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POSITIVE ASSESSMENT OF A LEGAL ENTITY’S ACTIVITIES AS A PERSONAL NON-PROPERTY BENEFIT

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In the article research of concept “business reputation” is carried out legal entities as participants of public relations. It is set that the row of the personal unproperty rights for legal entities, among that and right on inviolability of business reputation of legal entities, is envisaged in the article 94 of the Civil code of Ukraine. It is educed that business reputation is the personal unproperty blessing of legal entities. At the same time in the Civil code of Ukraine absent determination of concept “business reputation” legal entities, that causes a necessity to set forth such determination and offer him legislatively to fasten in the Civil code of Ukraine. It is set that the scientific association of Ukraine did not go round attention this question and offered a few variants of determination of concept “business reputation” legal entities.

Supreme court of Ukraine in resolution of Plenum BCY from 27.02.2009 No. 1 also set forth own determination of this concept, in accordance with that business reputation is an estimation of entrepreneurial, public, professional or other activity of legal entities, that is carried out by such persons as participants of public relations. On the basis of this determination the improved variant of concept “business reputation” is offered, namely: “positive estimation of entrepreneurial, public, professional or other activity of legal entities, that is carried out by such persons as participants of public. Just the same determination of concept of business reputation it is suggested to fasten in the Civil code of Ukraine. It is well-proven that the negative estimation of activity of legal entities testifies to absence of business reputation for such legal entities. It is also set that business reputation is presumption of law, that is assumed after every legal entity. As well as any other presumption of law, a presence for the legal entity of business reputation can be refuted in the judicial order by establishment of negative estimation of activity of such legal entity.

Key words: legal entity; personal unproperty rights; business reputation; Civil code of Ukraine.

Introduction. Ukraine is in the process of continuously improving its legislation in line with international standards. An important milestone on this way became the approval in 2003 of the Civil Code of Ukraine (hereinafter – the “Ukraine’s CC”) [1], which for the first time enshrined personal non-property rights of individuals and legal entities, also called personal non-property benefits. However, while the Civil Code of Ukraine devoted Book Two “Personal Non-Property Rights of Individuals” to individuals, only Article 94 “Personal Non-Property Rights of Legal Entities” was devoted to legal entities. This means that

legal entities are endowed not only with property rights, like individuals, but also with personal non-property rights, except for those rights that are a necessary condition for which are natural human properties. At the same time, excessive brevity of the legislator in disclosing the concept of personal non-property rights of legal entities and the specifics of their exercise calls for scientific research of these issues.

Analysis of recent scientific research. A number of scholars, in particular, L. V. Fedyuk, J. V. Nor, T. P. Karnaukh, N. V. Kozlova, and others, have studied certain aspects of personal non-property rights. However, the rapid development of market relations in Ukraine has led to an increase in the importance of the legal entity in civil relations, and therefore the study of personal non-property rights of a legal entity is becoming even more relevant. In our opinion, business reputation is particularly important, the right to inviolability of which is enshrined in Article 94 of the Civil Code of Ukraine.

The purpose of this study is a definition of the concept of business reputation of legal entities with due regard to the opinions of scholars as well as court practice in this regard, and to formulate proposals for enshrining the definition of this concept in the Civil Code of Ukraine.

Statement of the problem. According to Art. 91 of the Civil Code of Ukraine, a legal entity is able to have the same civil rights and obligations (civil legal capacity) as an individual, except for those which by their nature can only belong to a person. The civil legal capacity of a legal entity may be limited only by a court decision. Thus, even the founders of a legal entity cannot restrict its ability to have certain civil rights and obligations [2, p. 148]. A legal entity acquires civil rights and obligations and realises them through its bodies acting in accordance with its constituent documents and the law (Article 92 of the CCU).

In the context of this study, attention will be focused on establishing the concept of business reputation as a personal non-property benefit of a legal entity.

A prerequisite for the emergence of the concept of personal non-property rights of a legal entity as a certain association of individuals is the establishment of personal non-property rights of a human being, which has always been an important component of society's development. Such rights have acquired philosophical, religious or ethical elements characteristic of different eras. The concept of personal non-property human rights reached its greatest development in the second half of the twentieth century [2, p. 444]. This process resulted in the adoption of a number of international documents, first of all, the Universal Declaration of Human Rights (10 December 1948), the Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) [3] and others. The continuity of the process of formation and development of personal non-property human rights is confirmed in the Constitution of Ukraine, which establishes human and civil rights, and also indicates the possibility of forming political parties, public organisations, and conducting business activities. Further consolidation and elaboration of personal non-property human rights is provided for in Chapter Two of the Civil Code of Ukraine.

A legal entity is also endowed with personal non-property rights, which, according to S. Popova, are absolute subjective inalienable rights that have specific grounds for their occurrence and termination and are aimed at satisfying both non-property and property interests, are not limited to an exclusive list and may acquire economic content and individualise the subject of civil law relations as an organisation [4].

It should be agreed that the existence of personal non-property rights in a legal entity is generally explained by the fact that a legal entity is essentially a direct or indirect association of individuals [2, p. 150]. However, Article 80 of the CCU provides a slightly different definition of a legal entity: it is an organisation established and registered in accordance with the procedure established by law.

The term “organisation” means a structure formed in a certain way, which can be created by an association of persons, capital, or by a decision of the relevant governing bodies with a specific purpose – to become a participant in civil turnover. At the same time, an organisation that unites individuals into a single group is necessary, since without it it is impossible for it to appear externally as a unity [5, p. 142]. It

should be noted that, unlike the Civil Code of the Ukrainian SSR, the Civil Code of Ukraine does not contain a detailed legal definition of a legal entity. A systematic interpretation of the CCU provisions gives grounds to conclude that the legislator has fundamentally retained the traditional approach to defining the characteristics of a legal entity provided for in Article 23 of the CC of the Ukrainian SSR [2, p. 135]. Thus, the features inherent in a legal entity include its organisational unity, separate property, participation in civil circulation on its own behalf, the ability to bear independent property liability, and the ability to be a plaintiff or defendant in court. All of these features are interrelated and should be considered in their entirety, as only together they reveal the essence of a legal entity.

The personality of a legal entity arises at the moment of its establishment through state registration. From that time on, such person may use the rights provided by law, including personal non-property rights. Pursuant to Article 94 of the Civil Code of Ukraine, a legal entity has the right to inviolability of its business reputation, to secrecy of correspondence, to information and other personal non-property rights that may belong to it. According to Article 201 of the CCU, business reputation is a personal non-property benefit of legal entities. The term "business reputation" is often used in a number of legal acts of Ukraine, as well as in business transactions involving legal entities, but the regulatory definition of this concept is contained only in the Law of Ukraine "On Banks and Banking" [6], where Art. 2 states that "business reputation is information collected by the National Bank of Ukraine on the compliance of the activities of a legal entity or individual, including the managers of a legal entity and owners of substantial participation in such a legal entity, with the requirements of the law, business practice and professional ethics. However, it should be noted that, since this Law has a narrow field of application and regulates relations that arise during the establishment, registration, operation, reorganisation and liquidation of banks, the NBU's definition of business reputation is not a definition of a person's business reputation under the civil law of Ukraine [7]. The Supreme Court of Ukraine has defined business reputation as "an assessment of business, social, professional or other activities of legal entities carried out by such entities as participants in public relations" [8]. In the opinion of the Supreme Economic Court of Ukraine, "the business reputation of a legal entity is the prestige of its brand (commercial) name, trademarks and other intangible assets belonging to it among the consumers of its goods and services" (par. 5) [9].

A number of authors point to the connection between business reputation and intellectual property. It is argued that, on the one hand, intellectual property objects are a kind of "intermediaries" in the course of assessment of products and activities of a business entity by other persons and, thus, play a significant role in the formation of business reputation. On the other hand, they are forms of its material expression, since it is thanks to them that business reputation, being intangible, is manifested in competition [10, p. 8]. There are also suggestions that intellectual property rights should be extended to business reputation" [11, p. 115]. However, other authors justify the position that there are a number of differences between the legal regime of intellectual property and business reputation: 1) intellectual property rights are the results of intellectual activity, and business reputation is an assessment of a company's business activities, its commercial qualities, compliance with the requirements of applicable law and proper performance of contracts, etc. by customers, partners and competitors. In other words, these are different objects in terms of their legal nature and formation; 2) intellectual property rights must be embodied in a certain material carrier, while business reputation is not necessarily tied to a material carrier, it cannot be seen, felt, etc; 3) objects of intellectual property rights must be separable from their creator, as well as suitable for perception and reproduction by another person, while the business reputation of a business entity cannot be perceived, reproduced and separated from the business entity; 4) unlike the business reputation of business entities, some intellectual property objects, in particular industrial property rights, acquire their form only after relevant scientific and technical expertise, i.e. after their appropriate qualification. The foregoing indicates that business reputation of business entities and intellectual property objects are independent categories that should not be equated [7]. The author reasonably notes, however, that there is a close connection between these objects, which means that intellectual property objects are the funds that ensure commercialisation of business reputation of business entities by expressing the latter in the course of

economic activity by its owner. As a result, according to T. Kravchenko, the concept of “business reputation of a business entity” should be defined as a non-property benefit formed as a result of assessment of its activities by the participants of the relations in which the business entity is involved. The formation of business reputation is mainly influenced by economic, social, environmental, innovative and legal factors. The significance of business reputation necessitates a clear understanding of the concept of “business reputation of a business entity” and its legal nature to ensure proper legal regulation of the use, protection and preservation of the business reputation of this legal entity.

It is time to express personal views on the issue under study. Given the absence of the concept of business reputation in the Civil Code of Ukraine, numerous variants of the definition of this concept naturally appear in the scientific literature and court practice. In our opinion, the definition of business reputation should be based on the definition provided by the Supreme Court of Ukraine in its Resolution “On Court Practice in Cases on Protection of Dignity and Honour of an Individual and Business Reputation of an Individual and Legal Entity: Resolution of the Plenum of the Supreme Court of Ukraine of 27.02.2009 No. 1”, namely: “business reputation is an assessment of entrepreneurial, public, professional or other activities of legal entities carried out by such persons as participants in public relations”.

However, not every assessment of a legal entity's activities can be considered business reputation as a type of non-property benefit, but only a positive assessment. It is worth recalling that the etymological meaning of the word “good” is goodness, happiness [12]. If the assessment of activities is negative, this indicates that the legal entity has no business reputation. Therefore, we propose to enshrine in the Civil Code of Ukraine the following definition of the concept of business reputation of a legal entity: a positive assessment of business, public, professional or other activities of legal entities carried out by such persons as participants in public relations.

In addition, we believe that business reputation is a legal presumption that is assumed for every legal entity. This is evidenced by the right to inviolability of business reputation enshrined in Article 94 of the Civil Code of Ukraine. As with any other legal presumption, a legal entity's goodwill may be refuted in court by establishing a negative assessment of the entity's activities.

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ПОЗИТИВНА ОЦІНКА ДІЯЛЬНОСТІ ЮРИДИЧНОЇ ОСОБИ ЯК ОСОБИСТОЇ НЕМАЙНОВОЇ ВИГОДИ

У статті досліджено поняття “ділова репутація” юридичних осіб як учасників суспільних відносин. Встановлено, що низка особистих немайнових прав юридичних осіб, серед яких і право на недоторканність ділової репутації юридичних осіб, передбачена статтею 94 Цивільного кодексу України. Виявлено, що ділова репутація є особистим немайновим благом юридичних осіб. Водночас у Цивільному кодексі України відсутнє визначення поняття “ділова репутація” юридичних осіб, що зумовлює необхідність викласти таке визначення та запропонувати законодавчо закріпити його у Цивільному кодексі України. Встановлено, що наукова асоціація України не оминула увагою це питання і запропонувала декілька варіантів визначення поняття “ділова репутація” юридичних осіб.

Верховний Суд України в постанові Пленуму ВСУ від 27.02.2009 р. № 1 також виклав власне визначення цього поняття, згідно з яким ділова репутація – це оцінка підприємницької, громадської, професійної чи іншої діяльності юридичних осіб, яка здійснюється такими особами як учасниками суспільних відносин. На підставі цього визначення запропоновано удосконалений варіант поняття “ділова репутація”, а саме: “позитивна оцінка підприємницької, громадської, професійної чи іншої діяльності юридичних осіб, що здійснюється такими особами як учасниками громадськості”. Саме таке визначення поняття ділової репутації запропоновано закріпити в Цивільному кодексі України. Доведено, що негативна оцінка діяльності юридичних осіб свідчить про відсутність у таких юридичних осіб ділової репутації. Також встановлено, що ділова репутація є презумпцією закону, яка поширюється на кожен юридичну особу. Як і будь-яку іншу презумпцію закону, наявність у юридичної особи ділової репутації можна спростувати в судовому порядку, надавши негативну оцінку діяльності такої юридичної особи.

Ключові слова: юридична особа; особисті немайнові права; ділова репутація; Цивільний кодекс України.