

Characteristics properties of lease legal relationship while conducting entrepreneurial activities

Особливості орендних правовідносин при здійсненні підприємницької діяльності

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lease, economic agent, economic activity, entrepreneurship, lease legal relationship, lease agreement.

Ключові слова:

оренда, суб'єкт господарювання, господарська діяльність, підприємництво, орендні правовідносини, договір оренди.

Lease is an important part of modern economics system, which provides receiving of income and creates all necessary conditions to conduct entrepreneurial activities. Lease of nonresidential premises, manufacturing complexes, retail equipment, vehicles etc. can be granted.

Thus, lease can be considered in different aspects. Firstly, as a lease agreement, and secondly as one of the types of entrepreneurial activities.

Civil legislation has a central role in regulation of a lease agreement. Provisions, which regulated a lease agreement, can be found in chapter 58 of the Civil Code of Ukraine¹. First paragraph of the abovementioned chapter contains general provisions on rent (lease), other paragraphs regulate lease of certain kinds of property (lease of a land plot) – § 3, lease of buildings or other capital facilities – § 4, lease of vehicles – § 5) or certain kinds of agreements (hire – § 2, leasing – § 6). Besides, it should be noted that legal regulation of lease agreement also belongs to the Economic code of Ukraine. Thus, chapter 30 of the abovementioned regulatory legal act defines characteristics properties of legal regulation of economic-trade activities. Paragraph five of the abovementioned chapter contains regulations on property lease and leasing.

It has to be noted that in accordance with article 2 of the Economic code of Ukraine (hereinafter EC of Ukraine), participants of relationship in the sphere of economic activities are subjects of economic activities. Article 55 of the EC of Ukraine defines that subjects of economic activities are legal entities and self-employed individuals².

Thus, for analysis of legal regulation of activity in granting property lease one should turn to the notion of entrepreneurial activities. In accordance with the article 42 of the EC of Ukraine, entrepreneurship is an independent, initiative, systematic, at one's sole risk, economic activity, which is conducted by economic agents (entrepreneurs) in order to achieve economic and social results and receiving income. Regarding types of economic (entrepreneurial) activity, this provision is contained in sub-item 14.1.36 item 1 article 14 of the Internal Revenue Code of Ukraine³, which implies that general kinds of economic activity are manufacturing (production) of goods, conducting works and service provision. Based on provisions of the EC of Ukraine, it is clear that legislative body takes lease as economic-trade activity. However, we think that this provision is not justifiable, and that there should be an amendment into the EC of Ukraine which defines entrepreneurship as an independent, initiative, systematic, at one's sole risk, economic activity connected to manufacturing (production) and/or disposal of goods, conducting works, service provision, granting property lease, which is performed by economic agents (entrepreneurs) in order to achieve economic and social results and receiving income.

¹ Цивільний кодекс України від 16 січня 2003 р. № 435-IV [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/435-15/page>.

² Господарський кодекс України від 16 січня 2003 р. № 436-IV [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/436-15/page>.

³ Податковий кодекс України від 2 грудня 2010 р. № 2755-VI [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/2755-17/page1>.

Lease relationship while conducting entrepreneurial activities, which is regulated by the Civil Code of Ukraine and Economic code of Ukraine, is legal relationship. The notion "legal relationship" is one of the key notions in law. There are different approaches to understanding the notion "legal relationship" in law theory. Thus, O.F. Skakun determines that legal relationship is controlled by regulations voluntary social relationship, which is expressed in certain connection between eligible and obliged agents – holders of legal rights, obligations, credentials and responsibility – and is provided by state⁴. In his turn, O.M. Kurakin states, that legal relationship is social relationship, which has own specific characteristics. Particularly, they occur between certain participants, set and legally formalize their mutual behavior and gain determined external legal form. Besides, the process of transformation of social relationship into legal relationship is directly connected with their statutory regulations and respectively is connected with provision of power of official enforcement⁵. It is also has to be noted that Article 3 of the EC of Ukraine defines three groups of economic relationship – economic-production, organizational-economic and internal-economic⁶.

Thus, under the notion of economic legal relationship we can understand legal relationship, based on equality, freedom and material independence of participants, social relationship between economic agents and between other participants of economic relationship which occur, change or terminate in accordance with the provision, set by laws and regulations.

In accordance with the abovementioned, we want to attract your attention to a lease agreement as to legal relationship, as we think that an agreement is a basic model of civil and economic legal relationship. Basic function of an agreement is regulation of agents' behavior by determining their rights and obligations. In connection to this, agreement as legal relationship is a collection of rights and responsibilities of the parties.

Alongside with that, an agreement defines not only a final result, but also a content of parties' actions and order of their conducting, specific to entrepreneurial activities. With such an approach, an agreement is considered as an obligation which settles exact term of its performance. Thus, an agreement is a program of mutual activities of parties regarding achievement of economic result.

Thus, according to a lease agreement, according to a general rule, a lessor shall grant to a lessee property for temporary use, and lessee shall pay lease payment for use of property (Article 759 of the Civil Code of Ukraine)⁷. In accordance with the rules, set by Article 283 of the EC of Ukraine, property is granted for use to a lessee for conducting economic activity⁸. Thus, we can claim that regulations of civil and economic legislation of Ukraine can be applied to lease relationship while conducting entrepreneurial activities. Attention has to be paid to the fact that for performance of lease agreement, key moments regarding granting of leased property for use shall be defined (time and terms of granting property for use; document which tracks granting property for use; appropriate quality of granted property, etc.), settlement terms, possibility of prescheduled fulfillment of obligations etc.

Determining lease relationship with participation of entrepreneurial activities agent, it has to be noted that their key characteristics is payment of interest. Considering payment of interest in entrepreneurial activities, E.G. Pliev indicates mediation of major part of exchange relationship by them, in connection to ownership of certain consumer properties by manufactured goods and services, and, as a consequence, ones which have a certain cost (price)⁹.

Payment of interest in business sphere plays a vital part as main characteristics properties of entrepreneurial activities which are conducted by a certain economic agent is receiving of income. Therefore, lease payment in relationship with participation of entrepreneurial activities' agents and determination of its size and settlement terms is of top priority. Even in case of absence of indication on lease payment in a lease agreement, pay-

⁴ Скакун О.Ф. Теорія держави і права : [підручник] / О.Ф. Скакун ; пер. з рос. – Х. : Консум, 2001. – С. 345.

⁵ Куракін О.М. Категорія правовідносини в системі нормативного регулювання / О.М. Куракін // Право і суспільство. – 2013. – № 2. – С. 10.

⁶ Господарський кодекс України від 16 січня 2003 р. № 436-IV [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/436-15/page>.

⁷ Цивільний кодекс України від 16 січня 2003 р. № 435-IV [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/435-15/page>.

⁸ Господарський кодекс України від 16 січня 2003 р. № 436-IV [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/436-15/page>.

⁹ Плиев Э. Проблемы правового регулирования предпринимательской деятельности в Российской Федерации (гражданско-правовой аспект) : автореф. дисс. ... докт. юрид. наук / Э. Плиев. – М., 2002. – С. 11.

ments are indicated in different documents, for example by providing payment documents. Payment of leased property by an individual is proved by a check or a receipt.

Every legal relationship has its own structure. Traditionally legal relationship includes object, subject and content (rights and responsibilities of parties). We consider it important to grant general characteristics of the abovementioned elements of lease legal relationship considering aspect of conducting of entrepreneurial activities by a party (parties).

Studying objects of lease legal relationship in entrepreneurial activities the following has to be mentioned: lease agreement objects in entrepreneurship sphere are usually industrial and retail equipment, work shops, offices, warehouses, forest divisions and land plots. Regarding relationship which occurs between an agent of entrepreneurial activities and a citizen, lease object can be sports equipment, suits and wedding dresses, cars, electric tools, etc.

Apart from traditional lease objects, in connection to development of market economy, objects which do not have single-valued legal confirmation appear, and they are mistakenly considered as lease objects, for example, personnel lease, lease of rest time, lease of link channels, lease of meeting rooms etc.

Characteristics property of a lease relationship agent while conducting entrepreneurial activities is that an agent is a legal entity or a self-employed individual. However, pay your attention to the fact that another party of a lease agreement (lessee) can be not only an economic agent, but an individual as well (citizen of Ukraine, foreigner or a person without citizenship).

Content of lease legal relationship in entrepreneurial activities can be characterized this way: first thing which is worth noticing is extended range of rights and responsibilities compared to civil circulation. This is connected to a number of reasons. Firstly, responsibilities of agents occur in connection to special contractual structures or in connection to type of entering into agreement. Secondly, in connection to risky nature of entrepreneurial activities parties are forced to increase range of rights and responsibilities for their protection, for example, responsibilities regarding property insurance, provision of protection and fire-fighting regimes etc.

Another moment which has to be mentioned when characterizing lease relationship in entrepreneurial activities is that in some cases their content has complex character which contains two legal relationships which are independent of one another. For example, in case of granting industrial equipment for lease, a lessor provides additional services regarding its maintenance operations. Similar case is also set by part 2 article 798 of the Civil Code of Ukraine, devoted to rent of a vehicle with a crew servicing it.

Summary

The article is devoted to analysis of lease legal relationship while conducting entrepreneurial activities. Views of Ukrainian scientists regarding the notion of "legal relationship" are provided. Regulatory affairs of the abovementioned relationship in Ukraine are determined. Main elements of lease legal relationship are defined.

Анотація

Стаття присвячена аналізу орендних правовідносин при здійсненні підприємницької діяльності. Викладено погляди українських вчених щодо поняття «правовідносини». Визначено нормативно-правове забезпечення регулювання зазначених відносин в Україні. Окреслено основні елементи орендних правовідносин.

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