

власну позицію стосовно того, що демонтаж пенітенціарної служби України протягом п'яти років, який проводив Міністерство юстиції України, на жаль, не стабілізував оперативну обстановку та стан правопорядку в місцях несвободи. Вноситься пропозиція вивести діючу Державну пенітенціарну службу України з підпорядкування Міністерству юстиції України, передбачивши створення самостійного центрального органу виконавчої влади.

Ключові слова: злочинність, правопорушення, засуджений, працівник, установа, покарання

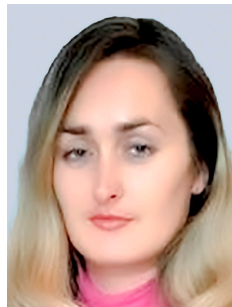
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LIQUIDATION OF MULTI-APARTMENT BUILDING CO-OWNER ASSOCIATION UNDER THE COURT DECISION

Abstract. The article examines the grounds, the procedure for liquidating a multi-apartment building co-owner association (MABCOA) under the court decision. The strategic (the need to adapt national law to EU law) and regulatory (substantive and procedural) measurements of the feasibility of improving the legal mechanism for liquidating the MABCOA under the court decision are indicated. A classification of rules regarding the grounds and order of such liquidation into causal and procedural ones is proposed. The markers for resolving the dispute on the liquidation in the MABCOA have been concretized: will the claim be satisfied before the restoration of the rights and legitimate interests of the co-owner in the MABCOA?; will there be any court interference in the activities of the MABCOA?; will the satisfaction of the claim not violate the rights and legitimate interests of other participants in the MABCOA? The signs of violations during the creation of the MABCOA as grounds for its elimination have been clarified: such violations must be of a significant, collective nature, and they cannot be eliminated in the current activities of the MABCOA. The expediency of introducing class action lawsuits into the national system is reasoned since evidence of the fact of collective violation of the rights of co-owners of a multi-apartment building during the creation of the MABCOA is possible only if a particular community of co-owners of a multi-apartment building is provided with a legal opportunity to go to court since the conflict is based on the issue of the same-type violation of the rights

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of such co-owners. It is proposed to enshrine the guarantees of voluntary execution of a court decision on the liquidation of an economic entity by granting the state registrar the right to apply to the court with a statement of claim on the appointment of officials of the economic entity responsible for carrying out the liquidation procedure after a certain period has elapsed since the registration of information about the termination procedure of such economic entity.

Keywords: *multi-apartment building co-owner association, co-owner, liquidation, liquidation procedure, collective violation, class action lawsuit, state registrar, guarantee*

Introduction. The strategic development of the national economic system is determined by the need to adapt national legislation to the EU legislation, deregulation, and liberalization of public regulation of economic activity. Article 89 of the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part, provides for the gradual liberalization of the conditions for starting a business and a constant review of the legal framework for the establishment of a climate for it following the obligations of the parties under international agreements (Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part, 2014). Clear and understandable grounds, the procedure for the liquidation of economic entities by a court decision is one of the conditions for liberalization and implementation of the principle of legal certainty in business, and investment, including foreign investment, in the national economy.

Multi-Apartment Building Co-Owner Association (here in after referred to as MABCOA) in Ukraine, *Comunidal depropietarios* (condominio) in Spain, *Lacooperative d'habitans* (residents' cooperative) in France, house associations in Lithuania, housing associations in Poland is a relatively common form of joint property management and maintenance of housing stock in good condition. According to statistics in Ukraine, the number of MABCOAs for the period from January 2021 to October 2021 is constantly increasing: in January – 35.353; in February – 35.492; in March – 35.641; in April – 35.834; in May – 36.050; in June – 36.223; in July – 36.420; in August – 37.069; in September – 36.650; in October – 36.870 (State Statistics Service, 2021).

However, in Ukraine, this form of association has emerged relatively recently in comparing with developed countries. Therefore, the practical implementation of the provisions of the Laws of Ukraine On the Multi-Apartment Building Co-Owner Association, On Housing and Communal Services, On Peculiarities of the Exercise of Ownership in a Multi-Apartment Building in the context of the economic and civil legislation (Economic Code of Ukraine, Civil Code of Ukraine, Economic Procedure Code of Ukraine, the Law of Ukraine On State Registration of Legal Entities, Individual Entrepreneurs and Public Associations) indicates legal gaps and the expediency of specifying the procedure for liquidating the MABCOA under a court decision.

This problem has one strategic and two regulatory dimensions mentioned above. Regulatory dimensions are the material and procedural aspects of the liquidation of the MABCOA under a court decision. The material aspect is due to the lack of procedural rules regarding the grounds, order, and guarantees for the execution of a court decision on liquidating the MABCOA in the Law of Ukraine On Multi-Apartment Building Co-Owner Association, the Model Statute of the MABCOA approved by the Order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine. The procedural aspect is due to the impossibility of compulsory execution of a court decision on liquidation of the MABCOA, changes in the legal position of the Supreme Court of Ukraine concerning appropriate legal remedies in disputes on liquidation of the MABCOA.

Analysis of recent research and publications. In the scientific doctrine, the issue of liquidation of the MABCOA under a court decision is investigated

fragmentarily in the context of the analysis of the legal status of such an economic entity as a whole. In particular, Voinovskyi investigated the issues of strengthening the institutional capacity of the local government system through the development of the MABCOA (Voinovskyi, 2019). It is necessary to pay attention to the author's analytical information regarding the foreign experience of the functioning of the MABCOA analogs in developed countries and the countries of the former Eastern Bloc (Poland, Germany), which had to solve the issue of changing the form of ownership from public to private concerning housing facilities (Voinovskyi, 2019). Myrza investigated the contractual component of providing services for managing a multi-apartment building (2011). Demchenko specified the peculiarities of the legal regime of property in a multi-apartment building (2011). Chekhovska considered the administrative and legal regime for de-shadowing the relations in the production and sale of housing and communal services (2006). Significant scientific achievements in the chosen research area are the works by Adamovych (2021), Bohatyr (2021), Doroshenko (2017), Zhekov (2015), Zubatenko (2008), Pohut (2020), Tytova (2006) on the liquidation of economic entities, termination of non-profit associations. Adamovych points out the inconsistency between the legally defined procedure for the liquidation of the MABCOA and the judicial practice that was formed at that time (2021).

Issues related to the activities of the MABCOA in foreign countries were studied by Maignan, Arnaud, Chateau Terrisse (2018), Szczepańska (2014), Curzydło (2015), Sikorska-Lewandowska (2021), Douglas C. Harris (2011). Substantially, MABCOA analogs in other countries perform a function similar to national associations: they combine private ownership of a separate unit in an apartment building with an inseparable part of the common property in the building and the right to take part in the collective management of the private and shared property. Regarding the grounds for the liquidation of such economic entities, they can be conditionally divided into two groups: states that provide special grounds for liquidation for the MABCOA and states in which general grounds for liquidation are indicated for all economic organizations (including MABCOA).

A review of the scientific research indicates the lack of a comprehensive analysis of the grounds, the procedure for liquidating MABCOA under a court decision, considering current legislation, the latest judicial practice, the experience of developed countries and countries of the former Eastern Bloc.

Purpose of the article is to develop proposals for improving the legal mechanism for the liquidation of the MABCOA under a court decision.

Formulation of the main material. In the national legislation, the procedure for liquidating the MABCOA under a court decision is regulated by Articles 110, 111 of the Civil Code of Ukraine, Article 28 of the Law of Ukraine On Multi-Apartment Building Co-Owner Association, Article 25 of the Law of Ukraine On State Registration of Legal Entities, Individual Entrepreneurs and Public Formations, Article 327 of the Economic Procedure Code of Ukraine, Section VIII Grounds and Procedure for Liquidation, Reorganization (Merger, Division) of Associations and Resolution of Related Property Issues of the Model Charter of the MABCOA. Conventionally, these rules can be divided into causal and procedural ones.

Causal rules determine the grounds for liquidating the MABCOA under a court decision (Article 110 of the Civil Code of Ukraine, which is common to all legal entities and economic entities). The legal basis for the liquidation of the MABCOA under a court decision is violations committed during the creation of a legal entity that cannot be eliminated (Civil Code of Ukraine, 2003). The initiators of applying to the court with a statement of claim may be participants of a legal entity or relevant state authorities. Among public authorities, the tax authorities are vested with the powers to go to court with claims for the termination of a legal entity and/or invalidation of constituent documents (subparagraph 20.1.37

of Article 20 Tax Code of Ukraine) (Tax Code of Ukraine, 2010); National Commission on Securities and Stock Market on the termination of a legal entity-issuer due to its inclusion in the list of issuers with signs of fictitiousness, a joint-stock company (Article 8 of the Law of Ukraine On State Regulation of Capital Markets and Organized Commodity Markets, 1996). Based on the peculiarities of the legal status of the MABCOA, tax authorities may initiate an appeal to the court with a claim for its liquidation since MABCOAs are not issuers of securities, financial institutions.

Analysis of judicial practice indicates that the initiators of the liquidation of MABCOA in most cases are participants of MABCOA, co-owners of premises (both residential and non-residential) in a multi-apartment building, tenants of non-residential premises in a multi-apartment building, competing service cooperatives. The dispute between one of the co-owners of a multi-apartment building, a tenant of non-residential premises, a service cooperative, and a MABCOA has economic jurisdiction (decisions of the Grand Chamber of the Supreme Court of April 18, 2018, in case no. 904/2796/17 (Decision of the Grand Chamber of the Supreme Court, 2018, of February 6, 2019, in case no. 462/2646/17). In case of an appeal against the fact of creation of a MABCOA by an individual who is not its participant or co-owner of premises in a multi-apartment building, the dispute is subject to consideration in civil proceedings (Decision of the Grand Chamber of the Supreme Court of February 26, 2020, in case no. 473/2005/19, Decision of the Grand Chamber of the Supreme Court, 2020).

When formulating the subject matter of the claim, plaintiffs, as a rule, choose the following method of defense: on invalidating the constituent documents on the creation of the MABCOA and canceling its state registration. Thus, the requirement to eliminate the MABCOA is derivative and depends on the satisfaction of the main one.

One of the most common grounds for invalidating the constituent documents on creating a MABCOA is a violation of the mandatory procedure for notifying the Constituent Assembly of co-owners of a multi-apartment building (Article 6 of the Law of Ukraine “On Multi-Apartment Building Co-Owner Association”). Thus, for the liquidation of a MABCOA in court, it is necessary to prove the fact of violation of the rights of co-owners of premises in a multi-apartment building when creating the MABCOA. It should be noted that such grounds for satisfying claims are indicated by both owners of premises in the house and other service cooperatives that provided housing and communal services before the creation of the MABCOA, tenants of non-residential premises in the building. According to the established judicial practice, only the claims of the owners of the premises of the residential building are subject to satisfaction. Concerning other persons (tenants, servicing cooperatives), the initiation of such litigation is due to the establishment by a MABCOA of higher rent or an attempt to interfere with the activities of the MABCOA, which has signs of abuse of procedural rights and the choice of an inappropriate method of protection.

It should be noted that in terms of satisfying the derivative claim, the legal position of the Supreme Court of Ukraine has changed. According to the decision of the Grand Chamber of the Supreme Court of Ukraine of June 29, 2021, the cancellation of state registration of a MABCOA is not a proper legal means since the cancellation of state registration of the MABCOA (registration record) under a court decision cannot be the very liquidation of a legal entity, which occurs under the procedure provided for in Paragraph 2 of Part 1 of Article 110 of the Civil Code of Ukraine, and does not lead to the termination of the MABCOA, taking into account the requirements of Article 25 of the Law of Ukraine On State Registration of Legal Entities, Individual Entrepreneurs and Public Formations. Consequently, a claim to cancel the state registration of an existing legal entity (MABCOA), which is established following the relevant procedure and carries out its activities

for a long time, during the period of its existence having acquired the appropriate rights and obligations, will not lead to the restoration of the rights and legitimate interests of the person filing such a claim (Decision of the Grand Chamber of the Supreme Court, 2021). Thus, since the grounds for liquidation of a legal entity by a court decision set out in Article 110 of the Civil Code of Ukraine are evaluation categories, it is advisable to specify which violations of legal rules are sufficient grounds for liquidation of a MABCOA under a court decision.

The chosen methods should be accessible and effective. There is a correlation between the specific protection method and the content of the violated right and interest. The main activity of the MABCOA is to perform functions that ensure the implementation of the rights of co-owners to own and use the common property of co-owners, proper maintenance of a multi-apartment building and adjacent territory, assistance to co-owners in obtaining housing and communal services, and other services of decent quality at reasonable prices and fulfill their obligations related to the activities of the association.

The court, resolving such a dispute *per se*, must find answers to the following questions: will satisfaction of the claim *per se* lead to the restoration of the rights and legitimate interests of the co-owner in the MABCOA?; will there be any interference by the court in the activities of the MABCOA?; will the satisfaction of the claim violate the rights and legitimate interests of other participants in the MABCOA?

The analysis made it possible to clarify the following thesis: for the liquidation of the MABCOA in court, violations in the creation of the MABCOA must be of a significant, collective nature. They cannot be eliminated during the current activities of the MABCOA.

Noteworthy there are the regulations specified in the Code of Commercial Companies of the Republic of Poland. One of the grounds for termination of an economic entity is a decision of the register court, which is issued if there are qualified constituent defects up to 5 years from the registration of the company, i.e., recognition of the invalidity of the company (Vasileva, Kovalishyn, & Gerbet, 2016, p. 126). According to Article 271 of the Code of Commercial Companies of the Republic of Poland, the termination of the company's activities may result from a court decision issued at the request of a participant or member of the company's body if the achievement of the company's goal is impossible or if other valid reasons have arisen, or also at the request of a state body defined in a special law if the company's activities violate the right or threaten public order (Code of Commercial Companies of the Republic of Poland).

The fact that the position of the Supreme Court of Ukraine regarding the improper method of protection has changed does not exclude the facts of violations of the rights of co-owners of the MABCOA due to the creation of the MABCOA and the need to restore them. The way out of this situation may be through implementation of class action lawsuit mechanism into the national legal system. Proof of the fact of collective violation of the rights of co-owners of a multi-apartment building when creating a MABCOA is possible precisely if a particular community of co-owners of a multi-apartment building is provided with a legal opportunity to appeal to the court because the conflict is based on the issue of the same-type violation of the rights of such co-owners. This practice can also be extended to corporate disputes.

Class action lawsuits are actively applied both in the states of the Romano-Germanic and general legal systems (Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005), at the EU level. They are also the subject of research in foreign legal doctrine (Mulheron, 2004, Redish, Julian, Zyontz, 2010, Weber, Franziska and Van Boom, Willem H., 2017, Meller-Hannich, Caroline & Höland, Armin, 2011, Clausnitzer, 2020). An analysis of foreign legislation and scientific doctrine allows concluding that the introduction of a class action lawsuit system,

on the one hand, will help protect the rights of co-owners of a MABCOA, and on the other hand, neutralize possible abuses by tenants of non-residential premises, serving cooperatives.

Procedural rules determine the procedure for liquidating a MABCOA under a court decision. Procedural rules are contained in Article 28 of the Law of Ukraine On Multi-Apartment Building Co-Owner Association, Section VIII Grounds and Procedure for Liquidation, Reorganization (Merger, Division) of the Association and Resolving Related Property Issues of the Model Charter of the MABCOA; Article 25 of the Law of Ukraine On State Registration of Legal Entities, Individual Entrepreneurs and Public Formations, Article 327 of the Economic Procedure Code of Ukraine.

Execution of a court decision on the liquidation of the MABCOA involves a procedural component. The procedure for liquidation of a legal entity provides for a range of mandatory actions – repayment of existing accounts payable, alienation of assets, dismissal of employees, and transfer of documents to the archive, etc. Only after these actions have been performed and the relevant documents have been submitted to the state registrar, an entry on the termination of the legal entity is made in the register and not an entry on the cancellation of its state registration.

This procedure does not provide for enforcement. According to Part 2 of Article 327 of the Economic Procedure Code of Ukraine, a court decision is executed by sending it to the state registrar in the order of information interaction between the Unified State Register of Court Decisions and the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations (Commercial Procedural Code of Ukraine, 1991). However, the state registrar does not exclude a MABCOA from the State Register of Legal Entities, Individual Entrepreneurs and Public Formations but only records that the economic entity is undergoing the termination procedure. An economic entity can stay in this state for an extended period. Until the economic entity itself carries out the liquidation procedure, the state registrar cannot fully comply with the court's decision and exclude it from the register. It can be stated that the legislation does not have effective mechanisms for influencing an economic entity to implement a court decision regarding liquidation. The law of EU countries provides for control by administrative or judicial authorities over the liquidation of economic entities (Hnativ, 2016).

This indicates the expediency of enshrining guarantees of voluntary execution of a court decision on the liquidation of an economic entity at the level of the law. One of the options may be to grant the state registrar the right to apply to the court with a statement of claim for the appointment of officials of the economic entity responsible for conducting the liquidation procedure after a certain period from the moment of registration of information about the termination procedure of such an economic entity.

Conclusions. Thus, the conducted research allows formulating the following conclusions and suggestions regarding improving the legal mechanism for the liquidation of the MABCOA under a court decision. The grounds for the liquidation of the MABCOA under a court decision are valuation categories. It seems appropriate to provide them with the following content characteristics. To liquidate the MABCOA in court, violations in the creation of the MABCOA must be significant, massive, and cannot be eliminated during the current activities of the MABCOA. The expediency of introducing a class action lawsuit mechanism into the national legal system is argued. Proof of the fact of a massive violation of the rights of co-owners of a multi-apartment building during the creation of the MABCOA is possible only if a particular community of co-owners of a multi-apartment building is provided with a legal opportunity to go to court because the conflict is based on the issue of the same-type violation of the rights of such co-owners. This practice can also be extended to corporate disputes. The introduction of a system of class action lawsuits, on the one hand, will help protect the rights

of co-owners in the MABCOA, and on the other hand, it will neutralize possible abuses on the part of tenants of non-residential premises, serving cooperatives. It is necessary today to enshrine legally the guarantees of voluntary execution of the court decision on the liquidation of an economic entity. One of the options may be to grant the state registrar the right to apply to the court with a statement of claim for the appointment of officials of the economic entity responsible for conducting the liquidation procedure after a certain period from the moment of registration of information about the termination procedure of such an economic entity.

The implementation of the proposals will contribute to streamlining and providing some certainty to the process of liquidation of the MABCOA under a court decision. However, there are other contradictory aspects in the activities of the MABCOA that are not sufficiently regulated by the legislation: the legal regime of the land plot, the adjacent territory for servicing the house, the mechanism of control of the MABCOA members over its current activities, etc. The following scientific research can be used to find ways to solve such problems.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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Людмила Руденко, Богдан Деревянко

ЛІКВІДАЦІЯ ОРГАНІЗАЦІЇ СПІВВЛАСНИКІВ БАГАТОКВАРТИРНОГО БУДИНКУ ЗА РІШЕННЯМ СУДУ

Анотація. У статті розглядаються підстави та порядок ліквідації організації співвласників багатоквартирного будинку (ОСББ) за рішенням суду. Зазначено стратегічні необхідності адаптації національного законодавства до законодавства ЄС та нормативні (матеріально-процесуальні) виміри доцільності вдосконалення правового механізму ліквідації ОСББ за рішенням суду.

Запропоновано класифікацію правил щодо підстав та порядку такої ліквідації на причинно-наслідкові та процесуальні. Конкретизовано ознаки вирішення спору про ліквідацію в ОСББ: чи буде задоволено позов як такий до відновлення прав та законних інтересів співвласника в ОСББ?; чи буде судово втручання в діяльність ОСББ?; чи

не порушить задоволення позову права та законні інтереси інших учасників ОСББ? З'ясовано ознаки порушень під час створення ОСББ як підстави для його усунення: такі порушення мають носити істотний, колективний характер і не можуть бути усунені в поточній діяльності ОСББ.

Обґрунтовано доцільність запровадження колективних позовів у національну систему, оскільки доведення факту колективного порушення прав співвласників багатоквартирного будинку під час створення ОСББ можливе лише за умови наявності конкретної спільноти співвласників. власникам багатоквартирного будинку надається юридична можливість звернутися до суду, оскільки конфлікт ґрунтується на однотипному порушенні прав таких співвласників.

Пропонується закріпити гарантії добровільного виконання рішення суду про ліквідацію суб'єкта господарювання шляхом надання державному реєстратору права звертатися до суду з позовною заявою про призначення посадових осіб суб'єкта господарювання, відповідальних за ведення суб'єкта господарювання. вийти з процедури ліквідації через певний строк з моменту реєстрації відомостей про процедуру припинення такого суб'єкта господарювання.

Ключові слова: організація співвласників багатоквартирного будинку, співвласник, ліквідація, ліквідаційна процедура, колективне порушення, колективний позов, державний реєстратор, гарантія

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POLYGRAPH IN CRIMINAL PROCEEDINGS: PROSPECTS OF USE

Abstract. The problematic issues of using a polygraph in criminal proceedings, which are relevant for many countries, are considered. Based on the analysis of judicial practice and publications of recent years, including foreign ones, the solution of the following issues is proposed: what should be the form of application of polygraph in criminal proceedings (definition of investigative action); what is the basis for the use of a polygraph in criminal proceedings; who can be the direct authorized subject of the polygraph application; what should be the method of using a polygraph in criminal proceedings. Attention is drawn to the importance of resolving these issues for investigative and judicial practice in accordance with the laws of a country.

It is noted that the use of a polygraph requires the use of special knowledge in the field of psychology. Therefore, the use of a polygraph in criminal proceedings is possible only during

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