

РОЗДІЛ 2 КОНСТИТУЦІЙНЕ ПРАВО; МУНІЦИПАЛЬНЕ ПРАВО

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COMMUNAL PROPERTY DISPOSAL: ACTUAL PRINCIPLES

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Theoretical and practical features of the management of communal property in accordance with the current legislation of Ukraine are studied. The position on the need to qualitatively expand the content of the existing principles of communal property management was supported. The author is of the opinion that the formation of effective local self-government as part of the goal of the administrative-territorial reform introduced in Ukraine requires, among other things, taking into account the general principles of economic activity, including greater dispositiveness in decision-making by local governments.

Gaps have been identified within the limits set by the current legislation for the management of communally owned property in correlation with approaches to the implementation of business relations in Ukraine.

An analysis of the current legal framework governing the boundaries and procedures for decision-making on the management of communal property revealed a lack of declarative rules that determine the prerequisites and procedures for the transfer of communal property from the common property of territorial communities in Ukraine. Author expressed an opinion that the existing procedure of managing objects of property rights of territorial communities, as an element of powers of the property owner, restrains the action of the principle of material and financial independence of local self-government enshrined in the Constitution of Ukraine.

It has been established that one of the key criteria that should be followed by entities empowered to manage communal property is social orientation in making any organizational and business decisions.

The idea of outsourcing as one of the most pragmatic ways to improve the efficiency of communal property management is supported given its wide range of optimization properties. The author also noted the possibility of delimitation of powers between local governments to manage the common property of territorial communities in the context of contractual relations established on the basis of voluntary cooperation and mutual responsibility.

Key words: territorial community, local government, communal property, joint communal property.

Бєлов Д., Новак О. Розпорядження комунальним майном: актуальні принципи.

Досліджено теоретичні та практичні особливості управління комунальною власністю відповідно до чинного законодавства України. Підтримано позицію щодо необхідності якісного розширення змісту існуючих принципів управління комунальною власністю. Автор вважає, що формування ефек-

тивного місцевого самоврядування в рамках мети запровадженої в Україні адміністративно-територіальної реформи потребує, серед іншого, врахування загальних засад господарської діяльності, у тому числі більшої диспозитивності у прийнятті рішень.

Виявлено прогалини в межах, визначених чинним законодавством щодо управління майном комунальної власності у співвідношенні з підходами до здійснення ділових відносин в Україні.

Аналіз чинної законодавчої бази, що регулює межі та порядок прийняття рішень щодо управління комунальним майном, виявив відсутність декларативних правил, які визначають передумови та порядок передачі комунального майна із спільної власності територіальних громад України. Автор висловив думку, що існуючий порядок управління об'єктами права власності територіальних громад, як елемент повноважень власника майна, стримує дію закріпленого в Конституції принципу матеріально-фінансової самостійності місцевого самоврядування України.

Встановлено, що одним із ключових критеріїв, яким повинні керуватися суб'єкти, уповноважені управляти комунальним майном, є соціальна спрямованість при прийнятті будь-яких організаційних та господарських рішень.

Ідея аутсорсингу як одного з найбільш прагматичних шляхів підвищення ефективності управління комунальною власністю підтримується з огляду на його широкий спектр оптимізаційних властивостей. Також автор відзначив можливість розмежування повноважень між органами місцевого самоврядування щодо управління спільним майном територіальних громад у контексті договірних відносин, що встановлюються на основі добровільної співпраці та взаємної відповідальності.

Ключові слова: територіальна громада, місцеве самоврядування, комунальна власність, спільна комунальна власність.

Formulation of the problem. As a result of the administrative-territorial reform initiated in Ukraine in 2015, the question arose about the future fate of the property owned by the disbanded territorial communities. Currently in Ukraine there is no single centralized procedure for the transfer of communal property rights between territorial communities, which would establish the basic principles for the disposal of communal property by subjects of power.

Analysis of recent research and publications. Given the significant number of domestic scientific papers that have studied the problems of effective management of communal property from both public and private law point of view, a significant number of theoretical and practical features related to the procedure for determining the actual and legal fate of objects of communal property law.

The purpose of the article. The aim of the article is to study the legal aspect of relations covering the process of disposal of communal property, as well as to determine the practical features of the implementation of derivative powers of representative local governments as entities acting in the interests of local communities.

Presenting main material. In the context of the introduction of administrative-territorial reform in Ukraine and the formation of new territorial communities, there is a need to resolve issues related to the future fate of property owned by one or more disbanded territorial communities in a way that would meet the interests of local people and the goal of reform, formed in the Concept of reforming local self-government and territorial organization of power in Ukraine as “defining directions, mechanisms and deadlines for effective local self-government and territorial organization of power to create and maintain a full living environment for citizens, providing high quality and affordable public services. institutions of direct democracy, satisfaction of the interests of citizens in all spheres of life in the relevant territory, coordination of the interests of the state and territorial communities” [1].

The basis for achieving the above goals can be the general principles of governance and local government in Ukraine, through the prism of which it is advisable to determine the principles of building effective property management of territorial communities, in particular, greater dispositiveness for local governments in exercising organizational and administrative powers. In particular, V. Golub, researching the experience of foreign countries, noted that the management of property of territorial communities should be based on the principles of:

- ensuring sufficient material infrastructure of local self-government to create a socially guaranteed standard of living and protect its interests as a consumer of services and products of enterprises and institutions of communal property;
- ensuring the management of communal property complex to increase its efficiency, competitiveness and stable operation [2].

At the same time, O.O. Voloshenko and Ye.O. Didenko, among others, set such areas for improving the efficiency of municipal property management as:

- updating methods of municipal property management: formation of an effective system for monitoring the processes of municipal property development, assessment and minimization of risks in management planning, analysis of the effectiveness of strategic planning of statistical and tax data; use of outsourcing mechanisms – transfer of performance of certain economic functions of local self-government bodies to state (municipal) institutions or private structures with granting them the right to use municipal property; use of real estate as an investment resource, as well as an incentive to attract investors to the economy of the municipality, the provision of state guarantees; land plots, municipal property for the implementation of promising investment projects;
- expanding the social orientation of the process of using municipal property. Creating conditions for strengthening the role of business in solving social problems, the formation of a competitive environment [3].

It should be noted that the outsourcing method is of particular practical value in the above areas, which reduces the workload of representative local governments in terms of implementing the necessary organizational and legal procedures with which current legislation links the movement of real estate in business. This method was implemented, in particular, by Zakarpattia, Lviv and Chernivtsi regional councils through the establishment of separate legal entities – utilities, which were delegated the authority to manage the common property of territorial communities of the respective regions, which in turn eliminated the sessional nature of local government a sign that prevented the timeliness of effective business decisions. At the same time, representative bodies of local self-government, as entities acting in the interests of the owner – the relevant territorial communities, retain the ability to determine the main goals and strategies of communal property management, compliance with which is a key condition for outsourced legal entities.

From the analysis of the above, it follows that one of the key criteria that should be guided by entities that have the authority to dispose of communal property, is the social orientation in making any organizational and economic decisions.

Currently, the transfer of communal property between territorial communities in Ukraine is carried out in accordance with the Laws of Ukraine “On Local Self-Government in Ukraine” and “On the Transfer of Objects of State and Communal Property”. Article 4 of the Law of Ukraine “On Local Self-Government in Ukraine” defines material and financial independence as one of the basic principles of local self-government [4], which is directly consistent with Article 142 of the Constitution of Ukraine, which states that the material and financial basis of local self-government is , movable and immovable property [5]. However, some norms are contradictory regarding the foundations of local self-government. In particular, paragraph 10 of Section V “Final and Transitional Provisions” of the Law of Ukraine “On Local Self-Government in Ukraine”, paragraph 2 which defines the legal regime of property transferred to communal ownership of regions and districts as common property of territorial communities of villages, towns and cities. oblasts and rayons, as well as the procedure for disposing of such property that falls within the competence of the owner. However, paragraph 3 of the above paragraph establishes the imperative requirement that district and regional councils must make a positive decision on the transfer of objects from the common property of territorial communities to the ownership of territorial communities in which such objects are located and meet only the needs of specific territorial communities [4]. At the same time, among the prerequisites for making decisions on the transfer of common property of territorial communities, the legislator cites only the proposal of a separate territorial community and does not establish a procedure for determining a specific object of communal property as one that meets the needs of one territorial community.

It should be noted that despite the fact that Article 1 of the Law of Ukraine “On Transfer of Objects of State and Municipal Property” allows the application of this law to relations arising from the transfer of state or municipal property of other forms of law property (including communal) by the decision of the representative bodies of local self-government [6], today such a law is insufficiently detailed for its effective use in the relevant field. In particular, the list of communal property that may be subject to gratuitous transfer in accordance with Article 7 of the Law of Ukraine “On Transfer of State and Communal Property” is limited, as it contains information only about critical infrastructure or property, which was used to provide social, medical and educational functions of local government. Such a list is exhaustive and leaves no room for decision on the transfer of other, separately identified immovable property which, as is often the case in practice, has not been used for any purpose or has not been in use for a significant period of time. direct initial appoint-

ment is not possible. By establishing a mandatory condition for the use of gratuitously transferred property for its original purpose, the legislator restrains the principle of material and financial independence of local self-government, as the territorial community that received the property unconditionally undertakes to adhere to the regime of targeted use of property. the transferred property does not meet the interests of the respective community, or the fulfillment of such a condition will involve significant budget expenditures. It is also worth noting the existing possibility of considering relations related to the transfer of communal property in the contractual area, in accordance with the principles of voluntariness, equality, mutual benefit and responsibility established by the Law of Ukraine "On Cooperation of Territorial Communities". This approach to regulation allows to determine the mutual obligations of the transferring entities, which in turn can create the necessary preconditions for the implementation of joint projects for the efficient use of communal property.

Conclusions. Based on the analysis of the theoretical and practical foundations of Ukrainian legislation governing the disposal of communal property, it can be argued that it is necessary to supplement existing regulations with more modern tools that can ensure compliance with the existing procedure for disposing of communal property. principles of communal property management are in line with the latest and most flexible management methods.

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