

# ENTERPRISE AND UNION OF ENTERPRISES IN UKRAINE

## *EMPRESA Y GRUPO EMPRESARIAL EN UCRANIA*

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### 1. INTRODUCTION

Development of market relations in modern conditions demands examination of international experience of activity of different types of legal entities that can promote integration processes in world's economy.

From scientific literature we know that there is an active discussion in Chile regarding necessity of formalizing the term "enterprise" in its legislation. Most often it is explained by the development of economic relations determined by science-technical progress<sup>1</sup>.

The question regarding the place of enterprise in civil and commercial relations is relevant for Ukraine as well<sup>2</sup>. But, unlike Chile, this definition is formalized in our legislation. Ukrainian experience can be useful for Chile because there is much in common between our countries. In particular, legal systems of both countries are characterized by twofold division of private law. This term means that provisions of commercial law exist separately and independently regarding provisions of civil law,

do not constitute its part and do not obey its rules<sup>3</sup>.

Civil Code of Chile was adopted in 1855 and Commercial Code of Chile - 10 years later. Both of these legislative acts served as examples for other countries of South America (among which are Ecuador, Venezuela, Columbia, Salvador, Nicaragua and Honduras) in the process of development of their own codes<sup>4</sup>.

In Ukraine passing from monism to twofold division of law happened comparatively recently - approximately 20 years ago. The reason of such event lies in dissolution of the Union of Soviet Socialist Republics (USSR) and passage from state planned economy to market relations.

On the 16<sup>th</sup> of January, 2003 Civil Code of Ukraine and Economic Code of Ukraine were adopted and came into force on the 1st of January, 2004. Before this moment all relationships in the sphere of civil and commercial law in independent Ukraine were regulated by Civil Code of Ukrainian Soviet Social Republic as of 18 July, 1963 and special laws (the Law of Ukraine "On entrepreneurship" as of 07 February, 1991, the Law of Ukraine "On enterprises in Ukraine" as of 27 March, 1991 and by other legislative acts).

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<sup>1</sup> BELYKOVA (2010) p. 10; ECHEVERRÍA (2002) pp. 603-620.

<sup>2</sup> ISAKOV (2006) pp. 1-17.

<sup>3</sup> BELYKOVA (2010) pp. 30-31.

<sup>4</sup> BELYKOVA (2010) p. 41 and p. 53.

## 2. DETERMINATION OF DEFINITIONS "LEGAL ENTITY" AND "SUBJECT OF ECONOMIC ACTIVITY" IN LEGISLATION OF UKRAINE

The term "legal entity" is enshrined in the Civil Code of Ukraine. It is understood as organization, established and registered in accordance with the procedure specified in law<sup>5</sup>. Such person enjoys civil capability and capacity, it is able to be claimant and defendant in the court.

It is worth underlining that not every organization is a legal entity<sup>6</sup>. For example, in Ukraine community organizations are organizations of individuals and/or legal entities of private law based on free will that are established for maintaining and protection of rights and freedoms, satisfying of public interests. They can act as legal entity or without such status<sup>7</sup>. In the last case they do not need to go through the state registration procedure, they just have to give notice to authorized registration body about its foundation.

The main characteristic features of legal entity that enable to distinguish it from other formations are:

- Organizational unity (existence of its own management and control bodies that function as one single);
- Obligatory state registration (that proves by corresponding extract and filling data into United State Register

of Legal entities and Individuals-Entrepreneurs);

- ability to act in social relations from its own name (existence of the name and the right to commercial name);
- Independent responsibility for its obligations (according to the general rule members of legal entity are not liable for its obligations and legal entity is not liable for obligations of its members<sup>8</sup>, except cases foreseen in the legislation of Ukraine<sup>9</sup>);
- Separate assets (assets of legal entity are separate from assets of owners, State, other subjects of civil law<sup>10</sup>).

This status depends on extent of legal capacity of the organization it is much more "wide" in legal entities. Thus, according to Ukrainian legislation, community organizations that are not registered as legal entities are not allowed to take part in civil relations, set up mass media, carry on business ect<sup>11</sup>.

In Ukraine legal entities are created by union of persons and/or property<sup>12</sup>. According to this criterion, in Ukrainian legal science such legal entities are separated: legal entities that unite only individuals (public associations, political parties ect), legal entities that unite assets and individuals (production cooperative) and legal entities that unite assets (for example, joint-stock companies)<sup>13</sup>.

<sup>8</sup> SHEVCHENKO *et al.* (2004) p. 127.

<sup>9</sup> Art. 119, Art. 133, Art. 151 of Civil Code of Ukraine, Art. 65, Art. 66, Art. 75 of the Law of Ukraine "On economic companies".

<sup>10</sup> BORYSOVA (2010) p. 26.

<sup>11</sup> Art. 21 of the Law of Ukraine "On community organizations".

<sup>12</sup> Art. 81 of Economic Code of Ukraine.

<sup>13</sup> SHEVCHENKO *et al.* (2004) p. 104.

<sup>5</sup> Art. 80 of Civil Code of Ukraine.

<sup>6</sup> Art. 1 of the Law of Ukraine "On standards, technical regulations and procedures of evaluation of compliance assessment".

<sup>7</sup> Art. 1 of the Law of Ukraine "On community organizations".

Except this, depending on the process of its establishment, they are divided into legal entities of private law and legal entities of public law. The difference between these entities lies, first of all, in the grounds of their establishment. Legal entities of private law are set up on the basis of the Charter and/or Constituent agreement (for company) or Constitutive act (for institution). Legal entities of public law are established by Executive order of President of Ukraine, state body, body of Autonomic Republic Crimea or self-government body.

Except this, the order of establishment, organizational-legal forms and legal status of private legal entities are regulated by Civil Code of Ukraine, but legal entities of public law – by Constitution of Ukraine and the law<sup>14</sup>, in particular by Commercial Code of Ukraine.

Civil Code of Ukraine distinguishes companies and foundations among organizational-legal forms, but foresees the possibility of establishing legal entity in another form, as prescribed by law<sup>15</sup>.

The main difference between companies and institutions is participation of their founders in the activity of these entities. Founders of the company have the right to take part in management of its activity and founders of institution are divested of this right. Except this, companies are set up by the way of members union and institutions – the means of union of founders' assets.

It is necessary to underline that the definition "institution" gained somewhat different meaning after adoption of Civil Code of Ukraine. Before 2004 organizations financed from budget were mostly un-

derstood under this term<sup>16</sup>. Effective Civil Code of Ukraine does not mark this feature as obligatory for recognition after an entity the status "institution".

Civil Code of Ukraine divides companies into profit (economic companies and productive cooperatives) and non-profit<sup>17</sup>. The status of institution is not so clear defined in Ukrainian legislation, but some scientists, Kucherenko I. in particular, consider that the main activity of the institution is not aimed on gaining profit<sup>18</sup>.

Thus, in accordance with civil law of Ukraine, legal entity is considered to be an organization endowed with number of obligatory features (in particular with organizational unity, state registration, name, separate assets ect), aggregation of which allows it to enjoy variety of rights, freedoms and obligations. The main organizational-legal forms of these entities are companies and institutions.

Economic Code of Ukraine does not give a definition of "legal entity". This legislative act contains the term "subjects of economic activity" that are divided into economic organizations and individuals-entrepreneurs. In fact, economic organizations include all legal entities that execute economic activity and are registered in accordance with the procedure specified in law<sup>19</sup>.

"Economic organization" is more "narrow" category than "legal entity". This is resulted from the main characteristics relevant for economic organization and disclosed below.

To be acknowledged as "subject of economic activity" organization, except fea-

<sup>14</sup> Art. 81 of Civil Code of Ukraine.

<sup>15</sup> Art. 83 of Civil Code of Ukraine.

<sup>16</sup> YAREMA y ROTAN (2005) p. 50.

<sup>17</sup> Part 2 Art. 83 of Civil Code of Ukraine.

<sup>18</sup> SHEVCHENKO *et al.* (2004) p. 107.

<sup>19</sup> Art. 55 of Economic Code of Ukraine.

tures that are usual for legal entity, needs to correspond to further demands:

1. The purpose of the subject has to be maintaining of economic activity (activity in the sphere of public industry, aimed on the production and distribution of production, execution of works or provision of value character services that have price definition<sup>20</sup>);
2. Existence of economic competence (aggregation of economic rights and obligations, determined in legislation and Charter documents<sup>21</sup>);
3. Separation of assets that can be maximum broad (that comes out from ownership right) or limited (if activity is maintained on the basis of alien property on the basis of the right of economic supervision or the right of operational management<sup>22</sup>);
4. Responsibility for results of economic activity (including responsibility for rational and effective usage of settled property<sup>23</sup>).

There are a lot of classifications of subjects of economic activity in economic law science. The distinction of these subjects according to the criterion “scope of powers” (scope of rights and obligations) on such types outstands among them:

- Subjects of the main (primary) link of economic activity (enterprises, economic companies, cooperatives, farm enterprise and individuals-entrepreneurs);

- Economic unions;
- Bodies of economic management<sup>24</sup>.

The main characteristic that unites these bodies is the existence of full scope of powers – the possibility to participate in any economic relations and execute any actions that are not forbidden by law. According to scientists’ point of view, particularly Khakhulin V. and Khakhulin Y., noted above gives grounds for uniting these types into one group – economic organizations (excluding individual-entrepreneurs).

Before 2005 there was one more group of subjects of economic activity which scope of powers was limited. It consisted from departments of economic organizations (branches, representation offices, other separate departments set up for maintaining of economic activity) that could participate only in internal relations<sup>25</sup>. But there were excluded from the number of subjects of economic activity of Ukraine by the Law of Ukraine as of 04 February, 2005<sup>26</sup>.

Thus, it is possible to make a conclusion that not every legal entity is an economic organization. But every economic organization is a legal entity. Except common features, usual for any legal entity, it has the number of specific characteristics that give grounds to distinct it as subject of economic activity from legal entity –subject of civil law.

These terms are basic in determination of the category “enterprise” that we want to examine further.

<sup>20</sup> Art. 355 of Economic Code of Ukraine.

<sup>21</sup> BELYANEVYCH *et al.* (2012) p. 101.

<sup>22</sup> BELYANEVYCH *et al.* (2012) p. 101.

<sup>23</sup> MAMUTOV *et al.* (2002) p. 281.

<sup>24</sup> MAMUTOV *et al.* (2002) p. 283.

<sup>25</sup> MAMUTOV *et al.* (2002) p. 283.

<sup>26</sup> SCHERBYNA (2009) p. 101.

### 3. DISTINCTION OF TERMS “LEGAL ENTITY” AND “ENTERPRISE”

The division of terms “legal entity” and “enterprise” does not exist in every country, but, in connection with inevitable development of commercial relations, such necessity is underlined in doctrine more and more often<sup>27</sup>.

To understand the role and place that enterprise occupies in the system of subjects of economic activity in Ukraine today, it is necessary to execute little excursion in the history.

In the USSR the legal status of enterprise was regulated by Civil Code of Ukrainian Soviet Social Republic as of 18 July, 1963, Regulation on socialistic state production enterprise, approved by the Decree of the Council of Ministers of the USSR as of 04 October, 1965 and other legislative acts.

Socialistic enterprise was the primary link of national economy, subject of law. Its main features were: direct maintaining of productive or other economic activity; status of independent subject of law; existence of rights of legal entity<sup>28</sup>.

Enterprises as socialistic organizations could exist in the form of the state (plants, factories, mines ect), collective-cooperative (collective farms, their enterprises, enterprises of inter-collective farms and state-collective farms unions) and public associations<sup>29</sup>. Depending on the sphere where they maintained their activity, enterprises were divided into industrial agricultural, building, transport, trade ect<sup>30</sup>.

Competence of enterprise was directly connected with its subject of activity and was special enterprise was able to execute only those actions that corresponded its aims, entrenched in the Charter. Naturally it had direct influence on the scope of its legal capacity and capability that were also limited.

But, in accordance with inevitable development of political and economic relations, in the 80<sup>th</sup> years of XX century legal science of USSR the necessity of changing of economic mechanism of enterprise was stated, especially in the part of extension of rights, economic independence and increase of economic independence of the last<sup>31</sup>.

Passage of Ukraine from administrative-planned model to mixed system of economy management, recognition of private property, and allotment of municipal property from state property determined number of changes in the legal status of enterprises.

In particular, the variety of their types extended. In 1991 the Law of Ukraine “On enterprises in Ukraine” was adopted. In accordance with it, in Ukraine could act:

- Individual enterprises (set up on the basis of individual’s own property and its work exclusively);
- Family enterprises;
- Private enterprises;
- Collective enterprises;
- State municipal enterprises, set up on the property of administrative-territorial units;
- State enterprises, established on the basis of whole state (republican) property;

<sup>27</sup> BELYKOVA (2010) p. 10.

<sup>28</sup> BABIY *et al.* (1983) p. 548; SYKHAREV (1987) p. 363.

<sup>29</sup> BABIY *et al.* (1983) p. 548; SYKHAREV (1987) p. 363.

<sup>30</sup> BABIY *et al.* (1983) p. 548.

<sup>31</sup> SYKHAREV (1987) p. 363.

- Common enterprises (set up on the mixed form of property);
- Enterprises, established on the property of legal entities and individuals of union republics and other states<sup>32</sup>.

It is worth mentioning that there were active discussions in the legal science of USSR regarding recognition status of legal entity after an enterprise. In particular it was underlined that in the case of considering this definition as economic category, it does not have to be identified with the object of law – property complex<sup>33</sup>.

Some scientists, including Gayvoronsky V., stated that if enterprise has the status of legal entity it leads to the situation when, in case of setting up of individual enterprise, such status acquires individual<sup>34</sup> that contradicts with its nature. Thus, one of the main characteristic features of Ukrainian enterprise – obligatory existence in the last the status of legal entity was put under dispute.

The discussion resulted into further decisions.

From one side, practice has shown that existence of individual enterprises had advantages (in particular tax payment into budget) as well as disadvantages (for example, limited liability of individual for its deeds) and the last were more significant<sup>35</sup>.

Soon individual enterprise together with some other types of enterprises was excluded from Ukrainian legislation. Classification of these organizations has notably

changed due to amendments to the Law of Ukraine “On enterprises in Ukraine”. Before 2004 (that means before Economic Code of Ukraine came into force) its activity could maintain:

- Private enterprises (set up on the basis of individual);
- Collective enterprises (established on the basis of labour collective of enterprise);
- Economic companies;
- Enterprises, set up on the basis of union of citizens;
- Municipal enterprises (established on the basis of territorial community);
- State enterprises (set up on the basis of state property)<sup>36</sup>.

Thus, such feature of enterprise as “legal entity status” did not disappear and remains to be one the main characteristics of this organization according to the legislation of Ukraine.

It is worth noting that the scope of legal capacity of enterprises during the time of independent Ukraine in comparison with their legal capacity during USSR period, increased substantially. After adoption of the Law of Ukraine “On the enterprises in Ukraine” Lutz V. stated that enterprise is allotted with wide powers in the part of planning of its activity, usage of profit and disposal of own production, maintaining of foreign economic activity, social activity. Except that, it has the right to take any decisions in the frame of legislation on its own initiative during its activity<sup>37</sup>. Thus, points of view of specialists expressed in the

<sup>32</sup> Art. 2 of the Law of Ukraine “On enterprises in Ukraine” (lost its force).

<sup>33</sup> MAMUTOV *et al.* (2002) pp. 290-291.

<sup>34</sup> MAMUTOV *et al.* (2002) pp. 290-291.

<sup>35</sup> MAMUTOV *et al.* (2002) p. 294.

<sup>36</sup> Paragraph 1 of the Law of Ukraine “On amending the Law of Ukraine “On enterprises in Ukraine”.

<sup>37</sup> SHEMSHUCHENKO (2002) p. 548.

80<sup>th</sup> years of XX century in the legal science of USSR regarding necessity of changing of economic mechanism of enterprise were brought to life.

From the other side, after adoption of Civil and Economic Codes of Ukraine, in Ukrainian legislation two approaches to the category “enterprise” began to exist.

Civil Code of Ukraine considers this definition as integrated property complex used for carrying out business and deemed to be immovable. It consists of all types of property intended for its operation, including land parcels, buildings, structures, equipment, inventory, raw materials, production, rights of claim, debts, the right to a trademark or another marking and other rights, unless otherwise established by the agreement or law<sup>38</sup>.

Consequently, pursue to the provisions of Civil Code of Ukraine, enterprise is considered to be an object of legal relations, as property complex. It is possible that in this case it is connected with often enterprise characterization as property (the sum of main and operating funds) in the process of privatization<sup>39</sup>. At the same time, analysis of separate types of agreements shows that Civil Code of Ukraine recognizes enterprise as an equal party in civil relations (for example, in some cases enterprise can act as lessor<sup>40</sup> ect).

This conclusion is proved in civil legal science. Venetskaya M. underlines that special status of enterprise as property complex, is determined by the fact that at the same time it acts as subject of civil relations<sup>41</sup>.

In its turn, Economic Code of Ukraine provides that “enterprise” is an independent subject of economic activity that systematically carries out production, research and development, trade or other economic activity. It is created by authorized state body or self-government body, or another subjects for satisfaction of social and personal needs<sup>42</sup>. Thus, it is possible to make a conclusion that every enterprise is a legal entity, but not every legal entity is an enterprise.

But there is also another point of view in doctrine. Thus, Mykhail Isakov considers that it is not allowed to reduce the term “enterprise” to the term “legal entity”. At his point of view the last, above all, is a subject of civil turnover, the party in private legal relations that are created horizontally. Enterprise, as subject of law, takes part in both - horizontal and vertical relations, what means in private, as well as in public relations. Mykhail Isakov considers that “...category of legal entity embrace enterprise as one of its organizational-legal forms. However, there are other rights and obligations, except rights of legal entity that belong to enterprise as a subject of economic activity and are beyond the scope of rights of legal entity. At his point of view, the usage of institute of “legal entity” creates legal conditions for participation of a subject in turnover relations, but does not orient it at industrial activity”<sup>43</sup>.

We consider that enterprise is, first of all, a legal entity – subject of the law. Specific features of its legal status come out from the main characteristics usual for this organization. They include the purpose of establishment and functioning of the enterprise, its founders and members, property

<sup>38</sup> Art. 191 of Civil Code of Ukraine.

<sup>39</sup> MAMUTOV *et al.* (2002) p. 290.

<sup>40</sup> Art. 810-1 of Civil Code of Ukraine.

<sup>41</sup> SHEVCHENKO *et al.* (2004) p. 263.

<sup>42</sup> Art. 62 of Economic Code of Ukraine.

<sup>43</sup> ISAKOV (2006) pp. 7-8.

basis of activity ect. These features define specific characteristics of its legal capacity and capability (as type of legal entity) as well as the scope of responsibility for its deeds.

Economic Code of Ukraine made further adjustments in classification of enterprise. Today, according to the forms of ownership, enterprise can be:

- Private (acts on the basis of private property not only citizens, but also subjects of economic activity, including legal entities);
- Municipal (acts on the basis of property of territorial community);
- State (acts on the basis of state property);
- Collective property (acts on the basis of property of labour collective);
- Mixed property.

It is worth to underline specific features of collective property enterprise. They include that mentioned enterprise is set up only by individuals by means of uniting of two components: their property and their labour participation in the activity of enterprise. These characteristics allow to distinguish enterprise of collective property from other subjects of economic activity.

Except that, depending on the way of establishing and formation of authorized capital enterprise can act as unitary (established by one person) or corporate (created by two or more persons)<sup>44</sup>.

Before Economic Code of Ukraine came into force enterprises were able to set up only with the aim of gaining profit<sup>45</sup>. Today, in Ukraine enterprise can be esta-

blished for business purposes as well as for the realizing non-commercial economic activity.

Thus, with passage of the State from planned-administrative model of economy management to market relations the role and place of enterprise in the system of subjects of relations has changed. In particular, the understanding of its legal nature, the purpose of establishment became different, the scope of legal capacity and capability of enterprise became wider, the questions of its responsibility began to regulate differently.

Along with that, arose double understanding of this definition – as object, as well as subject of law. This gave rise to the question of correlation of categories “legal entity” and “enterprise”, and obligatory obtaining by the last the status of legal entity. Analysis of legislation of Ukraine, as well as scientific literature on the mentioned question gives the grounds to make a conclusion that the term “legal enterprise” includes the definition “enterprise” as one of its types and it is more “wide” legal category.

#### 4. THE RIGHT OF ENTERPRISES IN UKRAINE TO UNITE

During determination of place and role of enterprise in the system of subjects of relations it is reasonable to examine the right of enterprises to unite. In the frame of our research it has practical meaning because in Ukraine enterprise and union of enterprises often are identified.

The union of enterprises as type of the organization is not a new phenomenon for Ukraine. During USSR times enterprises, plants, factories, science-research, construction, technology, production organizations often united its activity in the frame of production unions (set up in the form of

<sup>44</sup> Art. 63 of Economic Code of Ukraine.

<sup>45</sup> ZNAMENSKY *et al.* (2004) p. 110.



firms, industrial complexes, science-productive unions ect<sup>46</sup>), trusts, syndicates ect.

Specific feature of these unions was that they were established as legal entities, but their members did not always enjoy such status. Thus, for example, productive units that were parts of productive union (industrial complex) of automobile transport did not have the status of legal entity and the Decree on socialistic state productive union did not spread its force on them. At the same time, the union itself had the status of independent legal entity<sup>47</sup>.

At the same time, science-productive unions could consist of enterprises and organizations that did not have rights of legal entity, as well as independent organizations that enjoyed this status. In such case the difference between these members lied in the fact that science-productive union executed not only operative-economic, but also management functions. The last were exercised regarding members with the status of legal entity<sup>48</sup>.

In such type of union as syndicate single charter capital was formed as well as single management was executed. At the same time its members saved the status of legal entity and finance-economic independence<sup>49</sup>.

Members of trust were in another situation. Great influence on economic processes and industrial sector of the State trusts began to maintain in the beginning of the XX century (1922-1923). Large unions in the form of trusts were established in metallurgical, coal, mine spheres, in the area of heavy and agricultural en-

gineering and also in the spheres of sugar, spirit, oil production ect.

Before 1960 trust as a form of union was liquidated and revived again as productive-management unions. The last were set up specialized state economic organizations and acted as intermediate link between the central administration of ministries and enterprises executing the function of coordinator of production plans. Specific feature of trusts lied in the fact that enterprises and organizations – members of trust lost the right on the independent activity and were fully subordinated to it as highest body of economic management. The union itself gained the status of an enterprise. At the same time there were trusts of mixed type to which independent enterprises were also subordinated. In such case, trusts had characteristics of enterprise as well as the body of economic management.

Step-by-step transformation and liquidation of trusts executed from 1973 till 1991. Firstly they were changed into productive unions and after 1991 – into joint-stock companies, economic associations, holding companies ect<sup>50</sup>.

Today the right of enterprises to unite is regulated only by Economic Code of Ukraine. Article 70 of this Code foresees that enterprises have the right to unite their economic activity (industrial, commercial ect) on the basis of their free will.

This right can be fulfilled in the form of association (economic), corporation, consortium, concern and also in other organizational-legal forms, foreseen in laws of Ukraine.

According to the legislation of Ukraine such union usually has the status of independent legal entity. This feature

<sup>46</sup> BABIY *et al.* (1983) pp. 86-87.

<sup>47</sup> Par. 1, par. 2 Decree "On productive union (industrial complex) of automobile transport".

<sup>48</sup> BABIY *et al.* (1983) p. 449.

<sup>49</sup> SHEMSHUCHENKO (2003) p. 483.

<sup>50</sup> SHEMSHUCHENKO (2004) p. 127.

allows to divide union of enterprises and legal entities, created as a consequence of merger and acquisition processes.

The main characteristics that separate union of enterprises from other subjects are:

- The purpose of its establishment (the main aim is coordination of productive, science and other activity of its members);
- Subject structure (only enterprises can be founders and members);
- Legal regime of property (the last transferred to the union on the basis of the right of economic supervision or the right of operational management, but not on the property right) ect.

In this research work we will stop on such characteristic feature of union of enterprises as subject structure that will allow us to disclose problems of correlation of enterprises and their unions. We will examine this question on the example of definitions “economic company” and “corporation”.

One of the most wide-spread forms of enterprises on the territory of Ukraine is economic company<sup>51</sup>. It includes such types of enterprise as joint-stock company, limited liability company, additional liability company, commandite (limited) partnership, general partnership.

In accordance with Economic Code of Ukraine, economic company is set up by legal entities and/or citizens by means of uniting their property and participating in entrepreneurial activity of the company

with the purpose of gaining profit. Also this Code foresees a possibility of establishing such company solely<sup>52</sup>.

Civil Code of Ukraine contains more brief definition that determines economic company as legal entity with charter (aggregate) capital divided into shares among its members<sup>53</sup>. Similar definition contains the Article 1 of the Law of Ukraine “On economic companies”<sup>54</sup>.

Corporation is defined in the Economic Code of Ukraine as contractual union of enterprises, set up on the basis of combination of their industrial, academic (scientific) and commercial interests, which delegate certain powers of centralized activity regulation of each member to bodies of corporation management<sup>55</sup>.

It is worth mentioning that in Ukraine corporations can act as private (established on the basis of contract), as well as municipal and state (created on the basis of the decision of authorized state body or self-government body). Svetlana Grudnitskaya fairly considers that in the last case corporations act as assigns of ministries, departments ect, and in economic competence of such subject can combine entrepreneur and state functions (the last are executed under state financing)<sup>56</sup>. Appearance of state and municipal corporations is a consequence of passing of state’s economic management from state-planned system to the model of market relations.

In accordance with Economic Code of Ukraine (Article 118 and Article 120) corporations are independent legal entities.

<sup>51</sup> Thus, according to the statistic data of State Statistic Committee of Ukraine in 2012 was registered 498 561 economic company out of 1 323 807 subjects of economic activity. Available at [http://ukrstat.org/uk/druk/katalog/kat\\_u/publ1\\_u.htm](http://ukrstat.org/uk/druk/katalog/kat_u/publ1_u.htm).

<sup>52</sup> Art. 79 of Economic Code of Ukraine.

<sup>53</sup> Art. 113 of Civil Code of Ukraine.

<sup>54</sup> Law of Ukraine “On economic companies”.

<sup>55</sup> Art. 120 of Economic Code of Ukraine.

<sup>56</sup> MAMUTOV *et al.* (2002) p. 364.

Such position also finds support among scientists<sup>57</sup>.

At the same time, there are other points of view on interpretation of this definition in Ukrainian legal science. Limited liability company, additional liability company or joint-stock company are frequently understood under the term “corporation”<sup>58</sup>. Such situation is explained, firstly, by consonance of definition “corporation” with terms “corporate enterprise”, “corporate rights”, “corporate relations” that are also formalized in Economic Code of Ukraine. Secondly, such interpretation is driven by the experience of world’s leading states, where “corporation” is mostly understood as limited liability company or joint-stock company<sup>59</sup>.

On one hand, the difference between enterprise, set up in the form of economic company, and union of enterprises is obvious. Both of them are independent organizational-legal forms of the subject of economic activity. The first is established by any legal entity and/or citizen with the aim of getting profit, and the second – only by enterprises with the purpose of coordination of their activity for solving common tasks. The main common feature of these subjects is the existence of status of independent legal entity in both of them.

Such point of view is also supported in legal doctrine of Ukraine. Thus, for example, Iryna Kravets considers that among main distinctive features of these subjects are the aim of union’s establishing (coordination of members’ activity, but not gaining profit) and existence of organizational-economic

powers of union of enterprises regarding its members in connection with this<sup>60</sup>.

Svetlana Grudnitskaya underlines that economic company and union of enterprises differ in their membership. Thus, the structure of enterprise can be formed by legal entities as well as citizens, when founders and members of union of enterprises can be only legal entities. Except this, these subjects differ in their founders. Economic companies, excluding some cases<sup>61</sup>, can be established only by private bodies, when unions of enterprises can be set up by authorized state bodies, municipal bodies and also private persons ect<sup>62</sup>.

At the same time, Economic Code of Ukraine leaves the list of types of unions of enterprises “open”. The possibility of applying rules that regulate activity of unions of enterprises to the unions of other subjects of economic activity<sup>63</sup> gives grounds to apply them to enterprises, set up by legal entities.

This point of view is supported by some scientists that consider that economic companies form the union of enterprise in “wide” sense<sup>64</sup>. Their opinion has logic and background because such subject of economic activity can be established by two or more enterprises, is an independent legal entity that is created with the aim of solution their common economic tasks. In such case, there is a problem of double legal regulation of legal status of enterprises, created as a result of union of enterprises,

<sup>57</sup> DZHURINSKIJ (2010) pp. 48-49.

<sup>58</sup> NASHYNETZ-NAUMOVA (2010) pp. 83-86; ZHORNOKUY (2009) pp. 28-32; BATRYN (2009) pp. 128-131.

<sup>59</sup> LUTS *et al.* (2010) p. 48; KYLAGIN (2004) p. 52.

<sup>60</sup> KRAVETS (2011) pp. 41-44.

<sup>61</sup> For example, state joint-stock company or state holding company, single founder and member of which is a State in the form of its authorized state bodies (Art. 1, Law of Ukraine “On joint-stock companies”).

<sup>62</sup> GRUDNITSKAYA (1996) pp. 116-135.

<sup>63</sup> Art. 119 of Economic Code of Ukraine.

<sup>64</sup> BELYANEVYCH *et al.* (2012) p. 232.

by regulations that do not correspond each other in everything.

Except that notable role in this question plays interpretation of the term “enterprise” by Antimonopoly Committee of Ukraine.

Despite of the rules of Economic Code of Ukraine which provide that not every legal entity is an enterprise<sup>65</sup>, Antimonopoly Committee of Ukraine interpret this definition more “wide”. In its typical requirements to establishment of economic association it foresees that the member of such union can be any subject of economic activity, legal entity<sup>66</sup>. Such interpretation of definition “enterprise” more and more dissolve boundaries between economic company and union of companies.

Identifying union of enterprises with economic company leads to confusion of different legal categories, different interpretation of this term in the frame of Ukrainian legislation and breach of legal acts.

Among negative consequences of confusion of enterprise and union of enterprises is, for example, rejection in state registration of the subject of economic activity, as well as rise of court disputes, which can result in recognition ineffective of decisions of bodies of legal entity and liquidation of the subject itself<sup>67</sup>.

Thus, in 2009 District Administrative Court of Kyiv by its Decision rec-

ognized state registration of legal entity “Union of professional football clubs of Ukraine “Premier League” illegal and made a decision on its termination by means of liquidation. One of the main reasons of such decision was that this Union was set up in organizational-legal form that does not correspond to demands of the law<sup>68</sup>.

One more practical problem that arise because of identifying economic company and union of enterprises is described by Svetlana Grudnitskaya: “...economic organization “Uglesorb” was set up by number of state enterprises as economic association, at the same time by its legal status formalized in the Charter, it was identified as limited liability company...Association “Uglesorb” was liquidated”<sup>69</sup>.

Thus, in Ukraine the term “union of enterprises” is considered to be in “narrow” as well as “wide” sense. In the first case members of the union can be only enterprises, when in the second any legal entity. Except this, Ukrainian practice came to the conclusion that in the questions, connected with the defense of competition, it is more reasonable to take into consideration all legal entities without limitation to existence of status of “enterprise”.

## 5. CONCLUSIONS

On the basis of the research it is possible to make further conclusions. In Ukraine enterprise is a special form of legal entity subject of economic activity. At the same time, enterprise is also an object of legal relations as it is a certain property complex.

<sup>65</sup> Part 2 Art. 55 of Economic Code of Ukraine.

<sup>66</sup> Par. 4.2 of the Directive of Antimonopoly Committee of Ukraine “Typical requirements to establishment of economic association for general release of pre-reception of permission of bodies of Antimonopoly Committee of Ukraine on its establishment”.

<sup>67</sup> Among grounds of such rejections and claims it is possible to specify regulations of the Art. 27 of the Law of Ukraine “On state registration of legal entities and individuals-entrepreneurs”.

<sup>68</sup> *Decision of District Administrative Court of Kyiv in the case K-52893/09.*

<sup>69</sup> GRUDNITSKAYA (1996) pp. 117.

Enterprises as independent subjects have the right to unite. This right can be fulfilled by means of setting up of new legal entity. But insufficient regulation of questions connected with legal status of union of enterprises, its founders and members, in particular subject structure of the union, is a reason of many scientific discussions and practical problems.

In its turn, the example of Chile with its clearness of criteria of division of legal entities on types, distinction of legal regulation of subjects in accordance with aims for which they are set up, can be invaluable for Ukraine. Except this, Chilean experience of determination of the term “corporation” and its legal status are very interesting from the point of view of comparative law.

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