational and legal form of business partnerships, the mentioned subsystems comprise the following system and structure elements: a) a legal mode of property; b) the legal ability; c) a system of bodies or a certain management procedure; d) content of legal relations between members and a founded legal entity, including the scope and a procedure of their responsibility; e) relations between founders/members regarding formation, functioning, and cessation of the legal entity (participation in formation of charter capital, participation in profit distribution, disposal of corporate rights, obtaining information on partnership activity).

Therefore, taking into account the above-mentioned facts, it is expedient to define the organizational and legal form of business partnerships as a system of three regulated types of relations, namely: relations arising inside a system of «founders/members» between its system and structure elements – founders/members regarding formation, functioning, and cessation of a business partnership as

an organization; relations arising inside a subsystem «legal entity» regarding interaction of its structural elements – the legal ability, a legal mode of property, a management procedure; relations arising between the mentioned subsystems regarding functioning and cessation of a business partnership as a legal entity, including the scope and a procedure of responsibility.

Classifying organizational and legal forms of business partnerships, it is worth highlighting their close interrelation with the institution of a corporate enterprise. Business partnerships are referred to as several independent types of corporate enterprises (a generic category), which are created by two or more founders, act on the basis of uniting assets and/or entrepreneurial or labor activity of founders (members), common management, corporate rights (including through bodies, which were founded by them), and participation of founders (members) in distribution of revenues and risks of an enterprise. Nevertheless, in addition to the mentioned features being inherent to all the business partnerships, they also have a set of specific features, which enable to divide them into groups according to particular criteria. The author thinks that there is a need to highlight the most widespread reasons for classification of business partnerships: a) a priority of property and personal elements in the society; b) a reason for emergence of entrepreneurial partnerships (the main constituent documents); c) an amount of responsibility of their members.

Thus, the legislation indicates organizational and legal forms of business partnerships such as full partnerships, limited partnership, limited liability partnership, superadded liability partnership, and a joint-stock company.

The author warns and explains that limited partnership does not rule out full partnership, but only becomes the most popular construction of the organizational and legal form at a particular stage of economic relation development. In turn, a private market system becomes the ground for popular organizational and legal forms such as joint-stock companies, limited liability, and superadded liability partnerships, which have risen out of craft guilds, maritime and mining unions, and banking-houses. Finally, forms of legal entities such as state-owned companies and their types – a trust, an artel, and different configurations of establishments and funds (church, educational, and charitable establishments, public organizations, charitable and pension funds) have begun to develop within the scope of state as well as public and civil systems.

D. V. Zadykhailo (2012) mentions that it is worth indicating so-called basic organizational and legal forms of business partnerships, which are noted for uniformity of understanding in different state and legal systems, and derivative (special) organizational and legal forms of business partnerships. The first group includes a joint-stock company, limited liability partnership, superadded liability partnership,

full, and limited partnership. The second one respectively includes commercial and cooperative banks, insurance companies (insurers), non-governmental pension funds, corporate investment funds, and credit unions.

Conclusion of the research. Certainly, these assertions highlights importance of research related to the category of a subject of law. Nevertheless, a traditional view on an economic agent leads to a matter of organizational and legal support in the process of determination of a subject of economic law. A current traditional list of organizational and legal forms of an economic agent (namely a legal entity) dynamically changes. Each of these categories in the legislative as well as in the scientific sense is not static, since they actively develop under market conditions. Therefore, absence of a consolidated list of all the organizational and legal forms of economic entities as well as business entities and lists of legal entities of public and private law in the current legislation of Ukraine leads to negative consequences. For instance, a state registrar is induced to use the Statistical Classifier of Organizational Forms of Economic Agents. The mentioned classifier is a normative and technical rather than a normative and legal act. Unfortunately, it is imperfect. Particularly, as the name implies, the classifier is concerned with organizational forms of economic agents, but there are also political parties, non-governmental organizations, professional unions, religion organizations, and even government agencies and self-government bodies alongside economic agents, which cannot be referred to economic agents (moreover, the latter concept is not determined in the legislation). In addition, there are a considerable number of generalizing categories appearing in the role of organizational and legal forms in the classifier. These categories do not denote certain legal entities. They are used for denotation of some groups of legal entities such as «state-owned company», «business partnership», «religion organizations», etc. That is to say, there is the same absence of a single approach to determination of organizational and legal forms of legal entities as in the above-mentioned legislative acts. This leads to problems of practical application. For instance, if there is a necessity of formation of a charity fund, state registrars frequently force founders to indicate a title «Charity Organization «Charity Fund «Dobrodii» in a register card. The case is that the mentioned classifier does not contain an organizational and legal form such as a «charity fund». There is only a «charity organization». On the other hand, the above-mentioned Order of the Ministry of Justice of Ukraine enables not to indicate an organization type in the title. As a result, a problem of legal entity individualization arises. In addition, changes in the legislation regarding determination of organizational and legal forms lead to a situation, where a legal entity statute and an extract of the register contain different titles. Such situation causes a necessity of proof of title identity.

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МОДЕЛИРОВАНИЕ ОРГАНИЗАЦИОННЫХ ФОРМ СУБЪЕКТОВ ХОЗЯЙСТВОВАНИЯ КАК ТЕНДЕНЦИЯ РАЗВИТИЯ ХОЗЯЙСТВЕННОГО ЗАКОНОДАТЕЛЬСТВА

В статье проанализировано понятие субъекта экономической деятельности, обращено внимание на законодательное определение последнего как субъекта хозяйствования. Проанализирована юридическая природа видов субъектов хозяйствования и представлена их классификация, а также проиллюстрирован исторический опыт по формированию последних. Автором дана правовая конфигурация организационно-правовых форм хозяйствования и установлены некоторые отдельные типы корпоративных объединений.

Ключевые слова: хозяйственное законодательство Украины, организационно-правовые формы хозяйственных организаций, хозяйственные общества, моделирование организационно-правовых форм хозяйственных организаций.

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МОДЕЛЮВАННЯ ОРГАНІЗАЦІЙНИХ ФОРМ СУБ'ЄКТІВ ГОСПОДАРЮВАННЯ ЯК ТЕНДЕНЦІЯ РОЗВИТКУ ГОСПОДАРСЬКОГО ЗАКОНОДАВСТВА

Постановка проблеми. У статті проаналізовано поняття суб'єкта економічної діяльності, звернуто увагу на законодавче визначення останнього як суб'єкта госпо-

дарювання. Проаналізовано юридичну природу видів суб'єктів господарювання та надано їх класифікацію, а також проілюстровано історичний досвід щодо формування останніх. Автором надано правову конфігурацію організаційно-правових форм господарювання та встановлено деякі окремі типи корпоративних об'єднань.

Аналіз останніх досліджень і публікацій. Деякі аспекти стосовно суб'єкта економічної діяльності у національній правовій науці почали формуватися ще у середині ХХ ст. на рівні вчених двох конкуруючих правових наук – цивільного права (частіше за все з точки зору її окремих різновидів) та господарського права (корпоративне право). Серед цих науковців-правників більшість аспектів було проілюстровано такими вченими, як: цивілістична думка – С. С. Алексєєв, В. І. Борисова, В. В. Бараненков, І. В. Спасибо-Фатєєва та ін.; господарська думка – В. К. Мамутов, Д. В. Задихайло, Г. Л. Знаменський, В. Л. Мусяка, Е. Р. Кібенко, О. М. Вінник, В. С. Щербина, О. В. Бринцев, Д. І. Погрібний, О. П. Подцерковний, І. В. Лукач, К. О. Кочергіна та ін. Серед закордонних учених розробка цього питання почалась значно раніше, значний вклад у інститут організаційно-правових форм суб'єктів економічної діяльності внесли такі вчені, як: Ф. Істербрук, Д. Л. Фисчел, Ж. С. Давис та ін. У той же час зазначені науковці не приділили достатньої уваги як самому поняттю суб'єкта економічної діяльності, а з ним і проблемі еволюції розвитку організаційно-правових форм останнього, яке виступає ключовим фактором у процесі стабілізації правового забезпечення всіх існуючих на сьогодні форм його функціонування, адже виникнення у процесі розвитку ринкових відносин новітніх конфігурацій соціально-економічних інтересів призводить до неадаптованості правового забезпечення останніх.

Формулювання цілей. Метою статті є розробка законодавчої концепції визначення змісту організаційно-правових форм суб'єктів економічної діяльності, удосконалення існуючого законодавства стосовно даного питання, а також конструювання більш корисних моделей організаційно-правових форм економічної діяльності.

Виклад основного матеріалу. Із моменту проголошення України суверенною, незалежною, демократичною, соціальною та правовою державою починається новий етап її розвитку – побудова ринкової економіки. Саме в цей час на тлі ліквідації системи детективного планування й адміністративного управління економікою, цін державного регулювання, приватизаційного процесу влада і населення сподівалися на автоматичне функціонування, саморегулювання та правове забезпечення демократичних основ у економічній сфері, що, у свою чергу, стало однією з причин значних прорахунків і помилок у державній економічній політиці. Глобалізаційні процеси, кризові явища, поглиблення розвитку і розширення даних процесів по всіх сферах економіки, поява нових секторів останньої, а також зміни у структурі і динаміці вітчизняного соціального та політичного середовища закономірно призводять до процесу ускладнення структури економічного простору, а з ним узагалі економічних відносин, а також до появи в сучасних економічних відносинах різноманіття

колективних утворень, кожне з яких має свій унікальний правовий статус. Багатоманітність та розмаїття організаційно-правових форм суб'єктів економічної діяльності ускладнює і, безумовно, призводить до тривожної картини – відсутності сталого правового забезпечення останніх. Такий стан речей створив невідворотні процеси у національній економіці, а саме процес концентрації капіталу, де інтегровані бізнес-групи (так звана «економічна еліта») вже займають монополістичне становище чи лідируючу позицію по майже всіх існуючих ключових сферах економічної системи. Таким чином, законодавча економічна політика створюється під ретельним наглядом останніх та правове формування нового механізму економічного розвитку включає саме їх інтереси, однак процеси виникнення і створення нових чи альтернативних ринків супроводжуються процесом зміни економічних інтересів у середовищі бізнес-еліти, але методи координації законодавчого процесу не змінюються.

У цьому контексті актуалізується питання сучасного стану законодавчої розробленості організаційно-правових форм господарських організацій, особливо – холдингових компаній. Відсутність оптимальних методологічних підходів і теоретичних досліджень у праві щодо інституту організаційно-правових форм суб'єктів господарської діяльності та сучасних економічних реалій їх створення і функціонування на практиці є значною перепорою до формування адекватної законодавчої бази в економічному середовищі.

Висновки. Звісно, дані твердження підкреслюють важливість дослідження категорії суб'єкта права, однак традиційний погляд на суб'єкта економічної діяльності приводить нас до того, що картина встановлення правової реальності у визначенні суб'єкта економічного права, по-перше, повинна починатися з питання його організаційно-правового забезпечення. Традиційний перелік організаційно-правових форм суб'єкта (мова йде про юридичну особу) економічної діяльності перебуває в постійному стані активної динаміки, адже кожна з даних категорій як у законодавчому, так і в науковому розумінні є нестатичною, оскільки активно розвивається стосовно ринкових відносин. Таким чином, в умовах відсутності на рівні існуючих законів України зведеного переліку всіх організаційно-правових форм як суб'єктів економічної, так і суб'єктів господарської діяльності, а також переліків юридичних осіб публічного і приватного права має під собою негативні наслідки, наприклад, державні реєстратори змушені користуватися Статистичним класифікатором організаційних форм суб'єктів економіки. Зазначений класифікатор є не нормативно-правовим, а нормативно-технічним актом і, на жаль, недосконалим. Зокрема, з назви цього акта випливає, що він стосується організаційних форм суб'єктів економіки, але поряд з господарюючими суб'єктами в ньому опинилися політичні партії, громадські організації, профспілки, релігійні організації і навіть органи державної влади й органи місцевого самоврядування, які безпосередньо не можуть бути віднесені до суб'єктів економіки, тим більше що останнє поняття у законодавстві не визначене. Окрім цього, у класифікаторі в якості організаційно-правових форм фігурує

значна кількість узагальнюючих категорій, які не позначають конкретних юридичних осіб, а використовуються для позначення окремих груп юридичних осіб, як-от: «державне підприємство», «господарське товариство», «релігійні організації» та ін. Тобто, іншими словами, тут ми бачимо ту саму відсутність єдиного підходу до визначення організаційно-правових форм юридичних осіб, що і в згаданих вище законодавчих актах. Це тягне за собою проблеми на практиці. Наприклад, якщо виникає необхідність створити благодійний фонд, державні реєстратори часто змушують засновників зазначити у реєстраційній картці і в статуті найменування на зразок «Благодійна організація «Благодійний фонд “За успіх”»». Справа в тім, що згаданий класифікатор не містить такої організаційно-правової форми, як «благодійний фонд», там є тільки «благодійна організація». З іншого боку, зазначений класифікатор дозволяє не вказувати вид організації у назві, але тоді виникає проблема індивідуалізації юридичної особи. Крім того, внаслідок змін у законодавстві щодо визначення організаційно-правових форм виникають проблеми, коли у статуті юридичної особи й у виписці з реєстру виявляються різні найменування, що викликає необхідність доказування ідентичності найменування.

Коротка анотація статті

Анотація. У статті проаналізовано поняття суб'єкта економічної діяльності, звернуто увагу на законодавче визначення останнього як суб'єкта господарювання. Проаналізовано юридичну природу видів суб'єктів господарювання та надано їх класифікацію, а також проілюстровано історичний досвід щодо формування останніх. Автором надано правову конфігурацію організаційно-правових форм господарювання та встановлено деякі окремі типи корпоративних об'єднань.

Ключові слова: господарське законодавство України, організаційно-правові форми господарських організацій, господарські товариства, моделювання організаційно-правових форм господарських організацій.