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LEGAL PERSONALITY IN UKRAINIAN PRIVATE LAW

Ukraine is regarded as a civil law country. In the civil law tradition, affirmative asset partitioning captured the attention of legal scholars in the late nineteenth and early twentieth century when the notion of juridical person was fully distinguished from that of “asset independence”. At this stage in the civil law system, it became clear that in order to create an affirmative asset partitioning it would not be necessary to form a new legal entity or juridical person. The modern Ukrainian legal system was formed within the Russian Empire in the nineteenth century and was greatly influenced by German legal traditions. The German legal system was based mainly on fundamentals of Roman law. Thus, like most of continental Europe, Russia and Ukraine adopted Roman civil law traditions.

The legal entity of beings other than the human (juristic person) had been established since the early Roman law. Such entity is represented by the State, ecclesiastical bodies and education institutions which had long been recognized as having legal entity distinct from their members.

Another recognized juristic person is the corporation, which is established under the doctrine of corporate personality. Although this doctrine has been legally acknowledged, it is often describes as an «essentially a metaphorical use of language, clothing the formal group with a single separate legal entity by analogy with a natural person». Majority of the theories on corporate personality contended that the legal entity of the corporation is artificial due to the existence of the body corporate as a legal person is not real. It only exists because the law of the state recognized it as legal person and it is recognized either for certain purpose or objectives. Being merely a metaphor or an analogy, corporate personality is not entirely arbitrary and therefore must respond to the organizational realities of the corporation as well as conforming with and making intelligible the treatment of organization as legal actors.

The metaphor of personality is indeed useful in describing many of the corporation’s traditional and modern corporate attributes, namely, separate legal entity, the rights to own property, to take its own legal

proceedings, limited liability, to sue and to be sued and perpetual succession. Placing these attributes under the head of separate legal entity has resulted to selection of these few salient features from what would otherwise be an overwhelmingly complex reality.

The Fiction Theory is supported by many famous jurists such as Von Savigny, Coke, Blackstone and Salmond. Under this theory, the legal personality of entities other than human beings is the result of a fiction. Hence, not being a human being, corporation cannot be a «real person» and cannot have any personality of its own. Originally, the outward form that corporate bodies are fictitious personality was directed at ecclesiastical bodies whereby the doctrine was used to explain that the ecclesiastical bodies could not be guilty of a delict as they have neither a body nor a will. The ecclesiastical courts applied the Canon law which made use of the Romanistic Fiction theory in dealing with religious corporations that came under their jurisdiction. The lawyers in the temporal courts later borrowed the theory from their colleagues in the Courts of Christian. As a result, the fiction theory became an established theory of the English Law. Under fiction theory, rights and duties attached to corporation as artificial person totally depend on how much the law imputes to it [1, p. 57].

In 2000, Hansmann and Kraakman published an essay entitled «The Essential Role of Organizational Law» in the Yale Law Journal. Since then, a lively doctrinal debate has developed over the notion of asset partitioning and its attributes. According to Hansmann and Kraakman, a firm has two fundamental attributes: a well-defined decision-making authority and the ability to bond its contracts with an existing pool of assets [2, p. 1340 – 1341].

The division of the Ukrainian culture into two branches (Eastern and Western) is mainly reflected in the development of the private law. Thus, the tradition of law of the Western Ukraine shows a considerable influence of the West, and in the Eastern part of Ukraine the East European tradition is noticeable. These influences have formed the Ukrainian private law as it is on the current stage. They explain

SUMMARY

Akimenko Y. Legal personality in Ukrainian private law. – Article.

The article explores the tradition of the civil law legal system and the impact of its development on the formation of approaches to the essence of the legal entity. Application of Ukrainian legislation on the legal entities identified a variety of theoretical and practical problems. Analysis of the various theories of the legal entity and their manifestations in the regulations suggests that, as in the modern Ukrainian civil law, there is no single position in defining the essence of the legal entity, which is explained by the ambiguity of the concept of the legal person.

Keywords: private law, legal entity, legal personality.

АННОТАЦИЯ

Акименко Ю.Ю. Юридическая личность в частном праве Украине. – Статья.

В статье исследуются традиции романо-германской правовой системы, влияние правовой системы и её развития на формирования подходов к определению сути юридического лица. Применение действующего законодательства Украины о юридических лицах выявило множество теоретических и практических проблем. Анализ различных теорий юридического лица и их проявления в нормативных актах позволяет сделать вывод о том, что и в современном украинском гражданском праве отсутствует единая позиция в определении сути юридического лица, что объясняется неоднозначностью понятия юридического лица.

Ключевые слова: частное право, юридическое лицо, хозяйственные общества, юридическая личность.

АНОТАЦІЯ

Акименко Ю.Ю. Юридична особа в приватному праві України. – Стаття.

У статті досліджуються традиції романо-германської правової системи, вплив правової системи та її розвитку на формування підходів до визначення суті юридичної особи. Застосування чинного законодавства України про юридичних осіб виявило безліч теоретичних і практичних проблем. Аналіз різних теорій юридичної особи та їх прояви в нормативних актах дозволяє зробити висновок про те, що і в сучасному українському цивільному праві відсутня єдина позиція у визначенні суті юридичної особи, що пояснюється неоднозначністю поняття юридичної особи.

Ключові слова: приватне право, юридична особа, господарські товариства, юридична особа.